



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

DEPARTMENT ACTION ON RENEWAL APPLICATION - DOCKET OST 2001-11197

Date Filed: December 17, 2003

Application of Compania Mexicana de Aviacion (Mexicana) and All Nippon Airways (ANA) to renew their authority under 14 CFR Part 212, to continue to engage in certain code-sharing operations between Mexico and Japan, via Los Angeles, California, for a period of two years. Under this codeshare arrangement, Mexicana places its code on flights operated by ANA between Los Angeles and Tokyo (Narita), and ANA places its code on flights operated by Mexicana between Los Angeles and the three Mexican coterminal points Mexico City, Guadalajara and Cancun. (Under this arrangement, Mexicana and ANA transport passengers only between Mexico and Japan and do not carry any traffic originating in, or destined for, Los Angeles.)

Approved under assigned authority (14 CFR Section 385.13)

Date of Action: January 5, 2004

Authority Expires: January 22, 2006

Allen F. Brown

for _____
Director, Office of International Aviation

This action is subject to the conditions attached. Persons entitled to petition the Department for review of this action under the Department's regulations, 14 CFR §385.30, should file their petitions within ten days of the date of this action. This action is effective immediately, and the filing of a petition for review will not alter its effectiveness.

ATTACHMENT

Conditions:

- (a) Compania Mexicana de Aviacion and All Nippon Airways 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 non-effectiveness or of such decision. (Such notices should be filed in Docket OST 2001-11197.)
- (b) The code-sharing 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. Notwithstanding any provisions in the contract between the subject foreign air 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.
- (c) 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.
- (d) We may amend, modify, or revoke the authority granted here at any time without hearing at our discretion.

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**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Joint application of)
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)

COMPANIA MEXICANA DE AVIACION,)
S.A. DE C.V.)

and)
)

ALL NIPPON AIRWAYS CO., LTD.)
)

for Statements of Authorization pursuant to)
14 C.F.R. 212)
)

Docket OST-2001-11197

**JOINT APPLICATION FOR RENEWAL OF
STATEMENTS OF AUTHORIZATION**

Communications with respect to this document should be addressed to:

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Counsel to All Nippon Airways Co.,
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DATED: December 17, 2003

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**JOINT APPLICATION FOR RENEWAL OF
STATEMENTS OF AUTHORIZATION**

Compania Mexicana de Aviacion, S.A. de C.V. ("Mexicana") and All Nippon Airways Co., Ltd. ("ANA") (together, the "Joint Applicants"), pursuant to 14 C.F.R. 212, hereby request renewal of their statements of authorization permitting them to engage in certain codesharing operations between Mexico and Japan via Los Angeles. The Joint Applicants request that their authorizations be renewed for a period of at least two years consistent with the Department's prior grant of these authorities,¹ and invoke and rely on the automatic extension provisions of the Administrative Procedures Act and

¹ *Department Action on Application in Docket OST-01-11197, January 22, 2002 (approving statements of authorization for a two-year period through January 22, 2004).*

Joint Application of Compania Mexicana de
Aviacion, S.A. de C.V. and All Nippon Airways Co., Ltd.
Docket OST-2001-11197
December 17, 2003

Part 377 of the Department's regulations to continue their existing authorizations in force pending a final decision on this renewal request.

Under the codeshare agreement between Mexicana and ANA, Mexicana places its two-letter designator code on flights operated by ANA between Los Angeles and Tokyo (Narita). ANA places its designator code on flights operated by Mexicana between Los Angeles and Mexico City/Guadalajara/Cancun. The Joint Applicants transport passengers only between Mexico and Japan under this codeshare—this service is not marketed or available to passengers originating in or destined for Los Angeles. Instead, the Joint Applicants use Los Angeles only as a transit point at which their respective Mexico-U.S. and Japan-U.S. flights connect.

In further support of this application, the Joint Applicants state as follows:

1. Mexicana and ANA have entered into a codeshare agreement pursuant to which they engage in codesharing on various flights operated by each other. In this instance, codeshare flights between their respective homelands operate via a connection at Los Angeles.

2. Mexicana requests renewal of its statement of authorization permitting Mexicana to display ANA's two-letter "NH" code on flights operated by Mexicana between Mexico City, Guadalajara and Cancun, Mexico, on the one hand, and

Joint Application of Compania Mexicana de
Aviacion, S.A. de C.V. and All Nippon Airways Co., Ltd.
Docket OST-2001-11197
December 17, 2003

Los Angeles, California, on the other hand, for the purpose of connecting with ANA's Los Angeles-Tokyo flights.

ANA requests renewal of its statement of authorization permitting ANA to display Mexicana's two-letter "MX" code on ANA's Los Angeles-Tokyo flights, for the purpose of connecting with Mexicana's Los Angeles-Mexico City/Guadalajara/Cancun services.

The carriers do not, and do not request authority to, transport Fifth Freedom traffic between the United States and either Mexico or Japan.

3. The Joint Applicants hold all necessary underlying operating authority. ANA holds a foreign air carrier permit authorizing it to provide the service covered by this renewal application.² Mexicana holds authority in its foreign air carrier permit to conduct scheduled operations between Los Angeles and Mexico City/Guadalajara³ and holds an exemption permitting it to serve Los Angeles-Cancun.⁴

4. Approval of this renewal application would be fully consistent with the terms of the U.S.-Japan Air Transport Agreement, as well as the United States' aviation relationship with Mexico. The codeshare services described in this application are consistent with the terms of the 1998 U.S.-Japan Memorandum of Understanding, which authorizes third-country codesharing in Part IV. While the U.S.-Mexico aviation

² Order 98-4-17

³ Order 78-6-127

Joint Application of Compania Mexicana de
Aviacion, S.A. de C.V. and All Nippon Airways Co., Ltd.
Docket OST-2001-11197
December 17, 2003

agreement and the February 1999 agreement on codeshare services do not provide specifically for third-country codeshare services of the type covered by this renewal request, the Department has previously authorized similar services including the services covered by this application,⁵ noting that the Mexican aviation authorities have assured the United States that Mexico would authorize U.S. carriers to codeshare with third country partners for services to, from and via Mexico.⁶ All relevant bilateral considerations therefore support prompt approval of this renewal application.

5. To the extent applicable, the Joint Applicants agree to continue to comply with the provisions of 14 C.F.R. 257 with respect to the codeshare services at issue in this application.

6. Approval of this renewal application will not adversely affect the environment. Mexicana and ANA place their codes on flights operated currently by both carriers to and from Los Angeles. Approval will not therefore result in a near term increase in fuel consumption of ten million gallons or more. Nor will approval result in

⁴ *Notice of Action Taken*, December 2, 1992, Docket OST-95-452

⁵ *See, Department Action on Application in Docket OST-99-6294*, November 5, 1999 (Mexicana-Air New Zealand codesharing); *Department Action on Application in Docket OST-00-6815*, February 11, 2000 (Mexicana-Air Canada codesharing); *Notice of Action Taken*, Docket OST-2001-9985, August 27, 2001 (Mexicana-British Midland codesharing).

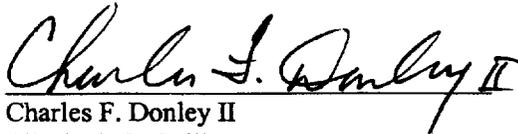
⁶ *See, Notice of Action Taken*, Undocketed, February 18, 1999 (citing September 14, 1998, letter to Brian J. Blood from Ing. Juan Antonio Barges Mestres confirming that the Mexican Government will permit U.S. carriers to engage in codesharing with third country carriers on services to, from or via Mexico on the basis of comity and reciprocity).

Joint Application of Compania Mexicana de
Aviacion, S.A. de C.V. and All Nippon Airways Co., Ltd.
Docket OST-2001-11197
December 17, 2003

increased aircraft noise. All operations are conducted with Stage 3 aircraft in compliance with applicable noise abatement requirements.

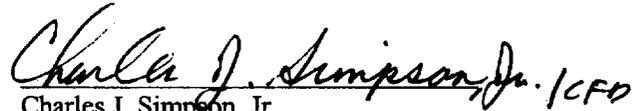
WHEREFORE, Compania Mexicana de Aviacion, S.A. de C.V. ("Mexicana") and All Nippon Airways Co., Ltd. ("ANA") respectfully request that the Department of Transportation renew their statements of authorization permitting them to engage in codeshare operations as more fully described herein, or grant such other relief as the Department deems necessary and appropriate.

Respectfully submitted,



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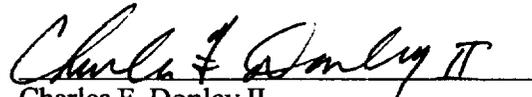
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Ltd.

DATE: December 17, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Joint Application for Renewal of Statements of Authorization has this day been served on all persons listed on the attached service list via telecopier, email or first class mail, postage prepaid.


Charles F. Donley II

DATED: December 17, 2003

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