



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

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on the 4th day of June, 1999

Served: June 4, 1999

Application of

**AMERICAN AIRLINES, INC.
(American)**

under 49 U.S.C. 40109 for exemption
(Los Angeles-Mazatlan and blanket code-
sharing U.S.-Mexico, behind and beyond
gateways)

Docket OST-97-2477

Applications of

**AMERICAN AIRLINES, INC., and
AERO CALIFORNIA, S.A. de C.V.
(Aero California)**

to amend statements of authorization under
14 CFR Part 212 of the Department's
regulations (Chicago-Monterrey; Dallas/Ft.
Worth-Acapulco; and blanket U.S.-Mexico
behind and beyond gateways, for code-
sharing services)

Undocketed

Applications of

AERO CALIFORNIA S.A. de C.V.

under 49 U.S.C. 40109 for exemption
(Monterrey-Chicago; Acapulco-Dallas/ Ft.
Worth; and blanket U.S.-Mexico behind and
beyond gateways, for code-sharing services)

**Dockets OST-99-5112
OST-99-5113**

Joint application of

**AMERICAN AIRLINES, INC., and
AERO CALIFORNIA S.A. de C.V.**

for renewal of statements of authorization
under 14 CFR Part 212 (reciprocal U.S.-
Mexico code-sharing services)

Docket OST-99-5586

Joint applications of

**DELTA AIR LINES, INC. (Delta) and
AEROVIAS DE MEXICO S.A.
DE C.V. (Aeromexico)**

for statements of authorization under
14 CFR Part 212 of the Department's
regulations (Atlanta-Guadalajara and
Houston-Cancun)

**Docket OST-99-5573
Undocketed**

Joint Applications of

**DELTA AIR LINES, INC., and
AEROVIAS de MEXICO, S.A. de C.V.**

for renewal of statements of authorization
under 14 CFR Part 212 of the Department's
regulations (reciprocal U.S.-Mexico code-
sharing services)

Docket OST-99-5593

Applications of

**DELTA AIR LINES, INC., and
AEROVIAS de MEXICO, S.A. de C.V.**

under 49 U.S.C. 40109 for exemption
(blanket U.S.-Mexico behind and beyond
gateways, for code-sharing services)

Docket OST-97-3289

Applications of

DELTA AIR LINES, INC.

under 49 U.S.C. 40109 for exemptions (various U.S.-Mexico markets, for code-sharing services)

**Dockets OST-98-4577
OST-97-2161**

Applications of

**UNITED AIR LINES, INC. (United),
and COMPANIA MEXICANA de
AVIACION, S.A. de C.V. (Mexicana)**

for an exemption under 49 U.S.C. 40109 and a statement of authorization under 14 CFR Part 212 of the Department's regulations (various U.S.-Mexico markets; and blanket U.S.-Mexico, behind and beyond gateways, for code-sharing services)

Docket OST-97-3237

Joint application of

**UNITED AIR LINES, INC., and
COMPANIA MEXICANA de
AVIACION, S.A. de C.V.**

for renewal of statements of authorization under 14 CFR Part 212 (reciprocal U.S.-Mexico code-sharing services)

Docket OST-99-5582

ORDER APPROVING U.S.-MEXICO CODE-SHARE SERVICES

Summary

By this order, we grant the captioned carriers the necessary regulatory authorities to operate new code-share services in the U.S.-Mexico market. We also grant the captioned carriers' requests to extend authorizations of the code-share services they are currently operating.

Background

Until this year, there were no specific provisions in the U.S.-Mexico aviation agreement providing for code-sharing services. Requests for such services, therefore, were considered on the basis of comity and reciprocity. On February 15, 1999, the United States and Mexico signed an agreement to amend their underlying bilateral aviation agreement to provide for bilateral code-share services.¹ Specifically, the agreement provides that code-share services operated behind and beyond authorized gateway city-pair segments to other cities within the U.S. and other cities within Mexico may be operated without limitation, and without the need to use a designation for authorization of those services. With respect to nonstop transborder services, the agreement provides that, for the purposes of code-sharing only, each country shall have the right to authorize up to four carriers for each nonstop gateway city-pair segment between the United States and Mexico. Designations for nonstop transborder services remain unchanged, *i.e.*, each country can designate up to two carriers that operate services with their own aircraft.

Applications

The captioned carriers filed applications for authority to expand their code-share services as now provided for under the February 1999 agreement.² Each of the carriers requests broad exemption authority and blanket statements of authorization to provide code-share services beyond each other's respective gateway points to points within the United States or Mexico, as applicable, on a blind-sector basis. The carriers have also requested new underlying exemption authority and statements of authorization to serve new nonstop transborder markets under their code-share arrangements.

Specifically, American seeks new exemption authority to serve the Los Angeles-Mazatlan transborder market on flights operated by Aero California. Aero California seeks a corresponding statement of authorization to display American's code on these services. Aero California seeks exemption authority to serve the Monterrey-Chicago and Acapulco-Dallas/Ft. Worth transborder markets. American seeks a corresponding statement of authorization to display Aero California's code on these services.

Delta seeks new exemption authority to serve the following 12 transborder markets: Atlanta-Monterrey; Houston-Cancun; Los Angeles-Hermosillo; Miami-Cancun; Miami-Mexico City; New Orleans-Cancun; New York/Newark-Cancun; Phoenix-Guadalajara; Phoenix-Guaymas; Phoenix-Hermosillo; San Diego-Mexico City; and San Diego-San Jose del Cabo on flights operated by Aeromexico. Aeromexico requests a corresponding statement of authorization to

¹ Pending formal entry into force of this amendment, the two governments agreed to implement the provisions of the new agreement immediately, on the basis of comity and reciprocity.

² Applications have also been filed by U.S./U.S. carrier-partnerships for U.S.-Mexico code-share services. We will handle those requests contemporaneously, by separate notice and/or order.

display Delta's code on these services.^{3 4} Delta also seeks a statement of authorization to display Aeromexico's airline code on Delta's new Atlanta-Guadalajara service.⁵ Because the carriers propose to begin this service on July 1, they seek expedited authorization of their services in this market.

United seeks new exemption authority to serve the following 10 transborder markets: Chicago-Puerto Vallarta; Los Angeles-San Jose del Cabo; Los Angeles-Guadalajara; Los Angeles-Puerto Vallarta; Miami-Cancun; Miami-Merida; New York/Newark-Cancun; New York/Newark-Mexico City; Oakland-Guadalajara; and San Antonio-Mexico City on flights operated by Mexicana. Mexicana requests a corresponding statement of authorization to display United's code on these services.⁶

Responsive Pleadings

United, United and Mexicana (jointly), Continental Airlines, Inc., American and Aero California (jointly), and Northwest Airlines, Inc., filed answers to the captioned applications. Delta and Aeromexico filed joint replies.⁷

United and Mexicana state that they do not oppose the applications of other applicants so long as the pending code-share applications of United and Mexicana are granted concurrently.

Similarly, American/Aero California urge the Department to act favorably on all pending U.S.-Mexico code-share applications at the same time.

Continental and Northwest urge the Department to defer action on the Delta/Aeromexico requests, arguing that consideration of their requests may delay action on the requests of other carriers seeking to expand services in the U.S.-Mexico market.

³ Delta and Aeromexico accompanied their May 17, 1999, amended application with a joint motion for leave to amend their applications. We will grant the motion.

⁴ In its February 18, 1999, joint application Delta and Aeromexico cite a pending application, filed February 22, 1998 (undocketed), for renewal of, among other things, a statement of authorization for the Miami-Cancun and New York/Newark-Cancun markets (application at 7). However, the carriers' original request for this authority was deferred (see Notice of Action Taken dated April 22, 1997, confirmed by Order 97-6-26). Under these circumstances, we will consider the carriers' request for renewal of a statement of authorization for the Miami/New York/Newark-Cancun markets as a request for a new statement of authorization.

⁵ Delta already holds the underlying exemption authority needed to conduct Atlanta-Guadalajara transborder services (see Notice of Action Taken dated April 27, 1999). We are granting Aeromexico's request for exemption authority to conduct transborder services in the Guadalajara-Atlanta market concurrently with the issuance of this order (Docket OST-99-5615).

⁶ On May 6, 1999, United and Mexicana filed a joint motion for immediate action in Docket OST-97-3237, requesting that the Department grant the applications of United/Mexicana for expanded U.S.-Mexico code-share services. Delta and Aeromexico filed a joint answer in support of the United/Mexicana motion. We will grant the motion.

⁷ On May 25, 1999, by Notice, the Department shortened the period for filing responsive pleadings to the May 17, 1999, Delta/Aeromexico application in this matter, establishing 2:00 p.m., May 28, 1999, as the deadline for answers to the application, and c.o.b., June 1, 1999, as the deadline for replies.

Delta and Aeromexico filed a joint reply, stating that Northwest has raised no basis to delay action on their pending requests and that the Department should grant the pending applications of all U.S. and Mexican carriers to expand their code-share operations.

Finally, Continental, American/Aero California, and United object to the joint application of Delta and Aeromexico to operate code-share services in the Atlanta-Guadalajara market (Docket OST-99-5573), to the extent that Delta and Aeromexico seek priority treatment of their application over those of other carriers.⁸ The commenting parties argue that the Department should grant prompt and favorable action on all pending applications and that there is nothing unique about the Delta/Aeromexico application to justify piecemeal authorizations in individual city-pair markets as proposed by Delta/Aeromexico.⁹ In their reply, Delta/Aeromexico state that the Department was successful in its efforts to reach an agreement with Mexico on code-share services which is acceptable to both governments and that there is no basis to withhold authority to allow Aeromexico to code share on Delta's Atlanta-Guadalajara flights.¹⁰

No other responses were filed with respect to the captioned applications for code-share services under the amended agreement.

Decision

A. Grant of Authority

We have decided to grant the requested exemption and code-share authorities. The applications filed are consistent with the agreement signed by the United States and Mexico in February, will use valuable rights for which the United States has exchanged valuable operating rights, and will expand the service options for travelers in the U.S.-Mexico market.¹¹ The exercise of these rights will benefit travelers, shippers, businesses, cities, airlines, and airports, and grant of the authority is clearly in the public interest.

⁸ United accompanied its response with a motion for leave to file an otherwise unauthorized document in this matter. We will grant the motion.

⁹ American and Aero California also had filed an answer opposing the Delta/Aeromexico application to serve the Houston-Cancun market (Docket OST-98-4577 and undocketed, both filed October 18, 1998) on the basis that the U.S. and Mexico had not yet reached an agreement on code-sharing services. That issue has been resolved as a result of the February 1999 agreement on code-sharing services.

¹⁰ Delta and Aeromexico accompanied their joint reply with a motion for leave to file an otherwise unauthorized document. We will grant the motion.

¹¹ We find that each applicant for an operating exemption is qualified to provide the services authorized.

B. Conditions

1. General

As is our normal practice in these matters, we will impose our standard conditions on the code-share authorizations, along with our standard dormancy notice conditions for U.S. carriers on the new exemption authority for nonstop transborder U.S.-Mexico services granted by this order. We have decided not to apply the dormancy conditions to the broad exemption authority awarded for the beyond gateway interior U.S. and interior Mexico code-share services authorized. The dormancy conditions were designed to maximize U.S. carrier opportunities under the U.S.-Mexico aviation agreement to ensure that limited-entry routes not being served would be readily available for service by other carriers. Because there are now no limits on the *beyond* gateway code-share operations under the February 1999 agreement, we do not find that it is necessary, or in the public interest, to apply the dormancy condition to those services.

2. Exclusivity

The code-share arrangements between each of the U.S. and Mexican carrier partnerships--Delta/Aeromexico, United/Mexicana, and American/AeroCalifornia--include provisions that provide for exclusive dealings between the partners with respect to U.S.-Mexico services.

Delta/Aeromexico and United/Mexicana in the context of the applications at issue here urge the Department to approve their requests without imposing any conditions on their exclusivity arrangements. They argue that the U.S.-Mexico market is highly competitive with 10 U.S. and 7 Mexican carriers serving numerous U.S.-Mexico city-pair markets. Given the number of carriers serving the country-pair market and the large number of cities served, the carriers argue that the characteristics of the market do not require any conditions on exclusivity and that permitting the exclusivity provisions is consistent with the Department's recent exclusivity order. Delta further argues that its agreement on exclusivity with Aeromexico was made in connection with investment by Delta in AeroPeru (a carrier in which its partner, Aeromexico, had an equity interest) and that the Department should not interfere in that contractual arrangement. With respect to this issue, American and Aero California, in a jointly filed response to the Delta/Aeromexico request, urge the Department to act on the applications of all carriers in the same manner.

In Order 99-5-2, we recently addressed the issue of code-share exclusivity and stated that where limits on U.S. carrier rights exist, we are inclined to be much less tolerant of any exclusivity provision in code-share arrangements. The U.S.-Mexico aviation agreement is not Open Skies, with certain restrictions still remaining, and we do not find that the arguments presented here are convincing, or that there are countervailing circumstances such that the public interest warrants permitting exclusivity in the arrangements here between these U.S. and Mexican carriers.

While both United/Mexicana and Delta/Aeromexico have pointed to the level of competition in the U.S.-Mexico market, the U.S.-Mexico market is not open in all respects, and carriers do not

have unconstrained flexibility to operate their services as they choose. For example, the number of carriers that may operate their own aircraft in any city-pair market remains limited, the number of carriers that can code share in any market is limited, and the ability of carriers to operate beyond Mexico is restricted. In these circumstances, we are not persuaded that permitting the exclusivity provisions at issue is in the public interest.

Nor are we persuaded by Delta's arguments that its investment in AeroPeru should weigh in favor of permitting its exclusivity arrangement with its Mexican partner in the U.S.-Mexico market. We made clear in Order 99-5-2 that investment in a foreign partner in and of itself would not normally justify consideration as a factor in our decision as to whether we should permit a specific exclusivity arrangement.¹²

Given these circumstances, we will condition the statements of authorization at issue here to preclude the carriers from giving any force or effect to any contractual provisions that provide for exclusive dealings between them.

C. Term of Authority

Since the code-share authority at issue is now provided for in the February 1999 agreement, consistent with recent practice we will grant the requests for statements of authorization for an indefinite period, subject to our standard code-share conditions, provided that the carriers continue to hold the necessary underlying authority to serve the markets at issue. However, consistent with our standard practice for exemption applications, in cases of this type, we have granted the subject exemption authority for a period of two years, and dismissed any carrier's request for longer-term authority awarded here.

Extensions of Current Code-Share Authorities

The captioned carriers have also filed applications to extend the duration of their statements of authorization for current code-share operations in the U.S.-Mexico market (see Dockets OST-99-5586, OST-99-5593, and OST-99-5582).¹³ With the exception of Aeromexico's statement of authorization to display Delta's code on Aeromexico's Atlanta-Monterrey flights (see Notice

¹² Order 99-5-2, at 7, n. 10.

¹³ The captioned carriers have also filed applications to renew certain underlying exemption authority for various U.S.-Mexico markets. These requests will be handled by separate Departmental order and/or notice.

of authorization to display Delta's code on Aeromexico's Atlanta-Monterrey flights (see Notice of Action Taken dated January 6, 1999, and granted through July 4, 1999), all of these authorizations were last granted on December 4, 1998, through June 1, 1999.^{14 15}

The applicants state that, on the basis of the February 1999 agreement providing for code-share services, the statements of authorization should be granted for an indefinite term. United filed an answer, stating that it does not oppose any request for extension so long as the pending United/Mexicana application for extension of their code-share authority is granted concurrently. No other answers were filed.

In light of the fact that we have now reached a code-share agreement with the Government of Mexico, and consistent with our policy in such matters, we have decided to grant the extensions for statements of authorization in the subject markets for an indefinite term, and that grant of such authority is consistent with the public interest.

Miscellaneous Procedural Matters

Any U.S. carrier wishing to convert its authorized nonstop transborder code-share operations from direct carrier service (designation), to service involving only the displaying of its code on another Mexican or U.S. carrier's flights (code-share only authorization), or vice versa, must file a notice with the Department no later than 30 days prior to the proposed change.¹⁶ The notice should identify the subject market and the type of aircraft to be used in the market, and include the level of service proposed in the market, along with the proposed conversion date. We will list the notice in the Weekly Summary of Applications Filed, providing for a two-week answer period. If no party opposes the request, and sufficient designations or code-share only authorizations, as applicable, are available, we will convert the operations as requested.

Moot Requests

Before the United States and Mexico reached an agreement on code-sharing services, the Department had deferred action on a number of requests filed by the applicants to expand their code-share services. Certain deferrals were a result of the designation limitations then in effect, the others were a result of our decision not to proceed with extensive code-share approvals,

¹⁴ Current code-share authority not a part of these extension requests is the statement of authorization, permitting Delta to display Aeromexico's code on flights operated by Delta between Atlanta, on the one hand, and Boston, Charlotte, Chicago, Cincinnati, Detroit, Raleigh/Durham, Greensboro, Nashville, New York, Newark, Philadelphia, and Washington, D.C., on the other, for the carriage of Aeromexico's traffic moving between Monterrey, Mexico, and the 12 named points beyond Atlanta (see Notice of Action Taken granted January 27, 1999, through January 27, 2000).

¹⁵ The Department extended the subject statements of authorization to these carriers for their currently operated services, through June 18, 1999 (see Notice of Action Taken dated May 28, 1999).

¹⁶ Notices should be filed in the form of a letter addressed to Teresa Bingham, Chief, U.S. Air Carrier Licensing Division, X-44, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590, and served on all U.S. carriers providing service in the U.S.-Mexico market.

pending an agreement with Mexico on code-share services.¹⁷ The carriers have submitted amended and/or new requests in the captioned docketed and undocketed applications, based on the provisions of the February 1999 agreement, to request broad U.S.-Mexico exemption and code-share authority, as well as authority to serve the new nonstop transborder city-pair markets they are now interested in serving. As sufficient designations or code-share authorizations are available under the amended agreement to accommodate all of the amended and/or new requests, we have granted the requested authority by this order (with the exception of the duration of the exemption authority requested by American and/or Aero California). In light of this action, the balance of the earlier-filed requests in certain of the captioned applications are now moot (with the exception of Delta's applications in Dockets OST-97-3289 and OST-97-2161, and United's application in Docket OST-97-3237).¹⁸ Therefore, to the extent not granted or deferred by this order, we dismiss, as moot, the remainder of the requests in all of the captioned docketed and undocketed applications.¹⁹

ACCORDINGLY,

1. We exempt American Airlines, Inc., under the provisions of 49 U.S.C. 40109, to the extent necessary, to engage in scheduled foreign air transportation of persons, property, and mail between points in the United States and points within Mexico beyond American's authorized Mexican gateway points for transborder services, for the purpose of blind-sector code-sharing services operated between the Mexican gateway points and other points within Mexico on services operated by either American or Aero California, S.A. de C.V.;
2. We exempt Aero California, S.A. de C.V., under the provisions of 49 U.S.C. 40109, to the extent necessary, to engage in scheduled foreign air transportation of persons, property, and mail between points in Mexico and points within the United States beyond Aero California's authorized U.S. gateway points for transborder services, for the purpose of blind-sector code-sharing services operated between the U.S. gateway points and other points within the United States on services operated by either Aero California, S.A. de C.V., or American (and its affiliates);
3. We grant American Airlines, Inc. (and its affiliate airlines, American Eagle Airlines, Inc., and Executive Airlines, Inc., d/b/a American Eagle), a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of Aero California on all flights operated by American and American Eagle within the United States beyond Aero California's authorized United States gateways for the carriage of Aero California's authorized Mexico-U.S. traffic;

¹⁷ See, e.g., Notices of Action Taken dated March 20, 1998, and April 28, 1998, for American and/or Aero California; see Notice of Action Taken dated April 22, 1997, for Delta and/or Aeromexico; and Notice of Action Taken dated March 20, 1998, for United and/or Mexicana.

¹⁸ Earlier-filed requests in Dockets OST-97-3289 and OST-97-2161 include requests for renewal of certain U.S.-Mexico exemption authority which will be handled by separate Department order or notice.

¹⁹ There are other miscellaneous requests for U.S.-Mexico code-share authorities filed by the applicants in dockets not captioned here that have now become moot as a result of the new agreement and that will be dismissed by the Department separately.

4. We grant Aero California, S.A. de C.V. (Aero California), a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of American Airlines on all flights operated by Aero California within Mexico beyond American's authorized Mexican gateways for the carriage of American's authorized U.S.-Mexico traffic;
5. We exempt Delta Air Lines, Inc., under the provisions of 49 U.S.C. 40109, to the extent necessary, to engage in scheduled foreign air transportation of persons, property, and mail between points in the United States and points within Mexico beyond Delta's authorized Mexican gateway points for transborder services, for the purpose of blind-sector code-sharing services operated between the Mexican gateway points and other points within Mexico on services operated by either Delta or Aerovias de Mexico, S.A. de C.V.;
6. We exempt Aerovias de Mexico, S.A. de C.V. (Aeromexico), under the provisions of 49 U.S.C. 40109, to the extent necessary, to engage in scheduled foreign air transportation of persons, property, and mail between points in Mexico and points within the United States beyond Aeromexico's authorized U.S. gateway points for transborder services, for the purpose of blind-sector code-sharing services operated between the U.S. gateway points and other points within the United States on services operated by either Aeromexico or Delta;
7. We grant Delta Air Lines, Inc., a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of Aeromexico on all flights operated by Delta within the United States beyond Aeromexico's authorized United States gateways for the carriage of Aeromexico's authorized Mexico-U.S. traffic;
8. We grant Aerovias de Mexico, S.A. de C.V. (Aeromexico), a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of Delta Air Lines on all flights operated by Aeromexico within Mexico beyond Delta's authorized Mexican gateways for the carriage of Delta's authorized U.S.-Mexico traffic;
9. We exempt United Air Lines, Inc., under the provisions of 49 U.S.C. 40109, to the extent necessary, to engage in scheduled foreign air transportation of persons, property, and mail between points in the United States and points within Mexico beyond United's authorized Mexican gateway points for transborder services, for the purpose of blind-sector code-sharing services operated between the Mexican gateway points and other points within Mexico on services operated by either United or Compania Mexicana de Aviacion S.A. de C.V.;
10. We exempt Compania Mexicana de Aviacion S.A. de C.V. (Mexicana), under the provisions of 49 U.S.C. 40109, to the extent necessary, to engage in scheduled foreign air transportation of persons, property, and mail between points in Mexico and points within the United States beyond Mexicana's authorized U.S. gateway points for transborder services, for the purpose of blind-sector code-sharing services operated between the U.S. gateway points and other points within the United States on services operated by either Mexicana or United;

11. We grant United Air Lines, Inc., a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of Mexicana on all flights operated by United within the United States beyond Mexicana's authorized United States gateways for the carriage of Mexicana's authorized Mexico-U.S. traffic;
12. We grant Compania Mexicana de Aviacion S.A. de C.V. (Mexicana), a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of United Air Lines on all flights operated by Mexicana within Mexico beyond United's authorized Mexican gateways for the carriage of United's authorized U.S.-Mexico traffic;
13. We exempt American Airlines, Inc., under the provisions of 49 U.S.C. 40109, to the extent necessary to engage in scheduled foreign air transportation of persons, property, and mail between the terminal point Los Angeles, California, and the terminal point Mazatlan, Mexico, for the purpose of code-sharing only on flights operated by Aero California;
14. We grant Aero California, S.A. de C.V. (Aero California), a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of American on flights operated by Aero California in the Los Angeles-Mazatlan market for the carriage of American's authorized Los Angeles-Mazatlan traffic;
15. We exempt Aero California, S.A. de C.V., under the provisions of 49 U.S.C. 40109, to the extent necessary to engage in scheduled foreign air transportation of persons, property, and mail between (1) the terminal point Monterrey, Mexico, and the terminal point Chicago, Illinois; and (2) the terminal point Acapulco, Mexico, and the terminal point Dallas/Ft. Worth, Texas for the purpose of code-sharing only on flights operated by American Airlines;
16. We grant American Airlines, Inc., a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of Aero California on flights operated by American in the Chicago-Monterrey and Dallas/Ft. Worth-Acapulco markets for the carriage of Aero California's authorized Monterrey-Chicago and Acapulco-Dallas/Ft. Worth traffic;
17. We exempt Delta Air Lines, Inc., under the provisions of 49 U.S.C. 40109, to the extent necessary to engage in scheduled foreign air transportation of persons, property, and mail in the following 12 transborder markets for code-sharing services only: Atlanta-Monterrey; Houston-Cancun; Los Angeles-Hermosillo; Miami-Cancun; Miami-Mexico City; New Orleans-Cancun; New York/Newark-Cancun; Phoenix-Guadalajara; Phoenix-Guaymas; Phoenix-Hermosillo; San Diego-Mexico City; and San Diego-San Jose del Cabo;
18. We grant Aerovias de Mexico, S.A. de C.V. (Aeromexico), a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of Delta Air Lines on flights operated by Aeromexico for the carriage of Delta's authorized services in the following markets: Atlanta-Monterrey; Houston-Cancun; Los Angeles-Hermosillo; Miami-Cancun; Miami-Mexico City; New Orleans-Cancun; New York/Newark-Cancun; Phoenix-

Guadalajara; Phoenix-Guaymas; Phoenix-Hermosillo; San Diego-Mexico City; and San Diego-San Jose del Cabo;

19. We grant Delta Air Lines, Inc., a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of Aeromexico on flights operated by Delta in the Atlanta-Guadalajara market for the carriage of Aeromexico's authorized Atlanta-Guadalajara traffic;

20. We exempt United Air Lines, Inc., under the provisions of 49 U.S.C. 40109, to the extent necessary to engage in scheduled foreign air transportation of persons, property, and mail in the following ten transborder markets for the purpose of code-sharing only on flights operated by Mexicana: Chicago-Puerto Vallarta; Los Angeles-San Jose del Cabo; Los Angeles-Guadalajara; Los Angeles-Puerto Vallarta; Miami-Cancun; Miami-Merida; New York/Newark-Cancun; New York/Newark-Mexico City; Oakland-Guadalajara; and San Antonio-Mexico City;

21. We grant Compania Mexicana de Aviacion S.A. de C.V. (Mexicana), a statement of authorization under Part 212 of the Department's regulations to display the airline designator code of United Air Lines on all flights operated by Mexicana for the carriage of United's authorized traffic in the following markets: Chicago-Puerto Vallarta; Los Angeles-San Jose del Cabo; Los Angeles-Guadalajara; Los Angeles-Puerto Vallarta; Miami-Cancun; Miami-Merida; New York/Newark-Cancun; New York/Newark-Mexico City; Oakland-Guadalajara; and San Antonio-Mexico City;

22. We grant the joint applications of American Airlines, Inc., and Aero California, S.A. de C.V., in Docket OST-99-5586; Delta Air Lines, Inc., and Aerovias de Mexico, S.A. de C.V., in Docket OST-99-5593; and United Air Lines, Inc., and Compania Mexicana de Aviacion S.A. de C.V., in Docket OST-99-5582, for extension of statements of authorization to engage in certain U.S.-Mexico code-sharing services;

23. The exemption authorities granted, above, are effective immediately for a period of two years from the service date of this order, subject to the conditions attached to this order;

24. The statements of authorization granted, above, are effective immediately and shall remain in effect indefinitely, subject to the conditions attached;

25. The U.S.-Mexico transborder exemption authority for nonstop services granted to American Airlines, Inc.; Delta Air Lines, Inc.; and United Air Lines, Inc., in this order, is subject to the dormancy notice requirements set forth in condition #7 of Appendix A of Order 88-10-2;

26. We grant all motions for leave to amend previously filed applications, and all motions for leave to file otherwise unauthorized documents in the captioned applications;

27. We grant the joint motion of United Air Lines, Inc., and Compania Mexicana de Aviacion, S.A. de C.V., filed May 6, 1999, for immediate action in Dockets OST-97-3237 and undocketed;

28. To the extent not granted, we dismiss the balance of the joint applications of American Airlines, Inc., and Aero California, S.A. de C.V., in Docket OST-99-5586; Delta Air Lines, Inc., and Aerovias de Mexico, S.A. de C.V., in Docket OST-99-5593; and United Air Lines, Inc., and Compania Mexicana de Aviacion, S.A. de C.V., in Docket OST-99-5582;

29. To the extent not granted, we defer on the balance of the captioned joint application of Delta Air Lines, Inc., and Aerovias de Mexico, S.A. de C.V. (sic), in Docket OST-97-3289, for renewal of certain U.S.-Mexico exemption authority for code-sharing services;²⁰

30. To the extent not granted, we defer on the balance of the captioned application of Delta Air Lines, Inc., in Docket OST-97-2161, for renewal of certain U.S.-Mexico exemption authority for code-sharing services;²¹

31. To the extent not granted, we defer on the balance of the captioned joint application of United Air Lines, Inc., and Compania Mexicana de Aviacion, S.A. de C.V., in Docket OST-97-3237, for renewal of certain U.S.-Mexico exemption authority for code-sharing services;²²

32. To the extent not granted, deferred, or dismissed, we deny all requests in the captioned applications;

33. We may amend, modify, or revoke the authorities granted by this order at any time at our discretion without notice or hearing; and

²⁰ Originally, the application filed in Docket OST-97-3289 on January 19, 1999, captioned only Delta Air Lines, Inc. In this application, Delta seeks renewal of certain U.S.-Mexico exemption authority for the purpose of code-sharing services (the application was timely filed and the authority has been kept in force pursuant to the Administrative Procedure Act). We will handle the January 19, 1999, request in a separate order or notice.

²¹ On February 18, 1999, Delta filed an application, in Docket OST-97-2161, to renew certain U.S.-Mexico exemption authority for the purpose of code-sharing services (the application was timely filed and the authority has been kept in force pursuant to the Administrative Procedure Act). We will handle the February 18, 1999, request in a separate order or notice.

²² On April 26, 1999, United filed a consolidated application in Docket OST-97-3237 and Docket OST-96-1988, to renew certain U.S.-Mexico exemption authority for the purpose of code-sharing services (the application was timely filed and the authority has been kept in force pursuant to the Administrative Procedure Act). We will handle the April 26, 1999, request in a separate order or notice. (The original and subsequent pleadings filed by the carrier, in Docket OST-97-3237 cite the joint applicants United and Mexicana.)

34. We will serve this order on all parties in the captioned dockets; the Federal Aviation Administration (AFS-200); the U.S. Department of State (Office of Aviation Negotiations); and the Ambassador of Mexico in Washington, D.C.;

By:

A. Bradley Mims
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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

CODE-SHARE CONDITIONS

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

- (a) The respective statements of authorizations will remain in effect only as long as (i) the subject U.S. carrier and the subject Mexican-flag carrier continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share and/or alliance agreement providing for the code-share operations remains in effect;
- (b) The subject U.S. carrier and/or the Mexican-flag carrier must notify the Department (Office of International Aviation, Room 6412) by letter, no later than 30 days before they begin any new beyond gateway code-share service under the blanket beyond-gateway code-share services authorized by this order. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. Such notices must be filed in the applicable application docket;
- (c) The subject U.S. carrier and/or the subject Mexican-flag carrier must notify the Department immediately if the code-share and/or alliance agreement under which these code-share services are operated is no longer in effect, or if the carriers decide to cease operating all or any portion of the code-share services under the agreement alliance.¹ Such notices must be filed in the applicable application docket;
- (d) 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.² 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. For services authorized by this order, where the foreign carrier is flying its aircraft, the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition;
- (e) The authority granted here is specifically conditioned so that neither the subject U.S. carrier nor the subject Mexican-flag carrier shall give any force

¹ We expect this notification to be received within 10 days of such non-effectiveness or of such decision

² On March 8, 1999, the Department adopted a new regulation, Part 257, governing code-sharing operations. That regulation becomes effective July 13, 1999.

or effect to any contractual provisions between themselves that are contrary to these conditions; and

- (f) The subject code-share authorizations are specifically conditioned so that neither the U.S. carrier nor the foreign carrier partner shall give any force or effect to any exclusivity provision in any agreement between them regarding their code-share services to the extent that such provisions provide for exclusive dealings between the U.S. carrier and its foreign carrier partner.

U.S. CARRIER
Standard Exemption Conditions

In the conduct of operations authorized by the attached order, the U.S. carrier(s) authorized 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.

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) 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;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or
 - (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).