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Order 2000-5-31



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

Issued by the Department of Transportation  
on the **29th day of March, 2000**

Served: June 2, 2000

Applications of

**ALASKA AIRLINES, INC.**

**AMERICAN AIRLINES, INC.**

**AMERICAN TRANS AIR, INC.**

**CONTINENTAL AIRLINES, INC.**

**DELTA AIR LINES, INC.**

**EMERY WORLDWIDE AIRLINES, INC.**

**NORTHWEST AIRLINES, INC.**

**TRANS WORLD AIRLINES, INC.**

**UNITED AIR LINES, INC.**

**UNITED PARCEL SERVICE CO.**

for new, renewed, and/or amended certificates of  
public convenience and necessity pursuant to  
49 U.S.C. 41102 (U.S.-Mexico)

**Dockets OST-99-6276 - 3**

**OST-99-6172 - 3**

**OST-99-6671 - 2**

**OST-99-5868 - 3**

**OST-99-5861 - 2**

**OST-99-6275 - 6**

**OST-99-5740 - 2**

**OST-99-5865 - 3**

**OST-99-6319 - 5**

**OST-99-5965 - 2**

**OST-99-5846 - 3**

**OST-99-6663 - 2**

**ORDER ISSUING CERTIFICATES**

## **Summary**

The captioned applicants seek grant, renewal and/or amendment of certificates of public convenience and necessity under section 41102 of Title 49 of the United States Code to provide scheduled foreign air transportation between points in the United States and points in Mexico, consistent with the provisions of the U.S.-Mexico aviation agreement. The applications are described in the attachment to this order.<sup>1</sup> Because the public convenience and necessity bases for granting these applications are clear, and the applications are not controversial, it is appropriate to use this simplified Subpart Q procedure to grant the requested authority.<sup>2</sup>

The applicants have filed and perfected each application as required by 14 CFR 201 and served it as required by 14 CFR 302.1705. Each application was summarized in the Federal Register, as cited in the relevant descriptive attachment, and was also summarized in the Department's published weekly list of applications filed. These notices described the authority sought and gave interested persons an opportunity to submit evidence and objections to the award of the authority. Except, as discussed below, no answers to the applications were filed.

## **Public Convenience and Necessity**

We find that grant or amendment of these certificates is consistent with the public convenience and necessity. The services authorized are the subject of, and consistent with, the U.S.-Mexico Air Transport Agreement. The certificates, therefore, use rights for which the United States has exchanged valuable operating rights. All of the authority conferred here contributes to the variety of price and service options available to travelers and shippers.

## **Fitness/Citizenship**

Each applicant is a citizen of the United States as defined in 49 U.S.C. 40102(a)(15). Each is an operating certificated air carrier, for which the authority at issue here would not constitute a substantial change in operations which would require further review by the Department. No information has come to our attention which leads us to question the fitness of the applicants to conduct air transportation operations. Therefore, on the basis of data officially noticeable under Rule 24(n) of the Department's regulations, we find each applicant is fit, willing, and able to provide the services authorized.<sup>3</sup>

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<sup>1</sup> Unless otherwise noted in the descriptive attachment, each of the applicants proposes to serve the subject markets, providing year-round services with its own aircraft.

<sup>2</sup> 14 CFR 302.1701 et seq. Under Rule 29(b), we may, in our discretion, omit a tentative decision in proceeding under Subpart Q and proceed directly to a final decision.

<sup>3</sup> Each of the applicants has previously been found to be a citizen of the United States and fit, willing, and able to provide scheduled foreign air transportation as a certificated air carrier under section 41102 of Title 49 U.S.C. See Order 97-10-8 for Alaska; Order 98-8-18 for American; Order 99-3-27 for American Trans Air; Order 99-3-26 for Continental; Order 98-8-18 for Delta; Order 99-12-7 for Emery; Order 99-2-8 for Northwest; Order 99-3-27 for TWA; Order 98-6-22 for United; and Order 99-12-7 for UPS.

### **Terms, Conditions, and Limitations**

Each certificate of public convenience and necessity is subject to the standard terms, conditions, and limitations we consistently impose in the public interest. All of the certificate actions taken by this order pertain to limited-entry routes. Therefore, consistent with our established policy in this regard, we have issued temporary, experimental certificates of five years' duration under section 49 U.S.C. 41102 (a)(2).<sup>4</sup>

### **Pendente Lite Exemptions**

For those services operated under current exemptions, those exemptions will expire in accordance with their own terms 90 days after we submit this order for review under section 49 U.S.C. 41307. For those routes operated under expired exemptions and kept in force by 5 U.S.C. 558(c), the exemption renewal applications on file will be dismissed by separate order, upon the effectiveness of the corresponding certificates of public convenience and necessity.

### **Miscellaneous**

#### **Responsive Pleadings**

Legend Airlines, Inc., filed an answer in opposition to American's application, in Docket OST-99-6172, for certain Dallas/Ft. Worth-Mexico certificate authority. Legend argues that American and its alliance partners have repeatedly proclaimed in other Department dockets that the Dallas/Ft. Worth Airport (DFW) will be destroyed because of a federal law authorizing additional operations at Dallas Love Field. Legend urges that the Department demand that American reject and refute such statements regarding DFW before it receives new DFW route authority.

We find no basis for withholding action on American's application as Legend suggests. American in its application is, in fact, requesting no new route authority to Mexican points from DFW. It is merely seeking to convert certain of its existing U.S.-Mexico route authority from exemption to certificate.

United Air Lines, Inc. (United), filed an answer to the application of Northwest Airlines, Inc. (Northwest), in Docket OST-99-6319. Northwest filed a reply.<sup>5</sup> United notes that eight of the twelve route segments Northwest seeks to incorporate into its certificate are routes that Northwest does not serve with its own aircraft. United states that, while in principle, it does not object to Northwest's holding a certificate encompassing all of its U.S.-Mexico route authority, it questions the wisdom of incorporating such routes into certificate authority. United asserts that, because certificates are infrequently updated, it would be difficult for other U.S. carriers to determine which of the segments were actually dormant and available for alternate U.S. carrier service.

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<sup>4</sup> 14 CFR Part 399.120.

<sup>5</sup> Northwest accompanied its reply with a motion for leave to file an otherwise unauthorized document. We will grant the motion.

With respect to United's concerns, we note that the Department has long-established filing/notice requirements for U.S. carriers that have dormant U.S.-Mexico route authority. Specifically, a U.S.-carrier holding U.S.-Mexico route authority is required to file notice with the Department if it discontinues services on a route segment for 90 days or longer. This notice must be given as soon as the decision to discontinue service (other than seasonal/intermittent service), is made, but in no case later than the 91<sup>st</sup> day of dormancy.<sup>6</sup> Moreover, this notice is applicable whether or not the carrier is serving the market with its own aircraft or by code-share on flights operated by its code-share partner. When these notices are filed, they are also posted in the Department's Weekly List of Applications Filed, a public document that is widely distributed within the industry. Under these circumstances, we believe that all carriers serving, or wishing to serve, the U.S.-Mexico market would have the information necessary to determine which U.S.-Mexico markets are dormant and/or available for alternate U.S.-carrier service and, thus, that there is no basis to exclude code-share routes on the requested certificate awards.<sup>7</sup>

We also note that, consistent with our policy with respect to exemption authority for U.S.-Mexico code-share services, we will require U.S. carriers holding *certificate* authority for U.S.-Mexico code-share services to file a notice with the Department should the carrier wish to convert its authorized nonstop transborder code-share operations from service involving only the displaying of its code on another carrier's flights (code-share only authorization), to direct carrier service (designation), or vice versa. This notice should be filed with the Department no later than 30 days prior to the proposed change.<sup>8</sup> The notice should identify the subject market and the type of aircraft to be used in the market, and include the level of service proposed in the market, along with the proposed conversion date. We will list the notice in the Weekly Summary of Applications Filed, providing for a two-week answer period. If no party opposes the request, and sufficient designations or code-share only authorizations, as applicable, are available, we will convert the operations as requested.

#### Requests for Waiver of Dormancy

Continental Airlines, Inc., in Docket OST-99-5868, requests that certain route segments be added to its certificate—segments that will be served by code-share arrangements with Alaska Airlines, Inc., or Northwest Airlines, Inc. In this regard, Continental requests that the

<sup>6</sup> These notices are filed in the form of a letter addressed to the U.S. Department of Transportation, U.S. Air Carrier Licensing Division, X-44, 400 Seventh Street, SW, Washington, D.C. 20590, and must identify the dormant route segment, the certificate route number, and the date the 90<sup>th</sup> day of dormancy will or did occur

<sup>7</sup> United also opposed Northwest's request in its application for a waiver of the Department's 90-day dormancy requirement applicable to the subject routes. However, in its reply to United's objection, Northwest clarifies that it does not seek any special waiver of the Department's standard dormancy condition applicable to U.S.-Mexico routes, so long as the standard dormancy condition will permit Northwest to continue serving U.S.-Mexico markets on a seasonal basis (including direct-carrier service and/or code-share service), without exposing such routes to dormancy. Since we will, in fact, not be according Northwest any special treatment as regards our dormancy requirements and since Northwest has now made clear it seeks no such special treatment, we view this issue as resolved.

<sup>8</sup> Notices should be filed in the form of a letter addressed to Teresa Bingham, Chief, U.S. Air Carrier Licensing Division, X-44, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and served on all U.S. carriers providing service in the U.S.-Mexico market.

Department waive the 90-day dormancy condition applicable to the subject route segments in Continental's amended certificate, to the extent that Alaska and/or Northwest will serve the subject markets on a seasonal basis. Consistent with our standard policy with respect to U.S.-Mexico route authority, we will impose the standard dormancy conditions on the subject authority. In doing so, however, we point out that, where services that have been identified as seasonal are involved, the dormancy condition begins to run only when the carrier has, in fact, totally *discontinued* service in the market, as opposed to simply stopping the service at the conclusion of the identified season. Therefore, we will dismiss, as moot, Continental's request.

#### Duration of Certificate Authority

A number of the captioned applicants have requested amendment and reissuance of their certificates so as to reflect one common expiration date for the entire certificate, including new and existing authority.<sup>9</sup> In support of these requests, the carriers state that, currently many of the experimental certificates issued to U.S. carriers for U.S.-Mexico services contain various expiration dates for the individual route segments listed in their certificates. Because of the varying expiration dates, the carriers state that they must file more frequent applications to renew the authority, increasing the regulatory burden on the carriers and the Department.

We have decided to grant the carriers' request here. A common expiration for the entire certificate would make it easier for the carriers to monitor the certificate authority and file timely renewal applications, would reduce the administrative and regulatory burden on the Department, as well, and would have no adverse effect on the public interest bases supporting the award of the authority. Accordingly, each U.S.-Mexico certificate reissued by this order will contain one expiration date to be applied to all of the city-pair segments contained therein.<sup>10 11</sup>

#### Findings and Conclusions

In view of the foregoing, and all the facts of record, we find and conclude that:

1. It is consistent with the public convenience and necessity to grant, issue and/or amend the certificates in the form attached;

<sup>9</sup> The following carriers requested common expiration dates on all route segments in their certificate (including new and renewed authority): Alaska in Docket OST-99-6276, American in Docket OST-99-6172, Continental in Docket OST-99-5868, and Northwest in Docket OST-99-6319.

<sup>10</sup> In addition, we note that the certificates of some carriers authorize service to Mexico City/Toluca, thereby authorizing service at both Mexico City airports while the certificates of other carriers do not. Since the U.S.-Mexico aviation agreement authorizes service to both airports, we have decided, in the interest of consistency, to amend all of the certificates issued or reissued herein to include Toluca as an authorized airport for Mexico City services.

<sup>11</sup> The following applicants filed timely renewal applications for certain of their certificate authority that was set to expire December 16, 1999: Continental, in Docket OST-99-5868; Delta in Docket OST-99-5861; Northwest, in Docket OST-99-5865; and United, in Docket OST-99-5846. Accordingly, the subject authority remains in effect pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 558(c), pending action on the respective renewal application.

2. Each applicant is a citizen of the United States and is fit, willing, and able to perform properly the foreign air transportation described in the attached certificate and to conform to the provisions of Subtitle VII of Title 49, United States Code (Transportation), and to the Department's rules, regulations, and requirements;
3. The public interest requires that the exercise of the privileges granted by the attached certificates and certificate amendments be subject to the terms, conditions, and limitations contained in and attached to those certificates and to such others required by the public interest as the Department may prescribe;
4. Except as otherwise noted in the attachments, the issuance of each of these certificates and certificate amendments does not constitute a "major regulatory action" under the Energy, Policy and Conservation Act of 1975, as defined by section 313.4(a)(1) of the Department's regulations;<sup>12</sup> and
5. The public interest does not require an oral evidentiary hearing or a show-cause proceeding on any of these applications. There are no material, determinative issues of fact requiring such procedures for their resolution.

**ACCORDINGLY,**

1. We amend, issue, or reissue in the form attached, certificates of public convenience and necessity to the applicants listed in the caption of this order;
2. We grant the request of Trans World Airlines, Inc., in Docket OST-99-5965, to withdraw its application for certificate authority to serve the St. Louis-Manzanillo market;
3. We grant the request of Continental Airlines, Inc., in Docket OST-99-5868, to withdraw its application for certificate authority to serve the San Diego-Mexico City/Toluca market;
4. We grant the consolidated motion of United Air Lines, Inc., filed in Docket OST-99-5846, et.al., to the extent the carrier requests expedited action on the authority requested in Docket OST-99-5846;
5. We grant the motion of Northwest Airlines, Inc., to file an otherwise unauthorized document in Docket OST-99-6319;
6. We grant the motion of Delta Air Lines, Inc., to file a supplement to its application in Docket OST-99-6275;
7. We grant the requests of Alaska Airlines, Inc., in Docket OST-99-6276; American Airlines, Inc., in Docket OST-99-6172; Continental Airlines, Inc., in Docket OST-99-5868; and

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<sup>12</sup> Our finding is based on the fact that grant of each application would not result in a near-term increase in annual fuel consumption in excess of 10 million gallons.

Northwest Airlines, Inc., in Docket OST-99-6319, to establish a common expiration date for the entire U.S.-Mexico certificates issued, renewed, and/or amended by this order;

8. We confirm our oral action of December 16, 1999, granting the request of American Trans Air, Inc., in Docket OST-99-6671, for a waiver of the advance filing requirements, pursuant to 14 C.F.R. Part 377, to keep the carrier's Indianapolis-Cancun certificate authority in effect, pending Department action on its renewal application;

9. We dismiss, as moot, the request of Continental Airlines, Inc., in Docket OST-99-5868, to waive the dormancy conditions for certain of its certificate authority that will be served on a seasonal basis pursuant to code-share arrangements between Continental and its code-share partners, Alaska Airlines, Inc., and Northwest Airlines, Inc.;

10. To the extent not granted or dismissed, we deny all motions and requests in these dockets;

11. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order and the attached certificates shall become effective upon the 61st day after its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;<sup>13</sup> and

12. We will serve this order on the applicants and all parties in the captioned dockets; the Ambassador of Mexico in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

**A. BRADLEY MIMS**  
Deputy Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*

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<sup>13</sup> This order was submitted for section 41307 review on **March 29, 2000**. On May 30, 2000, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.