



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on June 4, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST 99-5154

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of **CONTINENTAL AIRLINES, INC.**, filed **2/25/99**, for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

A. Scheduled foreign air transportation of persons, property, and mail between (1) the terminal point Detroit, Michigan, on the one hand, and the coterminal points Cancun, Mexico City, Puerto Vallarta, and Ixtapa/Zihuatanejo, Mexico, on the other hand; (2) the terminal point Memphis, Tennessee, and the terminal point Cancun, Mexico; (3) the terminal point Minneapolis/St. Paul, Minnesota, on the one hand, and the coterminal points Acapulco, Cancun, Cozumel, Puerto Vallarta, San Jose del Cabo, and Ixtapa/Zihuatanejo, Mexico, on the other hand; and (4) the terminal point Tampa, Florida, and the terminal point Cancun, Mexico. Continental proposes to serve the markets pursuant to a code-share arrangement with Northwest Airlines, Inc., whereby Continental will place its designator code on Northwest flights in the subject markets.¹

B. Scheduled foreign air transportation of persons, property, and mail between (1) the terminal point Los Angeles, California, on the one hand, and the coterminal points La Paz, Mazatlan, Puerto Vallarta, San Jose del Cabo, and Ixtapa/Zihuatanejo, Mexico, on the other hand; (2) the terminal point San Diego, California, and the terminal point San Jose del Cabo, Mexico; (3) the terminal point San Francisco, California, on the one hand, and the coterminal points Mazatlan, Puerto Vallarta, and San Jose del Cabo, Mexico, on the other hand. Continental proposes to serve the markets pursuant to a code-share arrangement with Alaska Airlines, Inc., whereby Continental will place its designator code on Alaska flights in the subject markets.

Continental requests that all of the exemption authority be granted for an indefinite term.

Responsive Pleadings: United filed a consolidated answer to Continental's application, as well as to the applications of Northwest Airlines in Dockets OST-98-4832 and OST-99-5164, and Alaska Airlines in Docket OST-99-5155. Continental filed a reply. United maintains that it does not oppose grant of Continental's application, nor similar applications filed by Alaska (in Docket OST-99-5155), and Northwest (in Dockets OST-99-5164 and OST-98-4832), so long as United's outstanding applications to code-share with Compania Mexicana de Aviacion (Mexicana) are granted no later than these applications. In its reply, Continental urges the Department to grant its application immediately.² It states, further, that if the Department were to give any preference to one code-share partnership over another in terms of timing or carrier selection (which it need not do here because all of the pending U.S.-Mexico code-share applications can be granted under the February 1999 code-share agreement), the Department should prefer code-sharing between two U.S. carriers entering new U.S.-Mexico markets over code-sharing between U.S. and Mexican-flag carriers.

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¹ Northwest provides seasonal services in the following markets: Detroit-Cancun; Minneapolis/St. Paul-Acapulco/Cancun/Cozumel; and Tampa-Cancun.

² Continental also amended its application to withdraw its request for exemption authority to serve the Detroit-Cozumel market (see Continental Reply at 1, footnote 3).

Applicant rep: R. Bruce Keiner (202) 624-2615 DOT Analyst: Linda L. Lundell (202) 366-2336

DISPOSITION

XX **Granted, in part, subject to conditions (see below)**

XX **Dismissed exemption request to serve the Detroit-Cozumel market (see below)**

XX **Dismissed request for longer-term authority (see below)**

The above action granting exemption was effective when taken: June 4, 1999, through June 4, 2001, or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

The above dismissal actions were effective when taken: June 4, 1999

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

XX **The authority granted is consistent with the aviation agreement between the United States and Mexico.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX **Holder's certificate of public convenience and necessity**

XX **Standard Exemption Conditions (attached)**

Conditions: The U.S.-Mexico exemption authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2. In addition:

- (1) The exemption authority granted is limited to services provided on a code-share basis only.
- (2) The code-sharing operations conducted under this authority must comply with 14 CFR 399.88 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted.³ Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected.
- (3) The authority granted here is specifically conditioned so that neither Northwest Airlines nor Continental Airlines, and neither Alaska Airlines nor Continental Airlines shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

Dismissals: Consistent with our standard practice for this type application, we have granted the exemption authority for a period of two years, and dismissed the carrier's request for longer-term authority. Based on Continental's reply in this proceeding, its application for exemption authority to serve the Detroit-Cozumel market is moot. We, therefore, dismissed its request to serve this market.

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³ On March 8, 1999, the Department adopted a new regulation, Part 257, governing code-share operations. That regulation becomes effective July 13, 1999.

Remarks: Regarding the comments filed by United, we note that by separate action (Order 99-6-6), we have contemporaneously granted the applications filed by United, as well as the applications of other U.S. and Mexican carriers, for U.S.-Mexico code-share services.

On the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we found the applicant qualified to provide the services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and was consistent with Department policy; (2) grant of the exemption was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted or dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp

U.S. CARRIER
Standard Exemption Conditions

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.