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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 the 10th Day of July, 2000

Application of

DELTA AIR LINES, INC.
and
COMAIR, INC.

Docket OST-99-6548 - 2

for a disclaimer of jurisdiction or, in the alternative, for
transfer of certain international authority pursuant to 49
U.S.C. 41105

ORDER GRANTING *DE FACTO* TRANSFER OF AUTHORITY

Summary

By this order, we grant a *de facto* transfer under section 41105 of Title 49 of the United States Code ("the Statute") of the certificate and other economic authorities held by Comair, Inc. (Comair) to Comair under the ownership of Delta Air Lines, Inc. (Delta).

Background

Delta and Comair hold various certificates of public convenience and necessity, exemptions and other economic authority from the Department authorizing each to engage in interstate and foreign air transportation of persons, property, and mail. On November 23, 1999, Delta and Comair (collectively, "the applicants") filed a joint application in Docket OST-99-6548 for a disclaimer of jurisdiction, or in the alternative, approval of the *de facto* transfer of Comair's international economic operating authorities to Delta pursuant to section 41105 of the Statute.¹

The applicants state that their request does not involve the actual transfer of any certificate or other authority from Comair to Delta since Delta, itself, holds authority to serve each point

¹ This application was filed in anticipation of Delta's acquisition of all of the outstanding stock of Comair Holdings, Inc., Comair's parent. Prior to that, Delta held a 22 percent ownership interest in Comair Holdings.

served by Comair.² Rather, the request stems from the Department's historic interpretation that the transfer Statute applies with respect to a transaction involving a stock acquisition resulting in the common control of two U.S. airlines holding international authority.³ Delta's acquisition of Comair results in common control of Delta and Comair, both of which hold international route authority. Although the applicants suggest that a disclaimer of jurisdiction would be appropriate here due to, among other things, the limited scope of Comair's international authority and service and Delta's overlapping route authorities, they also argue that, should the Department decline to disclaim jurisdiction, the *de facto* route transfers should be approved as fully consistent with the public interest standards of the Statute.

We received no objections to the application.

Public Interest

A certificate may be transferred under section 41105 of the Statute if the Department determines that the transfer is in the public interest. The primary criteria in determining the "public interest" are whether the certificate transfer would conflict with important international aviation policy objectives and whether the surviving entities are U.S. citizens and whether they will be fit to hold the authority. Further, section 41105(b) requires the Department to analyze the impact of the transaction on the viability of the carrier applicants, competition in the domestic airline industry, and the trade position of the United States in the international air transportation market.

The applicants contend that there are no international aviation policy concerns. In this regard, they state that approval will enable Comair to maintain existing international services already

² Comair holds a certificate for Route 617 authorizing it to serve Ottawa and Montreal, Canada, from New York and Newark. Comair also provides service between Cincinnati and Toronto, Boston/New York and Montreal, and Cincinnati/Orlando and Nassau, Bahamas, pursuant to section 206.5 of our rules that allows certificated air carriers to conduct foreign air transportation with small aircraft (that is, aircraft with 60 passenger seats/18,000 pounds payload or less) without the necessity of obtaining a certificate specifically authorizing such operations. Finally, subsequent to the filing of the instant application, the Department designated Comair to provide scheduled service with small aircraft between Dallas/Fort Worth and Mexico City and Puebla, Mexico under its code-share arrangement with Delta (see Notice issued April 4, 2000). Among others, Delta holds certificates for (1) Routes 660 and 678 authorizing various services between points in the U.S. and points in Canada, (2) Routes 152 and 158 authorizing it to serve, among others, between points in the U.S. and points in the Bahamas, and (3) Route 562 authorizing it to serve between, among others, Dallas/Ft. Worth and Mexico City. Delta holds underlying authority to serve Puebla under the provisions of section 206.5.

³ "A stock acquisition resulting in common control of two carriers having international route authority constitutes a *de facto* certificate transfer subject to section 401(h)." [Former section 401(h) of the Federal Aviation Act was recodified as section 41105 of the Statute.] *Federal Express Corporation and The Flying Tiger Line*, Order 89-3-21, at 2, note 2. See also, *AMR Eagle, Inc. and Executive Air Charter, Inc.*, Order 90-2-1, January 24, 1990, *Texas Air-TWA Acquisition Case*, Order 85-8-25, August 9, 1985, and *American International Airways, Inc. and Kitty Hawk Aircargo, Inc.*, Order 98-8-16, June 23, 1998.

provided under the Delta code,⁴ thus promoting U.S. international aviation policy goals by preserving competitive service options for the traveling and shipping public. The applicants also state that approval of the transfer will have a positive impact on each carrier's viability since it will enable Delta to maintain existing international services using Comair aircraft tailored to the size of the routes involved. To the extent that the route transfers have any impact on domestic competition, the applicants believe it will be positive in that enhanced international traffic flow will permit Delta and Comair to preserve existing service and enhance domestic inter-gateway and intra-gateway competition; such competition would enhance domestic competition and strengthen the trade position of the United States in the international air transportation market. Finally, the applicants state that the *de facto* transfer requested here will enhance the Delta/Comair relationship and the route system operated by the two carriers, including international services, which, in turn, will have a positive impact on employees at both companies. According to the applicants, the new parent-subsidary relationship between the two is not expected to result in any material changes in the business, management or continuing fitness of the two companies.

Decision

We have decided not to disclaim jurisdiction over this transaction, but rather we will approve the *de facto* transfer under the decisional criteria of section 41105. Our review of financial and other available information raises no issues that would lead us to question the fitness or citizenship of either airline as a result of this transaction. In fact, Comair's viability will likely be enhanced with the availability of Delta's resources behind it. Given that Delta plans to continue operating Comair as a separate corporate subsidiary, with each company conducting the operations it was providing before the recent stock acquisition, we would expect there to be little, if any, impact on domestic air transportation competition.⁵ Further, we find that the proposed acquisition will not conflict with any U.S. international aviation policy objectives and will have no material effect on the trade position of the United States in the international air transportation market. All U.S.-Canada markets are open to entry by other U.S. carriers. While services to points in the Bahamas and Mexico are not fully open as with Canada, our liberal aviation agreements and understandings with these countries have fostered competitive services in both markets.

Accordingly, we conclude that the approval of the *de facto* transfer of Comair's certificate and other economic authorizations to Comair under the ownership of Delta is in the public interest.⁶

⁴ Comair has and will continue to provide its services in the markets at issue here as a "Delta Connection" carrier pursuant to code-share arrangements between itself and Delta.

⁵ In addition, we note that the issue of the impact of the *de facto* transfer on competition in the domestic airline industry has also been reviewed by the Department of Justice and that that agency has taken no action to preclude the transaction.

⁶ The *de facto* transfer of a foreign certificate is subject to Presidential review under 49 U.S.C. 41307.

ACCORDINGLY:

1. We transfer the certificate for Route 617 and other economic authority held by Comair, Inc., to Comair, Inc., under the ownership of Delta Air Lines, Inc.
2. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order shall become effective on the 61st day after its submission for section 41307 review or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier.⁷
3. We will serve a copy of this order on the persons listed in Attachment A.

By:

A. BRADLEY MIMS
Acting Assistant Secretary for
Aviation and International Affairs

(SEAL)

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

⁷ This order was submitted for section 41307 review on July 10, 2000.
On September 7, 2000, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

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