DEPARTMENT ACTION ON APPLICATION IN DOCKET OST-00-8342

Approved under assigned authority (14 CFR §385.13).

Date of Action: December 1, 2000 (Filed November 16, 2000)

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

The codeshare operations are subject to the following conditions:

a) The statement of authorization will remain in effect only as long as (i) these six TACA Group carriers 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) Any of the subject foreign air carrier applicants whose homeland does not hold a Category 1 rating from the Federal Aviation Administration under its International Safety Assessment (IASA) Program may conduct the operations authorized here only by using aircraft wet-leased from a duly authorized and properly supervised U.S. or foreign air carrier.

c) The subject foreign air carriers must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. Such notices should be filed in Docket OST-2000-8342.

d) The subject foreign air carriers must promptly notify the Department (Office of International Aviation) if the code-share agreement under which these code-share services are operated is no longer in effect, or if the carriers decide to cease operating all or any portion of the approved code-share services. (We expect this notification to be received within ten days of such non-effectiveness or of such decision. The notice should be filed in Docket OST 2000-8342.)

e) 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.

f) The authority granted here is specifically conditioned so that the subject foreign air carriers shall not give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

g) We may amend, modify, or revoke the authority granted here at any time without hearing at our discretion.
November 16, 2000

VIA HAND DELIVERY

Documentary Services Division
U.S. Department of Transportation
400 Seventh Street, S.W., Room PL-401
Washington, D.C. 20590

Docket No. OST-00-3342-1


Ladies and Gentlemen:

Pursuant to 14 C.F.R. 212, TACA International Airlines, S.A. ("TACA"), Trans American Airlines, S.A. ("Trans Am"),1 Aviateca, S.A. ("Aviateca"), Lineas Aereas Costarricenses, S.A. ("LACSA"), Nicaraguense de Aviacion S.A. ("NICA") and TACA de Honduras, S.A. de C.V. ("TACA de Honduras") (together, the "Applicants") hereby jointly request statements of authorization permitting them to operate codeshare and wet lease services. The authorities sought are the same as those granted to each of the Applicants, except for Trans Am, in Docket OST-99-6089.2 The purpose of this Application is to extend such authorities to Trans Am and permit Trans Am to engage in wet-lease and codeshare services with other members of the TACA Group to the fullest possible extent.

TACA, Aviateca, LACSA, NICA and TACA de Honduras, on the one hand, and Trans Am, on the other hand, request reciprocal statements of authorization permitting them to conduct codeshare operations on routes for which the operator and codeshare partner(s) hold Department authority to provide scheduled foreign air transportation of persons, property and mail.3 TACA,

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1 Trans American Airlines, S.A. transacts business as TACA Peru.
2 On August 10, 1999, TACA, Aviateca, LACSA, NICA and TACA de Honduras requested renewal of these authorities, and filed a timely renewal application invoking the automatic extension provisions of the Administrative Procedures Act and Part 377 of the Department's regulations. The existing blanket reciprocal codeshare and wet lease authorities held by these carriers remains in effect today under these provisions.
3 Each applicant holds current Open Skies exemption authority: TACA International Airlines, Docket OST-97-2674, Notice of Action Taken, October 23, 1997 (renewal pending); Trans American Airlines, S.A., Docket OST-
Aviateca, NICA and TACA de Honduras would operate any such codeshare flights using aircraft wet-leased from carriers of Category I countries until such time as the homeland of each of those airlines is advanced to Category I under the Federal Aviation Administration’s International Aviation Safety Assessment (“IASA”) program.

Additionally, TACA, Aviateca, LACSA, NICA and TACA de Honduras, on the one hand, and Trans Am, on the other hand, request reciprocal statements of authorization permitting them to wet-lease aircraft to one another. TACA, Aviateca, NICA and TACA de Honduras will not wet-lease aircraft to Trans Am for use in U.S. service until such time as the homeland of TACA, Aviateca, NICA or TACA de Honduras is advanced to Category I under the FAA’s IASA program.

Grant of the requested authorities would clearly be consistent with the public interest. The United States has executed Open Skies air transport agreements with each of the Applicants’ homelands. Article 8, Commercial Opportunities, of each agreement provides in pertinent part:

In operating or holding out the authorized services on the agreed routes, any designated airline of one Party may enter into cooperative marketing arrangements such as blocked-space, code-sharing or leasing arrangements with

i) an airline or airlines of either Party; and

ii) an airline or airlines of a third country, provided that such third country authorizes or allows comparable arrangements between the airlines of the other Party and other airlines on services to, from and via such third country provided that all airlines in such arrangements 1) hold the appropriate authority and 2) meet the requirements normally applied to such arrangements.

The Applicants’ ability to codeshare and wet-lease to one another will enhance the competitive capability of the Applicants by permitting more efficient use of their fleets. That is consistent with the Department’s International Air Transportation Policy Statement. (60 Fed.Reg. 21841, May 13, 1995.) Moreover, the existence of the Open Skies agreements is, in and of itself, sufficient to establish that grant of the authorities would be consistent with the public interest. Further, the authorities requested are absolute rights granted to the Applicants under the specific terms of those Agreements.

2000-8054, Notice of Action Taken, November 9, 2000; Aviateca, Docket OST-97-2676, Notice of Action Taken, September 30, 1999; LACSA, Docket OST-97-2682, Notice of Action Taken, November 18, 1999; NICA, Docket OST-97-2678, Notice of Action Taken, February 19, 1998 (renewal pending); and TACA de Honduras, Docket OST-97-2677, Notice of Action Taken, October 17, 1997 (renewal pending). In addition, TACA International Airlines holds current exemption authority to conduct scheduled combination services between Belize City, Belize and Miami, Docket OST-96-4340, Notice of Action Taken, January 12, 1996.
The Applicants will assure that all appropriate persons receive adequate disclosure and notice of which carrier is operating and has control of any flights to which the designator code of one or more of the other Applicants has been added. The Applicants also will comply with all requirements for codesharing operations set forth in Section 399.98 and, to the extent applicable, Part 257. The Applicants accept the standard condition that the transportation involved be sold in the name of the carrier holding out the service in computer reservations systems and elsewhere, and that the carrier selling such transportation (that is, the carrier shown on the ticket) accept all obligations established in its contract of carriage.

For all the reasons specified above, TACA, Trans Am, Aviateca, LACSA, NICA and TACA de Honduras respectfully request that the Department of Transportation grant the requested statements of authorization permitting them to engage in reciprocal codesharing and wet-lease services, as more fully described herein. A copy of this application has been served on the parties identified below.

Respectfully submitted,

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