



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on June 28, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-17934

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 application of Alaska Airlines, Inc. and Lan Chile S.A. filed 5/19/04 for:

XX Exemption for Alaska for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of property and mail between (1) New York, New York (JFK), on the one hand, and Lima, Peru; and Santiago, Chile, on the other hand, and (2) Miami, Florida, on the one hand and Bogota, Colombia; and Caracas, Venezuela, on the other hand, and to integrate this authority with its existing certificate and exemption authority. Alaska intends to operate this service pursuant to a code-share arrangement with Lan Chile S.A.

XX Statement of authorization for Lan Chile under 14 CFR Part 212 to:

Permit Lan Chile to transport property and mail under Alaska's designator code on Lan Chile's scheduled flights between (1) New York, New York (JFK), on the one hand, and Lima, Peru; and Santiago, Chile, on the on the other, and (2) Miami, Florida, on the one hand; and Bogota, Colombia; and Caracas, Venezuela, on the other.

Applicant rep: James M. Waldon, (206) 392-5269 (Alaska) DOT Analyst: Sylvia Moore, (202) 366-6519
Juan Carlos Menció, (305) 869-2993

DISPOSITION

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

The above action with respect to Alaska's exemption authority was effective when taken: June 28, 2004, through June 28, 2006

The statement of authorization granted to Lan Chile was effective when taken: June 28, 2004, and will remain in effect indefinitely, subject to the conditions listed below.

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

XX The authority granted is consistent with the Multilateral Agreement on the Liberalization of International Air Transportation (to which the United States and Chile are parties), the aviation agreement between the United States and Peru, and the overall state of aviation relations between the United States and Colombia and the United States and Venezuela.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX Alaska's certificates of public convenience and necessity**

XX Lan Chile's foreign air carrier permit

XX Standard exemption conditions (attached)

The exemption authority granted is subject to the following conditions:

The route integration authority granted is subject to the condition that any service provided under this authority shall be consistent with the applicable bilateral aviation agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of this authority requested should be construed as conferring upon Alaska additional rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Alaska first 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 carrier to use the limited-entry route rights that are included in Alaska's authority by virtue of the route integration and blanket code-share authority granted here, but that are not then being used by Alaska, the holding of such authority will not be considered as providing any preference for Alaska in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

The statement of authorization granted is subject to the following conditions:

(a) The statement of authorization will remain in effect only as long as (i) Alaska and Lan Chile 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) Alaska and/or Lan Chile must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services. Such notices should be filed in Docket OST-2002-13609.²

(c) The code-sharing conducted under this authority must comply with 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 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 the computer reservation systems and elsewhere; and that the carrier selling such transportation (*i.e.*, the carrier shown on the waybill) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the shipper. Further, the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flights that enter, depart, or transit the airspace of any area for whose airspace the Federal Administration has issued a flight prohibition.

(d) The authority granted here is specifically conditioned so that neither Alaska nor Lan Chile shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

(e) We may amend, modify, or revoke the authority granted at any time without hearing at our discretion.

² We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found Continental qualified to provide the exemption 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 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, we denied all requests in the referenced Docket.

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*

U.S. Carrier Exemption Conditions

In the conduct of the 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 all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. 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 International Principal Security Inspector (IPSI) to advise the IPSI 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.

05/2004