135439

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

Issued by the Department of Transportation on **July 26, 2001**

NOTICE OF ACTION TAKEN -- DOCKET OST-2001-10174

*CORRECTED COPY

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 **DELTA AIR LINES, INC., and AEROVIAS DE MEXICO, S.A. DE C.V.**, filed **July 17, 2001**, for:

XX Exemption for Delta Air Lines for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between (1) Los Angeles, California, and Acapulco, Mexico, and (2) New York, New York, and Monterrey, Mexico. Delta also requests authority to combine this exemption authority with all of Delta's existing certificate and exemption authority, consistent with applicable international agreements. Delta further requests a codeshare-only authorization as necessary to support the proposed exemption services. Delta states that it intends to use this authority under a code-share arrangement with Aerovias de Mexico, S.A. de C.V.

XX Statement of Authorization for Aerovias de Mexico, S.A. de C.V. for indefinite duration under Part 212 of the Department's Regulations to:

Display Delta's "DL" designator code on flights operated by Aeromexico between (i) Los Angeles, California, and Acapulco, Mexico, and (ii) New York, New York, and Monterrey, Mexico.[1]

Applicant reps: **Robert E. Cohn (Delta) (202) 663-8060** DOT Analyst: **Linda Lundell (202) 366-2336**
William C. Evans (Aeromexico) (202) 371-6030

DISPOSITION

XX Granted (subject to conditions, see below)

The exemption authority granted was effective when taken: **July 25, 2001**, through **July 25, 2003**, or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

The statement of authorization granted was effective when taken: **July 25, 2001,** and will continue in effect indefinitely, subject to conditions.

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

***Corrects Notice of Action Taken dated July 25, 2001, to revise condition (b).**

---

[1] Aerovias de Mexico, S.A. de C.V. holds authority to serve between Los Angeles and Acapulco (see Notice of Action Taken dated April 25, 2001, in Docket OST-01-9518), and authority to serve between New York and Monterrey (see Notice of Action taken dated November 29, 2000, in Docket OST-00-8374).

(See next page)

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 Delta's certificates of public convenience and necessity
XX Aervias de Mexico, S.A. de C.V. foreign air carrier permit (Order 91-5-25)
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, the exemption authority granted is limited to services provided on a code-share basis only.

The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon Delta rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Delta notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights); (b) should there be a request by any carrier to use the limited-entry route rights that are included in Delta's authority by virtue of the route integration exemption granted here, but that are not then being used by Delta, the holding of such authority by route integration will not be considered as providing any preference for Delta in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

The code-share operations authorized are subject to the following conditions:

(a) The statement of authorization will remain in effect only as long as (i) Delta and Aeromexico continue to hold the necessary underlying authority to operate the code-share services at issue; and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) Delta and/or Aeromexico must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or if the carriers decide to cease operating the code-share services. Such notice should be filed in Docket OST-2000-10174.[2]

(c) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment to the Department's regulations concerning code-share arrangements that may be adopted. 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; and the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of

---

[2]We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

any area for whose airspace the Federal Aviation Administration has issued a flight prohibition; and

(d) The authority granted here is specifically conditioned so that neither Delta nor Aeromexico shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

Remarks: We acted on this application before the expiration of the 15-day answer period with the consent of all parties served with the application.

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

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the application 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, 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

APPENDIX A

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 (FAA), including all FAA requirements concerning security; 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.