BEFORE THE DEPARTMENT OF TRANSPORTATION WASHINGTON, D.C.

In the matter of the joint application of

TACA INTERNATIONAL AIRLINES, S.A.
LINEAS AEREAS COSTARRICENSES S.A.
AVIATECA S.A.
NICARAGUENSE DE AVIACION, S.A.
TACA DE HONDURAS S.A. DE C.V.
TRANS AMERICAN AIRLINES, S.A.

for registration of trade name under 14 C.F.R. 215

Docket OST-2004-17355

CONSOLIDATED REPLY AND MOTION FOR LEAVE TO FILE

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DATED: April 16, 2004
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DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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TACA INTERNATIONAL AIRLINES, S.A.  Docket OST-2004-17355
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CONSOLIDATED REPLY AND MOTION FOR LEAVE TO FILE

TACA International Airlines, S.A. ("TACA"), Lineas Aereas Costarricenses S.A. ("LACSA"), AVIATECA S.A. ("Aviateca"), Nicaraguense de Aviacion, S.A. ("NICA"), TACA de Honduras S.A. de C.V. ("TACA Honduras") and Trans American Airlines, S.A. (d/b/a "TACA Peru") (collectively, the "TACA Carriers") hereby reply to the comments of Delta Air Lines, Inc. ("Delta") and Continental Airlines, Inc. ("Continental") submitted in this docket. To the extent necessary, the TACA Carriers request leave to file this reply, which will correct the record in this proceeding and provide essential information to the Department of Transportation ("Department") as it considers the TACA Carriers’ application.

Aside from Continental—whose comments do not provide a legitimate basis on which to deny the TACA Carriers’ application—no person opposes approval of the
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TACA Carriers’ proposal to begin use of a single trade name and common designator
code in services to the United States. Since the TACA Carriers’ application will provide
clear public benefits, raises no safety, security, antitrust or other competitive concerns and
no serious objection has been lodged, the Department should approve the TACA
Carriers’ application without delay.¹

The TACA Carriers have submitted a proposal that meets or exceeds every
regulatory requirement of the Department as well as the Federal Aviation Administration.
What Continental describes as “qualifiers” are in fact carefully crafted procedures and
models confirming how the single trade name and common code paired with dedicated
carrier-specific flight numbers will function under different circumstances, showing the
Department in a tangible way the TACA Carriers’ commitment to consumer disclosure
and regulatory compliance. The TACA Carriers have demonstrated beyond question the
merit of their proposal and ask that their application be approved immediately.

¹ It is not surprising that Continental would attempt to block the TACA Carriers’
innovative proposal, for Continental is the only U.S. carrier currently operating
significant codeshare services between the United States and Central America and
benefiting from an immunized alliance with a Central American carrier. Delta, the only
other commenting party, does not oppose approval and suggests only that minor
additional information be sought. The TACA Carriers are providing such information in
this reply.
1. The TACA Carriers need prompt approval of their application to compete more effectively with larger individual carriers, such as Continental, as well as with worldwide alliances. The benefits to consumers from approval of the TACA Carriers’ application are clear: the TACA Carriers will lower their costs and increase consumers’ awareness of their services thereby becoming a greater competitive force, something Continental prefers not happen.

Continental argues that the TACA Carriers want to compete with alliances but are unwilling to observe the rules applicable to them. Continental’s statement ignores the overwhelming advantages enjoyed by many alliances, including those to which Continental belong, namely extensive codeshare services and antitrust immunity. Unlike Continental, not one of the TACA Carriers is part of an immunized alliance despite the fact that all of their homelands were early signatories to open skies agreements. Nor do the TACA Carriers operate meaningful codeshare services with a U.S. carrier.

The fact is that the TACA Carriers have never realized the benefits of the open skies agreements negotiated by their homelands, and today operate much in the way they did before those agreements were signed. Although the Department approved several years ago their request to codeshare with American Airlines (“American”), for a variety of reasons, including the conditions imposed as part of the approval, the TACA Carriers
have been prevented from developing a robust codeshare relationship with American. Today, the six TACA Carriers and American codeshare on only four transborder routes: San Salvador-Dallas/Ft. Worth, San Jose-Dallas/Ft. Worth, Belize City-Dallas/Ft. Worth and San Jose-Los Angeles.\(^2\)

Moreover, the TACA Carriers have been denied the ability to expand their relationship with American as a result of their inability to obtain antitrust immunity, a benefit extended to numerous other carriers and alliances, including Continental and COPA.\(^3\) The TACA Carriers have also had to contend with restrictions imposed on their operations by the FAA’s IASA program, which at one time or another has limited the ability of every TACA Carrier to begin new services, add new aircraft to its operations specifications or engage in codeshare operations, despite the ability of every U.S. carrier to increase at will its services to Central America under various open skies agreements.

\(^2\) Two routes are operated by American, one by TACA International and one by LACSA.

\(^3\) Despite their limited relationship, Continental attempts to link the TACA Carriers to American’s services between Miami and Central America. American’s presence at Miami and its Central American services have nothing to do with the TACA Carriers. In fact, the TACA Carriers and American are aggressive competitors in all markets and no basis exists to attribute to the TACA Carriers any portion of American’s market share. Nor do the TACA Carriers themselves operate a substantial portion of the flights between Miami and Central America. According to Continental’s own figures, the combined services of the six TACA Carriers constitute no more than 25 percent of Miami-Central America departures. This is hardly evidence of “marketing strength”, as Continental suggests.
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Even today, one-half of the TACA Carriers remain subject to Category 2 restrictions. In
no way can the TACA Carriers be said to be able to compete anywhere nearly as
effectively as Continental or any other U.S. carrier, much less an alliance (especially an
immunized alliance) involving a U.S. carrier and its partners. Approval of their
application will provide the TACA Carriers with a small but necessary tool they must
have to compete in services to the United States.

2. The TACA Carriers’ application raises no antitrust or competitive issues.
There are no unlawful agreements among the TACA Carriers related to travel to or from
the United States, nor are such agreements necessary to operate effectively under a single
trade name and common code. Codeshare services operate without such agreements, and
the TACA Carriers’ proposal can be similarly operated without them. No change in the
way the TACA Carriers currently operate will occur as a result of approval of their
application, other than use of the TACA name, “TA” code and dedicated flight numbers.4

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4 Continental again tries to link the TACA Carriers with American, suggesting that
approval of the TACA Carriers' application requires imposition of restrictive conditions
identical to those imposed in May 1998. The competitive considerations that existed in
1998 are vastly different from today’s conditions. Not only are the market shares of the
TACA Carriers a small fraction of American’s share, American is not a party to this
application, there is no “joint alliance committee” and the TACA Carriers are not seeking
3. Approval of the TACA Carriers’ application will have no effect on the TACA Carriers’ limited codeshare service with American. The TACA Carriers affirmed in their application, and affirm again, that they will continue to conduct all operations in accordance with their existing authorities. This includes use of the “TA” code on flights operated by American.

To the extent such codeshare service is operated, it would be held out under the “TA” code paired with the dedicated flight number of a single TACA Carrier. No more than one dedicated flight number from a TACA Carrier would be used, in accordance with the Department’s condition. Disclosure of the identities of the operating carrier (American) and marketing carrier (one of the six TACA Carriers) would be provided in a manner identical to the way in which disclosure will be provided for all other TACA Carrier flights, and as shown in Exhibits B, D, E, F and G to the TACA Carriers’ to use the trade name “American” or the “AA” code on any flight. Additionally, to the extent the Department considers this application similar to a codeshare as Continental urges, the Department has already twice reviewed and granted the TACA Carriers blanket codeshare (and wet lease) authority without imposing any special restrictive conditions. See, Department Action on Application, Docket OST-99-6089, August 20, 1997; Department Action on Application, Docket OST-00-8342, December 1, 2000. The authority requested by the TACA Carriers is less expansive than the blanket authorities granted previously to them and does not require the application of extraordinary conditions reserved for more difficult cases.
application. The Department’s condition on the TACA Carriers’ codeshare with American will thus be complied with fully.

4. The TACA Carriers’ homelands will permit U.S. carriers to operate under a single trade name and common code to the same extent the TACA Carriers are permitted by the United States to so operate. The TACA Carriers would not object to inclusion of a note in any approval stating that the Department’s decision is based, in part, on its expectation that the TACA Carriers’ homelands would approve equivalent operating rights for U.S. carriers.

5. The TACA Carriers are in no way seeking to use a single trade name or common code to avoid the FAA’s Category 2 restrictions. Stated simply, a TACA Carrier domiciled in a Category 2 country (Guatemala, Nicaragua and Honduras) will not display on its flights a flight number dedicated to another TACA Carrier in connection with services to or from the United States, unless such operations are performed with aircraft wet leased from a carrier domiciled in a Category 1 country or are part of an existing service grandfathered by the Department and the FAA. This is consistent with FAA and Department restrictions and is a permissible and well-accepted way for a carrier domiciled in a Category 2 country to serve the United States. TACA Carriers domiciled in Category 1 countries (El Salvador, Costa Rica and Peru) can and will, consistent with
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each carrier’s underlying route authority and FAA policy, display flight numbers assigned  
not only to TACA Carriers domiciled in Category 1 but Category 2 countries as well.

It is not correct to suggest that U.S. carriers cannot engage in codesharing with  
carriers domiciled in Category 2 countries. U.S. carriers can and do display on their  
flights the codes of such carriers. United States carriers can also display their codes on  
flights performed by carriers domiciled in Category 2 countries provided such flights are  
operated with aircraft wet leased from a carrier domiciled in a Category 1 country. The  
TACA Carriers would do no more than this through the display of the “TA” code and a  
dedicated flight number on flights operated to and from the United States by TACA  
Carriers domiciled in Category 1 countries, operated under a permissible wet lease or  
grandfathered by the Department and the FAA.\footnote{Continental seems to suggest that the United States should regulate operations of the TACA Carriers conducted solely between points in Central America. Although such operations are clearly beyond the scope of U.S. jurisdiction, the TACA Carriers expect to apply the same flight numbering system to such flights as they will to flights operating to and from the United States. Consumers will be able to easily identify the marketing and operating carriers just as they can today with any interline flight. Continental states also that TACA Ecuador would benefit unfairly from approval of the application. TACA Ecuador is not a party to the TACA Carriers’ application and would therefore not be covered by any approval permitting use of the single trade name and common code in services to and from the United States.}
6. The TACA Carriers will not operate cabotage or unapproved seventh freedom flights. Each of the TACA Carriers will conduct operations only in accordance with their underlying operating authority, and use of a single trade name and common code will not change this. Nor will approval of the TACA Carriers’ application facilitate the carriage of prohibited traffic or operation of unauthorized flights. The Department and other regulatory agencies as well as consumers will be able to determine easily and at all times which TACA Carrier is operating a particular flight by reference to the dedicated carrier-specific flight number paired with the “TA” code. Continental’s vague assertion that the TACA Carriers will somehow use a single trade name and common code to operate prohibited flights is untrue.

Conclusion

The TACA Carriers have proposed an innovative marketing strategy that will permit them to lower costs, increase their recognition among consumers and thus become more effective competitors in the Central America-U.S. market while ensuring compliance with all applicable regulatory requirements. The TACA Carriers ask that the

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6 In addition to the TACA Carriers’ assurances on these points, the United States received identical assurances from the Salvadoran delegation during the U.S.-El Salvador consultations held in Washington, D.C., on May 21, 2003.

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Department grant prompt approval of their application so they can immediately
implement their proposal.

Respectfully submitted,

[Signature]

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DATED: April 16, 2004
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Consolidated Reply and
Motion for Leave to File has this day been served on all persons identified on the attached
service list via first class mail, postage prepaid, email or telecopier.

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