



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

Issued by the Department of Transportation on July 22, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5848

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).

Applicant: **Lineas Aereas Privadas Argentinas, S.A.**

Date Filed: June 16, 1999

Relief requested: Exemption from 49 U.S.C. § 41301 to engage in scheduled foreign air transportation of persons, property and mail between Buenos Aires, Argentina, and Atlanta, Georgia.

If renewal, date and citation of last action: New authority

Applicant representative: Pierre Murphy (202) 872-1679

Responsive pleadings: Continental Airlines, Inc. filed an answer stating that the U.S.-Argentina agreement expressly allocates all 28 weekly Argentine carrier frequencies to Aerolineas Argentinas and does not provide for reallocation of those frequencies. Thus, Continental states, the LAPA frequencies at issue here are extrabilateral unless and until the United States and Argentina hold consultations on the designation of LAPA and reach an agreement which would accommodate LAPA's request as well as Continental's desire to operate daily Newark and Houston-Buenos Aires services, we should not approve LAPA's request. Continental further states that LAPA has not provided supporting information demonstrating that it is qualified to perform the proposed services. LAPA filed a reply stating that it is qualified to conduct the proposed services; the authority it seeks is provided for in the Agreement; and, it is licensed and designated by its government to serve the route. The City of Houston and the Greater Houston Partnership (the Houston Parties) filed a reply stating that the Houston Parties support Continental's position that we should not grant any extrabilateral authority to a carrier of Argentina while our bilateral agreement with Argentina prevents major cities such as Houston from obtaining nonstop service in the U.S.-Argentina market.¹

DISPOSITION

Action: Approved

Action date: July 22, 1999

Effective dates of authority granted: July 22, 1999-July 22, 2000

Basis for approval (bilateral agreement/reciprocity): 1985 bilateral aviation agreement between the United States and Argentina, as amended

While we are sympathetic to Continental's desire to commence Newark/Houston-Buenos Aires scheduled service, we do not find that it would be consistent with the public interest to withhold the authority requested by LAPA. Specifically, we do not regard the authority at issue here as extrabilateral. Under the MOC, each party has the right to substitute one carrier for another for use of the frequencies for its carriers specified in the MOC with certain conditions. *See* U.S.-Argentina Memorandum of Consultations, July 14-19, 1994, Annex II, paragraph 6. Argentina has designated LAPA to use certain frequencies of Aerolineas Argentinas and has so notified the U.S. under the terms of the MOC. *Id.* However, having said that, we hope that open-skies talks with Argentina, scheduled to begin in Washington, D.C. on July 27, 1999, will be fruitful and lead to expanded opportunities for the carriers of both sides. With regard to Continental's assertion that LAPA has not demonstrated its qualifications to conduct the scheduled services at issue here, we have previously found LAPA qualified to conduct passenger charter services in the U.S.-Argentina market, and there is nothing in the record which would have us reach a different result with respect to the services it proposes here. Moreover, the carrier is properly licensed and designated by its government to perform the proposed services.

¹ The Houston Parties' pleading was accompanied by a motion to file an otherwise unauthorized document. We grant the motion.

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

X Standard exemption conditions

Special conditions/Partial grant/Denial basis/Remarks:

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

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) immediate action was required and was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) 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/deferred/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*