



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

Issued by the Department of Transportation on **April 23, 2004**

NOTICE OF ACTION TAKEN – DOCKET OST 2004-17213

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).

Application of **Delta Air Lines, Inc.** filed **2/26/2004** for:

XX Exemption under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between Houston, Texas, on the one hand, and each of the following points in Mexico, on the other: (1) Ciudad del Carmen; (2) Monclova; (3) Oaxaca; and (4) Puebla. Delta also requests route integration authority to permit it to combine service on these routes with all other Delta services authorized by its existing certificates and exemptions, to the extent permitted by applicable international agreements. Delta states that it will use the authority pursuant to a code-share arrangement with ExpressJet Airlines, Inc., d/b/a Continental Express (ExpressJet), whereby Delta will place its code on flights operated by ExpressJet in the subject markets.¹

Applicant rep: **Robert E. Cohn (202) 663-8060** DOT Analyst: **Linda Senese (202) 366-2367**

DISPOSITION

XX **Granted, (subject to conditions, see below)**

The above action was effective when taken: **April 23, 2004**, through **August 21, 2005**, (coextensive with other U.S.-Mexico exemption authority for codesharing with Continental/Express Jet, granted in Docket OST-2003-15504) or until 90 days after final Department action on a corresponding certificate application, whichever occurs earlier.

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

XX **The authority granted is consistent with the aviation agreement between the United States and Mexico.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX **Holder's certificates of public convenience and necessity**

XX **Standard Exemption Conditions (attached)**

Special Conditions/Remarks: The U.S.-Mexico exemption authority granted is subject to the dormancy notice requirements set forth in condition 7 of Appendix A of Order 88-10-2. All of the exemption authority granted is limited to service provided on a code-share basis only.

The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of the route integration authority granted should be construed as conferring upon Delta rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Delta notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any such carrier to use the limited-entry route rights that are included in Delta's authority by virtue of the route integration authority granted here, but that are not then being used by Delta, the holding of such authority by route integration will not be considered as providing any preference for Delta in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

¹ In its application, Delta states that it also plans to display its code on ExpressJet flights in the Houston-Toluca market. Delta advises that, in this regard, Delta already holds certificate authority to serve the Houston-Mexico City/Toluca market (Route 562, Order 2000-5-31). It further states that the Department has submitted notification to the Mexico authorities for Delta codesharing on flights operated by Continental Airlines and ExpressJet on the Houston-Mexico City route. To the extent necessary, Delta requests that this code-share notification be amended to include Houston-Toluca. We find that no such amendment is necessary since we view the notification to serve Mexico City as including authority to serve Toluca.

(See Reverse Side)

***To reflect correct effective date**

The code-share operations conducted under this authorization are subject to the following conditions: (a) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment 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; and (b) the authority granted here is specifically conditioned so that neither Delta nor ExpressJet shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the services authorized.

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 exemption 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 or 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

Attachment

U.S. Carrier Standard Exemption Conditions

In the conduct of operations authorized, the U.S. carrier applicant(s) 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 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; 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.

08/2003