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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 March 14, 2002

NOTICE OF ACTION TAKEN -- DOCKET OST-2002-11739 – 2

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).

Joint Applicants: **AEROLINEAS CENTRALES DE COLOMBIA, S.A. (ACES) & AEROVIAS NACIONALES DE COLOMBIA, S.A. (AVIANCA)** Date filed: March 4, 2002

Relief requested: (1) Exemption from 49 U.S.C. 41301 to permit ACES to conduct scheduled foreign air transportation of persons, property and mail between Cali and Cartagena, Colombia, on the one hand, and Miami, FL, on the other hand. (2) Statement of authorization pursuant to 14 CFR 212 of the Department's regulations to permit ACES to display the airline designator code of AVIANCA on flights operated by ACES between Cali, Cartegena and Medellin, Colombia, on the one hand, and Miami, FL, on the other hand. [1]

Applicant representative: Richard Mathias (ACES) 202-298-8660; Robert Papkin (AVIANCA) 202-626-6600

Responsive pleadings: On March 8, 2002, the applicant informed us that it had polled the parties served with its application and that none objected to our acting in advance of the normal answer date (March 19) or to the merits of the application itself.

DISPOSITION

Action: Approved Action date: March 14, 2002

Effective dates of exemption authority granted: March 14, 2002 - March 14, 2004

Effective dates of statement of authorization granted: March 14, 2002 - Indefinite, subject to attached code-share conditions

Basis for approval (bilateral agreement/reciprocity): U.S.-Colombia Air Transport Agreement

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:
X Standard exemption conditions (attached) X Foreign air carrier permit conditions (Order 94-3-8)
X Code-share conditions (attached)

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

We found that the applicant was qualified to perform its proposed operations.

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 authority 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/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 seven (7) 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

[1] We note that ACES holds a foreign air carrier permit which includes authority to operate Medellin-Miami service (*see* Order 94-3-28).

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

(a) The statement of authorization will remain in effect only as long as (i) ACES and AVIANCA 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) ACES and/or AVIANCA must promptly notify the Department if the code-share agreement providing for the code-share operations is no longer effective or the carriers decide to cease operating any or all of the approved code-share services. Such notices should be filed in Docket OST-2002-11739. [1]

(c) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendments 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.

(d) The 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.

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

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 14 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).