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

Issued by the Department of Transportation on May 16, 2001

NOTICE OF ACTION TAKEN -- DOCKET OST 2001-9431- 3

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 Alaska Airlines, Inc. filed 4/13/01 for:

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

**Scheduled foreign air transportation of persons, property, and mail between Los Angeles, California, and Guadalajara, Mexico. Alaska proposes to serve the market by placing its two-letter designator code on flights operated by American in the Los Angeles-Guadalajara market.**

Applicant rep: Marshall S. Sinick (202) 626-6600 DOT Analyst: Linda L. Lundell (202) 366-2336

DISPOSITION

XX Granted, subject to conditions (See below).

The action above was effective when taken: May 16, 2001, through May 16, 2003, or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

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

XX Authority granted is consistent with the aviation agreement between the United States and the Mexico.

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

- XX Holder's certificates of public convenience and necessity
- XX Standard Exemption Conditions (attached)

Special Conditions/Remarks: **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.**

Aside from Alaska's application itself, the only other submission on the record is an answer from United, stating that assuming that the proposed arrangement is consistent with the U.S.-Mexico bilateral agreement, United has no substantive objection to our approving the application. However, United, citing the relief it requested in Docket OST-01-9196, urges the Department to modify its practice of disqualifying or disfavoring a U.S. carrier in carrier selection proceedings to operate new self-operated service in a limited-entry market if the carrier has a pre-existing code-share arrangement in the market. United cites the *Los Angeles-San Jose del Cabo Exemption Proceeding* (the *Los Cabos Case*) (Docket OST-01-8361), where it believes the Department effectively disqualified United from selection because it was already participating in pre-existing code-share arrangements. United states further that, in the *Los Cabos Case*, the Department selected American for the limited-entry services at issue, notwithstanding United's arguments regarding the relevance of the Alaska/American code-share alliance.

We have decided to approve Alaska's application, which is effectively unopposed on the record and which we find consistent with the public interest.

United's views on the decisional relevance in a carrier selection context of the American/Alaska code-share alliance were raised in the *Los Cabos Case*, which was the appropriate forum, as opposed to the application before us here. With respect to United's belief that code-share arrangements disqualify or disfavor a U.S. carrier in carrier selection proceedings before the Department, it has been and continues to be our policy, consistent with our carrier selection guidelines, to consider each comparative selection decision based on the specific service and competitive circumstances of the case at issue. The weight given each of the relevant factors depends upon the particular service and competitive environment present, as well as the particular bilateral context in which the services are provided.

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On the basis of data officially noticeable under Rule 24(g) 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) 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\\_aviation.asp](http://dms.dot.gov/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 Regulations, 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.