



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

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on the 3rd day of September, 1998

SERVED: September 9, 1998

Notice of Route Integration and
Contingent Application of

UNITED AIR LINES, INC.

for exemption pursuant to 49 U.S.C. § 40109 (Chicago-
Buenos Aires)

Docket OST-98-3764

Application of

CONTINENTAL AIRLINES, INC.

under 49 U.S.C. §§ 41102 and 41108 for a certificate of
public convenience and necessity and frequencies
(Houston and Newark-Buenos Aires)

Docket OST-98-3814

Application of

DELTA AIR LINES, INC.

under 49 U.S.C. §§ 41102 and 41108 for a certificate of
public convenience and necessity (Atlanta-Buenos Aires)

Docket OST-98-3218¹

ORDER

Summary

By this order, we determine that United Air Lines, Inc. (United) holds all the economic authority needed to operate its proposed Chicago-Buenos Aires combination services and that no further award of authority or carrier selection procedures are necessary for United to operate this service. We also

¹ While Delta's application in Docket OST-98-3218 includes requests for authority to serve various Atlanta/New York-South America and U.S.-Belize markets, this order deals with its specific request for Atlanta/New York-Buenos Aires authority only. The remaining portions of the application will be handled separately.

will dismiss the requests of Continental Airlines, Inc., and Delta Air Lines, Inc., for certificate authority in the U.S.-Argentina market.

Background

Under the U.S.-Argentina aviation agreement, U.S. designated combination carriers may operate 28 weekly combination frequencies with wide-body aircraft.² The U.S. Government has designated American Airlines, Inc. and United for these combination services and allocated each carrier a total of 14 wide-body weekly frequencies for its U.S.-Argentina services.³ Currently, United operates seven weekly flights in the New York-Buenos Aires and fourteen weekly flights in the Miami-Buenos Aires market.⁴

United's certificate for Route 652 authorizes service to Buenos Aires from various named U.S. gateways, including Miami and New York. It does not specifically authorize service from Chicago. However, that certificate does authorize services from Chicago to other international points.⁵ United also holds an exemption authorizing United to integrate its various international route authorities ("route integration exemption").⁶ The route integration exemption is conditioned to require United to notify the Department when it seeks, in reliance on its route integration authority, to begin new service in markets where U.S. carrier entry is limited. The exemption is further conditioned to preclude operation of such services until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to use the limited-entry route rights.⁷

² Under the terms of the aviation agreement, wide-body aircraft may be substituted, at the exclusive discretion of any of the designated airlines, by other aircraft of lower capacity, in which case the frequency level yielded by applying the following conversion rate shall apply: one wide-body aircraft (B-747-100 or similar aircraft) shall be equivalent to two DC-8, B-707, B727, B-737, B-757, MD-80, or similar aircraft, and to 1.5 L-1011, DC-10, A-300, B-747SP, B-767, or similar aircraft. The agreement further provides that each designated airline may, on any or all flights and at its option, operate flights in either or both directions and without directional or geographic limitations, serve points on each authorized route in any order, and omit stops at any point or points outside the territory of the Party which has designated that airline, without the loss of any right to carry traffic otherwise permissible.

³ Order 95-2-23.

⁴ Because of the smaller size aircraft United operates, it is able to operate the 21 weekly flights with its allocation of 14 weekly wide-body frequencies under the aircraft conversion provisions of the U.S.-Argentina aviation agreement described in footnote 2, supra.

⁵ Order 92-7-9.

⁶ Orders 97-6-16 and 97-10-8.

⁷ The condition specifically states:

The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of route integration authority requested should be construed as conferring upon United rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless United notifies us 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 United's authority by virtue of the route integration exemption granted here, but that are not then being used by United, the holding of such authority by route integration will not be considered as providing any

(Footnote continued)

preference to United in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue. Order 97-6-16 (Docket OST 97-2126)

Applications and Responsive Pleadings

A. United

On April 20, 1998, United filed a notice pursuant to the provisions of its route integration exemption notifying the Department of its plans to inaugurate service in the Chicago-Buenos Aires market on September 9, 1998.⁸

United states that U.S. carrier entry into the U.S.-Argentina market is limited only by the requirement for a frequency allocation under the terms of the U.S.-Argentina aviation agreement and that United intends to operate its proposed Chicago-Buenos Aires service within its existing frequency allocation. Specifically, United states that it would use seven of its Miami-Buenos Aires flights to operate the Chicago-Buenos Aires service. In these circumstances, United argues that no other carrier would be affected by its integration of services to operate the proposed Chicago-Buenos Aires services and that no frequency allocation or carrier selection proceeding is required.

Continental Airlines, Inc. (Continental) filed an answer, and concurrently filed an application to serve the U.S.-Argentina market (discussed below). Continental notes its long-standing interest in serving Argentina and its past objections to the frequency allocation to American and United. It argues that United's proposed services are different from those originally proposed when United secured the frequencies, and that with this change, the Department should reexamine U.S.-Argentina frequency awards, should institute a comparative route proceeding to consider authorizing a new entrant to serve the market, and should award Continental that authority with seven weekly frequencies to provide such service.

United filed a reply, reiterating its position that it is fully using its frequency allocation and, thus, that there are no available frequencies for Continental's proposed services; and that, absent a dormancy issue, there is no basis to engage in the type of carrier selection proceeding Continental is seeking.

B. Continental

Continental requests a certificate of public convenience and necessity for authority to provide scheduled foreign air transportation of persons, property, and mail between Houston and Newark, on the one hand, and Buenos Aires, Argentina, on the other. Continental proposes to operate daily flights in each market with either DC-10-30 aircraft already in its fleet or B-777 aircraft which are on order when sufficient frequencies are available to permit both Newark and Houston-Buenos Aires service. It further states that while only seven frequencies are available, Continental would offer daily Newark-Buenos Aires service.

⁸ Alternatively, United requested that should the Department determine that its route integration authority did not encompass such service, that United be granted a separate Chicago-Buenos Aires exemption. If separate exemption authority were granted, United requested that such authority remain in effect for a period of two years or until final action by the Department on United's certificate application in Docket OST-95-495. As discussed below, we determined that no separate exemption was necessary.

Delta Air Lines, Inc. (Delta), United, and the Dallas/Fort Worth International Airport (Dallas/Fort Worth) filed answers in opposition to Continental's application.⁹ The Greater Houston Partnership (Houston) filed a reply.¹⁰

Delta states that it also has pending an application to serve the Argentina market (Docket OST-98-3218) and that, to the extent the Department determines frequencies are available for allocation, its application requires contemporaneous consideration with the applications of Continental and United.

United maintains its position that no frequencies are available for additional U.S.-Argentina service, and that Continental's application should be dismissed without prejudice to refile at such time as additional U.S.-Argentina combination service frequencies may be available for allocation.

Dallas/Ft Worth argues that Continental has no firm plans for Houston-Buenos Aires service and that no frequencies will be available for reallocation to Continental or any other carrier. It notes, however, that new frequencies may become available if a new pro-competitive U.S.-Argentina bilateral agreement is negotiated. Should that occur, Dallas/Ft. Worth maintains that it, not Houston, is the better selection for a mid-continent hub that would provide convenient access between points throughout the western United States and Buenos Aires.

Houston states that in the event frequencies are available for new U.S. carrier service to Argentina, Continental and Houston stand ready to provide such service.

Decision

We have reviewed the notice that United submitted under its route integration exemption together with the provisions of the current U.S.-Argentina aviation agreement and the overall state of aviation relations with Argentina. Based on this review, we have determined that reallocation of United's frequencies in the circumstances of this case is not in the public interest. We have also decided to dismiss, without prejudice, the certificate applications of Continental and Delta to serve Argentina.

United has been designated under the U.S.-Argentina aviation agreement and already holds sufficient frequencies to operate the proposed Chicago services. United has been using all of the frequencies it was allocated in serving the Miami and New York-Buenos Aires markets. It simply proposes now to use some of these frequencies to support services in the Chicago-Buenos Aires market. Thus, no additional frequencies are necessary for it to operate the proposed Chicago services. Furthermore, we conclude that United needs no additional underlying economic authority to serve the Chicago-Buenos Aires market. As noted above, United holds certificate authority to serve Argentina from various named U.S. gateways, albeit not Chicago, but holds certificate authority from Chicago to serve other international points. It also holds broad route integration exemption authority to combine its various international route authorities. The integration of these authorities provides United with the necessary

⁹ Delta's answer was accompanied by a motion to consolidate the pending requests of Delta (Docket OST-98-3218), Continental (Docket OST 98-3814), and United (Docket OST-98-3764). United filed an answer, objecting to Delta's motion. Based on our decision discussed in this order, we will dismiss Delta's motion.

¹⁰ The reply was accompanied by a motion for leave to file an unauthorized document. In the interest of having a complete record, we will grant the motion.

underlying economic authority to serve the Chicago-Buenos Aires market, subject to the specific conditions of the route integration exemption, most notably the notice-filing requirement which United filed. Upon review of that notice and the provisions of the U.S.-Argentina aviation agreement, we have determined that no additional authority need be awarded for United to perform its proposed Chicago-Buenos Aires service.

Under the U.S.-Argentina aviation agreement, the Argentina market is limited by the number of frequencies that the authorized U.S. carriers may operate. Thus, the availability of route opportunities requires the availability of frequencies to provide service. In this case, the 28 weekly frequencies available have been allocated to American and to United. Both carriers are currently using their allocated frequencies. We have no basis to conclude that American will not continue to use its allocated frequencies, and United has made clear on the record of this case that it has firm plans to continue to use its frequencies. Moreover, the frequencies allocated are not restricted to service from specific U.S. gateways. Indeed, in our order regarding the allocation of U.S.-Argentina frequencies, we made clear our goal to afford the carriers flexibility to adjust their services to meet the changing needs of the U.S.-Argentina market.¹¹ In these circumstances, we find that United's decision to move the frequencies to Chicago is consistent with both the operative bilateral regime and the terms of United's regulatory authority. Accordingly, we see no basis to change the frequency distribution, and we conclude that there are thus no usable route rights available for award to another carrier and no purpose to be served by engaging in carrier selection procedures. Consequently, pursuant to United's route integration exemption, United can implement its proposed Chicago-Buenos Aires service.

We are unpersuaded by Continental's argument to the contrary, namely that United decision to move some of its existing frequencies to a new gateway warrants reexamination of the current allocations for U.S.-Argentina combination services. As indicated above, the frequencies allocated to United are not conditioned on service in specific city-pair markets. Nor does the U.S.-Argentina agreement restrict United to named U.S. gateways. Furthermore, the agreement specifically provides designated carriers with the flexibility to use different aircraft in their services and to adjust their service levels based on the aircraft type operated. United's proposed services in the Chicago-Buenos Aires market are fully consistent with these provisions of the aviation agreement. Moreover, also as discussed above, United already holds the underlying route authority necessary to serve the Chicago-Buenos Aires market. In these combined circumstances, we are unable to conclude that United's proposed new service at Chicago within its existing frequency allocation forms a basis for considering Continental's application.

Finally, given our determination that no usable Argentina route rights are available at this time, we have decided to dismiss, without prejudice, the U.S.-Argentina certificate applications filed by Continental and Delta. Notwithstanding this decision, we appreciate the interest of Continental and Delta in serving Argentina. The United States and Argentina have been actively engaged in negotiations that would result a more liberalized regime for U.S. carrier combination and all-cargo services. Should such an agreement be reached, Continental and Delta would be free to refile their applications at that time.

ACCORDINGLY,

¹¹ Order 94-9-36 at 4.

1. We determine that United's proposed Chicago-Buenos Aires service is authorized under the route integration authority granted United on May 2, 1997 (confirmed by Order 97-6-16), and that no further carrier selection procedures are necessary for United to operate its proposed Chicago-Buenos Aires services;
2. We dismiss, as moot, United's request for a separate exemption under 49 USC § 40109 to serve the Chicago-Buenos Aires market;
3. We deny the motion of Delta Air Lines, Inc. to consolidate its U.S.-Argentina application in Docket OST-98-3218 with the application of Continental Airlines, Inc. in Docket OST-98-3814 and the application of United Air Lines, Inc. in Docket OST-98-3764;
4. We dismiss the applications of Continental Airlines, Inc., (Docket OST-98-3814) and Delta Air Lines, Inc. (Docket-98-3218) to the extent the carriers seek certificates of public convenience and authority to serve the U.S.-Argentina market;
5. To the extent not granted or dismissed, we deny all requests in the captioned dockets relating to U.S.-Argentina service; and
6. We will serve this order on Continental Airlines, Inc.; Delta Air Lines, Inc.; United Air Lines, Inc.; all other U.S. certificated air carriers; the Dallas/Fort Worth International Airport; the Greater Houston Partnership; the Ambassador of Argentina in Washington, DC; the Office of Aviation Negotiations (U.S. Department of State); and the Federal Aviation Administration.

By:

CHARLES A. HUNNICUTT
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/general/orders/aviation.html>*