



Order 96-6-53

Served July 5, 1996

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

Issued by the Department of Transportation
on the 25th day of June, 1996

U.S.- LIMA COMBINATION SERVICE
PROCEEDING (1996)

Docket OST-96-1037

FINAL ORDER

SUMMARY

By this order, we make final the selection of Continental Airlines, Inc., for primary authority to provide scheduled combination service in the Houston, Texas-Lima, Peru, market and award it seven weekly frequencies for use commencing on November 1, 1996. In addition, we make final the selection of American Airlines, Inc., for backup frequency authority in the Dallas/Ft. Worth-Lima market.

BACKGROUND

Under the 1986 Air Transport Agreement between the United States and Peru, as amended, there are no limits on the number of U.S. carriers that may provide scheduled combination air services. However, the number of weekly frequencies that U.S. carriers may operate is limited. Through October 31, 1996, U.S. carriers may operate a total of 31.5 narrow body weekly frequencies. Effective November 1, 1996, the number of weekly frequencies increases to 42, with the addition of 3.5 weekly frequencies available from all U.S. gateways, including Miami/Ft. Lauderdale, and seven weekly frequencies from any gateway other than Miami/Ft. Lauderdale. The amended agreement also

provides for intermediate and beyond rights for U.S. carrier services, subject to certain frequency limitations.

By Order 96-4-48, we tentatively selected Continental for primary authority to provide scheduled combination service in the Houston, Texas-Lima, Peru market and tentatively awarded it seven weekly frequencies for use commencing on November 1, 1996. We tentatively concluded that the service proposals of American and Continental were comparable, but that Continental would provide significantly greater overall public benefits through intergateway competition with Miami and through enhanced intercarrier competition with American. In addition, we tentatively selected American for backup frequency authority in the Dallas/Ft. Worth-Lima market.

OBJECTIONS

American and the Dallas/Ft. Worth Parties each filed objections to the show-cause order. American, generally supported by the Dallas/Ft. Worth Parties, argues that, for a number of reasons, the Department should vacate the show-cause order and award American the authority it has requested.

First, American claims that Continental's alleged violations of the evidence request disqualify it from an award. Specifically, American alleges that Continental used prohibited data (privately produced O & D Plus International data) in violation of Order 95-10-24, *U.S.-Peru Combination Service Proceeding* (OST-95-370) and made no use of the base data required by the evidence request. According to American, Continental's explanation of how it calculated the "understatement and foreign flag adjustment" figures for each city-pair in column (2) of CO-201 is insufficient. Moreover, American states that a foreign flag adjustment at some 140 non-gateway cities is invalid because such a practice is not supported by Department precedent. In addition, American restated Continental's traffic forecast in CO-202 by using O & D Survey numbers shown in Column (1) of CO-201 rather than the allegedly unsupported figures in column (2), and claims that the forecast actually totals only 53,849 annual passengers with an annual load factor of 40.3 percent compared to American's traffic forecast of 99,086 on-board passengers with a load factor of 72.2 percent. Under these circumstances, American asserts that granting Continental authority would violate the due process rights of both American and the Dallas/Ft. Worth Parties, and constitute arbitrary and capricious decision-making not supported by the evidence.

Second, American asserts that the evidence of record does not support the Department's tentative conclusion in the show-cause order that Dallas/ Ft. Worth and Houston "enjoy roughly comparable advantages". American contends that Dallas/Ft. Worth is far superior to Houston as a gateway for service to South America on the basis of, among other things, economic and

real estate growth, retail sales, buying income, annual operations, service to domestic cities, and O & D traffic to points in Latin America. The Dallas/Ft. Worth Parties emphasize that Dallas/Ft. Worth is in a unique position to boost U.S. trade with Peru given its leadership position in the high-tech field.

Third, American claims that its commitment to a start-up date of November 1, 1996, is superior to Continental's commitment to a start-up date of no later than December 15, 1996. American states that Continental's likely start-up date wastes six weeks of the winter season prior to the peak Christmas holiday period, and is inconsistent with the Department's stated interest in a November start-up.

Fourth, American contends that its proposal will benefit more passengers than Continental's proposal. In doing so, American argues that the Department selectively criticized its forecast, while totally ignoring exaggerations and errors in Continental's forecast. American claims that Continental used excessive stimulation for Houston (1000 percent) and for Los Angeles (75 percent). American estimates it will carry 95 percent of Dallas/Ft. Worth traffic, whereas Continental estimates a 75 market share for Houston. In addition, American contends that it will provide service to 20 Texas cities, and Continental would serve only 10. American asserts that applying its conservative forecasting methodology to Continental's entire forecast reduces the latter's total forecast passengers to 50,845, and results in a load factor of 39.1 percent. However, even using Continental's traffic forecast, American argues that it will benefit over 13,000 more forecast passengers than Continental.

Fifth, American argues that Continental's Latin America service record at Houston has been sporadic.

Sixth, American claims that any intergateway or intercarrier competition benefits from selecting Continental are outweighed by the superiority of American's proposal. American argues that its share of the U.S.-Peru market is actually less than 44 percent and that its overall share of the U.S.-Latin America market is 25.8 percent, taking into account foreign-flag competition. The Dallas/Ft. Worth Parties note that if the 3.5 U.S.- Peru frequencies to be awarded in Docket OST 96-1104 are awarded to Continental, and American were awarded the seven frequencies in this proceeding for Dallas/ Ft. Worth, American would have 58 percent of the total frequencies and not 64 percent as the Department found. Furthermore, American states that the Department's reliance on market structure to award authority is inconsistent with the balancing test the Department has used in other proceedings.

ANSWERS

Continental and the Houston Parties each filed answers to the objections. Continental's position was generally supported by the Houston Parties.

According to Continental, its deviation from the evidentiary ground rules was neither intentional nor prejudicial to American. Continental asserts that it did not use O & D Plus data for its traffic base and that it used INS data to determine the underreported foreign-flag traffic. Continental asserts that revising its exhibits pursuant to American's suggestions (using data for the 12 months ended June 30, 1995, rather than September 30, 1995) would increase its total U.S.- Peru traffic by 146,000 passengers (revised CO-201 compared to CO-201) and the understatement due to foreign-flag traffic unreported in the O & D Survey would increase by over 40,000 passengers (compare revised CO-203 and CO-203). Furthermore, Continental asserts that the Department did not rely on Continental's foreign flag adjustment in the show cause order and therefore, its submission cannot prejudice American. Continental contends that American's failure to replicate Continental's results in CO-201 arises from American's failure to use the correct figures in CO-301. Continental argues that American does not cite precedent for dismissing an applicant for an unintentional or intentional violation of the Department's evidentiary rules. Moreover, Continental states that American itself benefited from the Department's practice of not disqualifying applicants for deviations from the evidentiary rules in the *U.S.-Japan Gateways Case*.

Continental takes exception to American's argument that Dallas/Ft. Worth is the superior gateway. Continental notes that American historically has chosen not to offer service between Dallas/Ft. Worth and South America, and that 84 per cent of American's South America departures and seats operate from its Miami hub. In contrast, Continental claims that it operates 42 percent more Latin American nonstops at Houston than American operates at Dallas/Ft. Worth. Continental states that Houston presently serves more than four times as many U.S.-Central/South American passengers as Dallas/Ft. Worth. Similarly, Continental claims that Houston generates more than twice the air cargo to Latin America and 10 times the air cargo to Peru than Dallas/Ft. Worth. Continental asserts that it would provide intergateway competition for American's Miami gateway and that it, unlike American, would not be diverting its own passengers from another gateway.

Continental contends that American's proposed start-up date is not significantly superior to Continental's. In doing so, Continental cites Order 95-10-24 for the proposition that in certificate cases start-up dates are not usually an important deciding factor.

Continental claims that both carriers forecast virtually identical amounts of U.S.-Lima traffic for 1997. According to Continental, the real differences between the carriers' forecasts lie in the growth and stimulation factors used in the Los Angeles, Houston, Dallas/Ft. Worth and connecting markets and, to a far lesser extent, the distribution of traffic. Continental alleges that American stimulated connecting markets by a factor 50 percent greater than Continental's stimulation in those markets. Moreover, Continental claims that American forecast 44

percent more traffic for itself in the local Dallas/Ft. Worth-Lima market than it forecast last year for the year ended September 30, 1996, while it adjusted its Los Angeles passenger forecast for identical service downward by 11 percent.

According to Continental, American has a poor track record of developing international routes with small local traffic at Dallas/Ft. Worth. In contrast, the Houston Parties offer as evidence of Continental's commitment to Latin America that in 1988, Continental served no points in Latin America, while in February 1996, Continental was serving 11 points with 55 weekly non-stop and 14 one-stop flights.

Finally, Continental contends that American and the Dallas/Ft. Worth Parties downplay or ignore American's dominance in the U.S.-Peru and U.S.-South America markets. Continental argues that, for the 12 months ended in the third quarter of 1995, American had an 86-percent share of the U.S.-Lima O & D passengers. Moreover, Continental states that American operates 70 percent of the U.S.-flag scheduled nonstop flights and 64 percent of the nonstop seat capacity in the U.S.-South America market. Continental claims that American is an applicant for 3.5 additional frequencies which Continental will no longer seek when the award in this proceeding is made final. Moreover, Continental claims that Dallas/Ft. Worth service would provide no genuine new convenience or benefits to the traveling public and would divert traffic from American's service at Miami.

DECISION

We have decided to make final the selection of Continental for primary authority¹ and American for backup authority to provide scheduled combination service in the U.S.-Peru market.² The level of competition is crucial in this limited-entry market where frequencies are a valuable resource and where a single U.S. carrier dominates.³

¹ Contintal requested the right to combine service at the points on this route with service at other points Continental is authorized to serve by certificates or exemptions, consistent with applicable international agreements. We will grant this route integration authority.

² Based on the data officially noticeable under Rule 24(n), we find that both carriers are fit, willing and able to provide the transportation services proposed. Both Continental and American have previously been found to be citizens of the United States and fit to provide scheduled foreign air transportation of persons, property and mail. See, for example, Order 95-6-26 for both Continental and American.

³ According to the O & D survey for the 12 months ended September 30, 1995, 227,690 O & D passengers traveled between the United States and Lima on U.S. carriers, and approximately 163,000 traveled on foreign-flag carriers. American provided most of the service during this period for U.S. carriers with

In our show cause order we tentatively concluded that both service proposals would provide important public benefits and that the overall proposals are comparable. However, we also tentatively concluded that Continental will provide significantly greater overall public benefits through intergateway competition with Miami and through enhanced intercarrier competition with American.⁴

American and the Dallas/Ft. Worth Parties have not provided new facts or arguments that warrant a different outcome. In essence, American takes the position that any benefits to intergateway or intercarrier competition from selection of Continental are outweighed by other factors favoring the selection of American. We disagree. We have said in numerous cases that criteria may be weighed differently in each case. Given the circumstances of this case, market structure carries particularly great weight. American's arguments do not change that balance.

On balance, the market structure and level of competition outweigh the other factors cited by American given the comparable benefits of both service proposals, discussed below, and American's dominance in this limited-entry market. Continental's proposal to serve Lima from Houston would add a fourth gateway to the three existing gateways offering nonstop service. In addition, awarding Continental the frequencies in this proceeding would give it a total of 14 frequencies to more effectively compete against American's 17.5 frequencies.

In contrast, an award in this case to American would give even more dominance to an already strong carrier by giving it more than half of all U.S. carrier departures to Lima (51.9 percent) and South America (50.6 percent), and by giving it nearly two-thirds of all seats.⁵ Moreover, as previously stated in the

daily widebody and narrow-body nonstop service from Miami and single-plane service from New York over Miami. United entered the market in early 1995 with daily narrow-body nonstop service from Miami and single-plane service from New York over Miami. In early 1996, Continental began daily narrow-body nonstop service from Newark. Nearly 70 percent of the passengers using U.S. carriers originated from only two U.S. cities, Miami (49 percent) and New York (20 percent). Los Angeles was third with four percent. The two gateway cities proposed to be served by the applicants, Houston and Dallas/Ft. Worth, are ranked ninth and tenth, respectively, with each originating 0.9 percent of the total U.S. carrier traffic to Lima. The U.S.-Lima market experienced a sharp O & D traffic increase of 24 percent during the 12 months ended September 1995. Over the last two years, overall traffic has increased at an average annual growth rate of 16.7 percent.

⁴ Order 96-4-48 at 5-6.

⁵ American's share of seating capacity would be 66 percent for the U.S.-Lima market and 64.9 percent for the U.S.-South America market.

show cause order, with two hubs (Dallas/Ft. Worth and Miami) American would have a major service and marketing advantage over Continental and United with one hub each.

Neither American nor the Dallas/Ft. Worth Parties argue that awarding American authority would provide superior public benefits to the market structure and level of competition.⁶ Order 96-1-41 instituting *the U.S.-Lima Combination Service Proceeding (1996)* stated that we would consider the “effects of the applicants’ service proposals on the overall market structure and level of competition in the U.S.-Peru market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits.”⁷

American takes issue with the Department’s characterization of it as a dominant carrier in the market by stating that its share of the U.S.-Peru market is actually less than 44 percent and that its overall share of the U.S.-Latin America market is 25.8 percent, taking into account foreign-flag competition. However, when we compare American with other carriers that operated in the U.S.-Lima market during calendar year 1995, American carried 2.8 times more passengers than the next closest carrier (Aeroperu) and 4.2 times more than the next closest U.S. carrier (United). In the U.S.-South and Central American market American carried 1.7 times more passengers than the next closest carrier (Mexicana de Aviacion) and 4.7 times more than the next closest U.S. carrier (Continental).

Furthermore, American estimates market shares in many online connecting markets at 95 percent. These market share estimates are even higher than what many carriers attain when they operate the only available nonstop service between a U.S. city and a foreign gateway. Most U.S.-Lima markets, however, are not well served, and consumers currently have very few choices. Such high market shares, if attainable, only exemplify how strong American’s dominance between the U.S. and Lima would be if awarded this route, and it further encourages the need for a second competing carrier.

The Dallas/Ft. Worth Parties claim that American would have 58 percent of the total frequencies and not 64 percent as the Department found in the show cause order, if the 3.5 U.S.-Peru frequencies to be awarded in Docket OST 96-1104 are awarded to Continental and American were awarded the seven frequencies in this proceeding. The *Official Airline Guide Worldwide Edition*, (April 1996) indicates that American would have 64 percent of the frequencies if we awarded it the seven frequencies in this proceeding. However, even if we were to accept the Dallas/Ft. Worth Parties’ estimate of 58 percent, American would still hold a dominant position in this limited-entry market.

⁶ Order 96-4-48 at 7.

⁷ Order 96-1-41 at 4.

American takes the position that granting Continental's application in spite of the alleged violation of the evidence request violates American's and the Dallas/Ft. Worth Parties' due process rights and constitutes arbitrary and capricious decision-making not supported by substantial evidence. We cited precedent in our show cause order for the premise that we looked to whether there was an intentional violation of our rules and to whether the exhibit itself could be modified to ensure basic fairness to all parties.⁸ We did not find an intentional violation of the evidence request on behalf of Continental, and we did not consider Continental's adjustments to the base traffic in reaching our decision because Continental failed to explain adequately either its methodology or its data source for this significant adjustment.⁹ American has not presented evidence that Continental's deviation from the evidence request was intentional or prejudicial given that the deviation in question did not play a role in our decision. Therefore, we disagree that award of authority to Continental denies American and the Dallas/Ft. Worth Parties their due process rights and is either arbitrary or capricious.

American and Dallas/Ft. Worth contend that the Department erred by tentatively concluding that Continental's service proposal would provide the greatest overall public benefits as a result of its significant advantage in providing both intergateway and intercarrier competition in the U.S.-Peru market. They direct most of their specific challenges to the tentative conclusion in Order 96-4-48 that the service benefits from each proposal are "close." Their primary contentions as set forth by American are that (1) "by all significant measures" Dallas/Ft. Worth ranks well ahead of Houston as a gateway for new international service to South America; (2) American's service proposal will benefit far more passengers than that of Continental; (3) Continental's Latin American service record at Houston has been sporadic; and (4) American's start-up date is superior to Continental's.¹⁰

American and the Dallas/Ft. Worth Parties first challenge the record basis for the Department's tentative finding that the two Texas gateways "enjoy roughly comparable advantages for U.S.-Peru service in terms of geography, size, facilities, local traffic potential, and connecting traffic potential as important hubs of their respective carriers."¹¹ They argue that they have submitted numerous exhibits which show that the Dallas/Ft. Worth area has a larger economy, gateway population, and local traffic/trade growth potential than Houston, that the Dallas/Ft. Worth airport has more total operations and traffic than Houston, including more total O&D traffic to Latin America, and that American serves more exclusive points from Dallas/Ft. Worth than Continental does from

⁸ Order 96-4-48 at 9.

⁹ Id.

¹⁰ American objections, at 2.

¹¹ Order 96-4-48, at 6.

Houston.¹² We did, however, consider and weigh these exhibits against a similar number of exhibits submitted by Continental and the Houston Parties which show identical or comparable advantages for the Houston gateway.¹³ As Houston states, there are countless measures of comparison of metropolitan areas, and the result is usually dependent upon the data chosen or the statistical methods employed. On balance, we found no decisional advantage of one gateway over the other for purposes of this proceeding. We also specifically addressed the contentions of the parties regarding the relative advantages of their connecting services to U.S. points, finding an “essential congruency” in their proposals to serve points generating U.S.-Peru traffic, particularly those with nonstop-to-nonstop online connections.¹⁴ References to other city-count comparisons repeated by the objecting parties do not challenge the accuracy or materiality of that finding.¹⁵

American also continues to maintain that its proposed service at Dallas/Ft. Worth will benefit far more passengers than will Continental’s service at Houston. It asserts that Order 96-4-48 selectively criticized American’s traffic forecast while ignoring major errors in Continental’s forecast in reaching its conclusion that neither carrier had a decisive traffic advantage. American misinterprets our decision and its supporting findings. We first observed that the two forecasts as presented by the applicants were fairly close, noting in particular that, methodology aside, American’s somewhat higher overall traffic figures reflected a considerable amount of foreign-originating traffic which is not normally counted in comparing the public benefits of service proposals.¹⁶ We also found that American’s purported advantage in connecting traffic implied a substantial amount of traffic diverted from its Miami gateway services; in looking at service benefits, self-diverted traffic is accorded little or no weight.¹⁷ Finally, we found that these inherently short-term forecasts do not take account of Continental’s greater long-run incentive to expand connecting service at Houston and to develop its traffic base through aggressive pricing.

We did not ignore the methodological weaknesses of either traffic forecast, but rather found both to be overstated in various respects.¹⁸ The essence of our

¹² American objections, at 11-13; Dallas/Ft. Worth Parties objections, at 2-4, 7-10.

¹³ Houston Parties answer, at 5-7; Continental answer at 12-13.

¹⁴ Order 96-4-48, at 6.

¹⁵ American objections, at 12,17; Dallas/Ft. Worth Parties objections, at 3.

¹⁶ Order 96-4-48, at 6 n. 9.

¹⁷ We continue to find unpersuasive American’s claim that Continental would also suffer significant self-diversion over its Newark gateway; most such connections, even if theoretically possible, would involve unacceptable circuitry to Lima.

¹⁸ Order 96-4-48, at 6. As Continental notes, the principal methodological

decision, however, was that the methodological weaknesses tended to be offsetting¹⁹ and that neither showed, or with appropriate adjustments was likely to show, any significant overall traffic advantage for one proposal over the other. Given our other findings and the evidence of record regarding the similarity in the service proposals, the congruity of the traffic points served, the comparability of the gateways and the behind networks of each carrier, we found no persuasive basis to give decisional weight to the numerical differences in the traffic forecasts, especially given our determination of the significance of market structure to our decision in this proceeding. American has not convincingly demonstrated that our decision with respect to service benefits was unwarranted.

American and the Dallas/Ft. Worth Parties also argue that the Department failed to address the question of the credibility of Continental's proposal in view of its "sporadic" service record to Latin America. They argue that Continental's failure to start the Los Angeles-Bogota service it proposed in 1993, coupled with its rapid cancellation of service begun between Houston and other markets in Colombia, Venezuela, Mexico and Canada, casts doubt on the Department's premise that the carrier will have a greater incentive than American to develop the Houston-Lima market.²⁰ American argues that, in contrast, it now serves seven Mexican markets and offers nonstop service to Sao Paulo, San Jose, and Guatemala City from Dallas/Ft. Worth, all markets with small local O&D traffic levels.

Continental and the Houston Parties respond by noting that on at least six occasions American also has discontinued service in Dallas/Ft. Worth-Latin American markets.²¹ At the same time, they emphasize that American has shown little interest in developing Dallas/Ft. Worth as an alternative to Miami,

differences between the forecasts involve the traffic growth and stimulation factors used in the Los Angeles, Houston, Dallas/Ft. Worth and various connecting markets, as well as market share and traffic distribution assumptions.

¹⁹ Both American and Continental continue to argue that their own forecast would show a traffic advantage if it were adjusted in accordance with the other applicant's assumptions, or if the other forecast were adjusted in accordance with its own assumptions. See, Continental answer, at 14-17; American objections, at 15-16.

²⁰ American objections, at 19-20; Dallas/Ft. Worth Parties objections, at 10-11. The Dallas/Ft. Worth Parties emphasize that the Los Angeles-Bogota, Houston-Caracas and Houston-Vancouver markets are considerably larger than the Houston-Lima market.

²¹ Referencing exhibits CO-100, at 2, and CO-122. Continental suggests that neither carrier should be seriously faulted for "experiments" that do not work out. We agree.

while, in contrast, Continental has consistently expanded service between Houston and Central and South America since 1988, aggressively developing it into the second largest gateway to Latin America. Continental claims that while 84 percent of American's South American departures and seats operate from its Miami hub, and Dallas/Ft. Worth ranks "a distant third" among American's South American gateways, Continental operates 42 percent more Latin America nonstops at Houston than American does at Dallas/Ft. Worth and Houston serves four times as many U.S.-Central/South American passengers as Dallas/Ft. Worth.²²

We agree with Continental that the most important issue here is the impact of our selection on the competitive market structure in the U.S.-Peru and U.S.-Latin American markets. In this regard, we continue to believe strongly that Continental's overall record of promoting Latin American service at Houston, together with its clear incentives to develop U.S.-Peru service through that gateway as a complement to its Newark service, makes it the most likely carrier to maximize the long-run public benefits resulting from the opportunities at issue in this proceeding.²³

Finally, American continues to argue that its commitment to a November 1, 1996 start-up date is a decisional service benefit in this case, one ignored by Order 96-4-48. It argues that Continental's suggestion that the Department "should specify startup no later than December 15, 1996" would waste six weeks of the important winter season prior to the peak Christmas holiday period and is inconsistent with the Department's various statements of the importance of expedition in this proceeding.²⁴ Continental states that it merely suggested a start-up date "no later" than December 15, and that it will start service before that date. It notes, in any event, that Order 96-4-48 proposed a 45-day certificate start-up condition, and that the Department has previously observed that while start-up dates are often important in exemption cases, they are not usually a decisional factor in certificate cases. We find that to be the case here, where the long-term benefits of added competition greatly outweigh a possible, but by no means certain, difference in start-up dates limited in any event by our proposed certificate condition to December 15, 1996.

BACKUP AWARD

²² Citing CO-114 through 119, HOU 205 and HOU-R-106.

²³ Order 96-4-48 did not contain a separate discussion of the "reliability" arguments, but the Department considered the competing contentions of the parties on this subissue and reflected its decision on the merits in its general findings on Continental's incentives versus those of American.

²⁴ American objections, at 13-14.

We make final our selection of American for award of backup authority to serve the Dallas/Ft. Worth-Lima market.²⁵ While we remain convinced that Continental's proposal offers the most public benefits, the record supports a conclusion that a backup award to American, if activated, would produce public benefits as well.

CERTIFICATE START-UP AND FREQUENCY DORMANCY CONDITIONS

As we noted in our show cause order, we will issue a five-year experimental certificate for the primary award. The seven frequencies will be allocated to the primary carrier for a one-year period. No party has objected to our proposal to include a 45-day start-up provision in any certificate to be issued in this case, and a 90-day dormancy provision for any frequencies awarded in this case, as has been our standard practice. Therefore, the certificates will include those conditions.

ACCORDINGLY,

1. We issue Continental Airlines, Inc., a new temporary experimental certificate of public convenience and necessity in the form attached to engage in foreign scheduled combination air service between the terminal point Houston, Texas and the terminal point Lima, Peru;
2. We allocate to Continental Airlines, Inc., seven weekly frequencies for the operation of the service referred to in paragraph 1;
3. The frequencies allocated in ordering paragraph 2 will be effective November 1, 1996 and will expire (a) one year from such date, or (b) the 90th day that the holder fails to use the frequencies, whichever occurs earlier; unless the Department earlier suspends, modifies, or withdraws the frequency allocation;
4. We award backup authority to American Airlines, Inc., and issue it a backup allocation of seven weekly frequencies for services in the Dallas/Ft. Worth-Lima market. The allocation of these frequencies will not become effective unless the authority and frequency allocation to Continental Airlines for services in the Houston-Lima market expires or has otherwise been deleted or suspended.

²⁵ The award will be in the form of a backup frequency allocation. Thus, the seven weekly frequencies allocated to Continental for its Houston-Lima services would not be available to American for Dallas/Ft. Worth-Lima service unless the certificate authority and frequency allocation awarded Continental by this order expires or has otherwise been deleted or suspended. As American already holds effective certificate authority to serve the Dallas/Ft. Worth-Lima market (Route 389), it would require no additional underlying economic authority to implement its backup award should it be activated.

The backup frequency allocation will expire one year from the effective date of this order;

5. The frequencies allocated in ordering paragraph 4 will expire (a) one year from the date of service of this order, regardless of whether they have become effective, or (b) after they become effective, the 90th day that the holder fails to use the frequencies, whichever occurs earlier; unless the Department earlier suspends, modifies, or withdraws the frequency allocation;

6. Unless disapproved by the President of the United States under 49 U.S.C. section 41307, this order and the attached certificate shall become effective on 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;²⁶

²⁶ This order was submitted for section 41307 review on

. On we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.

7. We shall serve this order on all parties in Docket OST-96-1037; and
8. We will not entertain petitions to reconsider the order.

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov/dotinfo/general/orders/aviation.html>*

