



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

Issued by the Department of Transportation on June 12, 2001

**NOTICE OF ACTION TAKEN -- DOCKET OST 01-9177-5**

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: COMPANIA MEXICANA de AVIACION, S.A. de C.V.

Date Filed: March 14, 2001

Relief requested: Mexicana requests a Statement of Authorization, under 14 CFR Part 212, to display United Air Lines' designator code, for an indefinite period, on Mexicana flights between Mexico City, Mexico, and the two coterminal points Guatemala City, Guatemala, and Panama City, Panama. (Mexicana would be carrying United's passengers traveling to/from the United States on these code-share flights.)

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

Applicant representative(s): Robert D. Papkin and Charles F. Donley II, 202-626-6601

Responsive pleadings: On March 23, 2001, Delta Air Lines filed an answer, stating that it has a strong interest in providing third-country, code-share services to Latin America via Mexico, and, in that connection, does not object to Mexicana's code-share request, provided that the Department obtains an assurance from the Government of Mexico that it would approve similar code-share requests by other U.S. carriers and their code-share partners. On March 23, 2001, Continental Airlines and Compania Panamena de Aviacion filed a joint answer, stating that they were requesting Mexican authorities to allow them to codeshare on COPA's daily Mexico City-Panama City B-737 service, and did not oppose Mexicana's subject application, so long as they are allowed to conduct similar code-share operations between Mexico City and Panama City. On April 6, 2001, Delta filed an additional pleading. In this pleading, Delta notes that Continental and COPA have applications pending with the Department for authority to conduct third-country code-share services to Panama, via Mexico City, and asserts that the Department, before approving either the Continental/COPA or the instant Mexicana/United request, should verify that the Government of Mexico does not intend to apply designation limitations to third-country beyond routes, as it does in the case of U.S.-Mexico transborder routes.

**DISPOSITION**

Approved: June 12, 2001

Effective dates of authority granted: Mexicana's Statement of Authorization is of indefinite duration.

Remarks/Conditions: Based on the record in this case, and in light of our overall favorable aviation relationship with Mexico, we found that grant of this code-share authority to Mexicana is supported by adequate reciprocity with the applicant's homeland. Mexicana states here that its homeland authorities have a liberal policy toward the operation of third-country code-share services, and there is no evidence in the record of this case that refutes the applicant's assertion. Against this background, we anticipate that Mexican authorities will act favorably on similar requests made by U.S. carriers and, indeed, our decision to proceed now on the present request derives directly from that positive expectation. Under these circumstances, we did not see a public interest need to withhold grant of authority, pending the securing of assurances from the Mexican Government. As a final matter, we note that the FAA recently advised us that it had no objection to our taking favorable action on the subject code-share application.

The code-share authority that we granted Mexicana is subject to the following conditions: 1) This Statement of Authorization will remain in effect only as long as Mexicana and United continue to hold the necessary underlying authority to operate the code-share services at issue and their code-share agreement providing for these operations remains in effect. 2) Mexicana and/or United must promptly notify the Department (Office of International Aviation) if the subject agreement providing for these operations is no longer effective or the carriers decide to cease operating any or all of the approved services. (We expect this notice to be received within ten days of such noneffectiveness or of such

decision and filed in Docket 01-9177.). 3) The code-share operations conducted under this authority must comply with 14 CFR Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. 4) Notwithstanding any provisions in the contract between the subject 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 the service in computer reservation systems and elsewhere; that the carrier selling such transportation (that is, 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. 5) The operating carrier shall not permit the code of its U.S. code-share 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. 6) The code-share authority granted here is specifically conditioned so that neither carrier shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

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

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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) the joint applicants were qualified to perform their proposed operations; (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.

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