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Order 99-2-9



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

Issued by the Department of Transportation  
on the 9<sup>th</sup> day of February, 1999

**Served: February 12, 1999**

**U.S.-ROMANIA THIRD-COUNTRY  
CODE-SHARE OPPORTUNITIES**

**Docket OST-99-5096**

Applications of

**CONTINENTAL AIRLINES, INC.  
DELTA AIR LINES, INC.  
NORTHWEST AIRLINES, INC.  
UNITED AIR LINES, INC.**

**Docket OST 98-4509  
OST-98-4508  
OST-98-4507  
OST-98-4506**

for U.S.-Romania Third-Country Code-Share  
Opportunities

**ORDER TO SHOW CAUSE**

**SUMMARY**

By this order, we tentatively select (1) Delta Air Lines, Inc., Northwest Airlines, Inc., and United Air Lines, Inc., to serve Bucharest, Romania, under code-share arrangements with third-country carriers beginning April 1, 1999, and (2) Continental Airlines, Inc., to serve Bucharest, Romania, under code-share arrangements with third-country carriers beginning November 1, 1999.

**BACKGROUND**

Under Annex IV of the 1998 U.S.-Romania aviation agreement, the United States, effective April 1, 1999, may designate three U.S. carriers to serve Romania under code-share arrangements with third-country carriers.<sup>1</sup> An additional carrier may be authorized effective November 1, 1999.

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<sup>1</sup> Under Route A, the designated U.S. carriers may operate from points behind the United States via the United States and intermediate points to a point or points in Romania and beyond.

By Notice dated September 14, 1998, we invited U.S. carriers to file applications for the three designations to operate U.S.-Romania third-country code-share services that become available April 1, 1999.

### **APPLICATIONS**

Applications were filed by Continental, Delta, Northwest, and United. Each of the applicants proposes to operate code-share services in the U.S.-Romania market via an intermediate European point with a third-country carrier, all beginning April 1, 1999, as follows: Continental with Air France via Paris from three U.S. gateways to Bucharest (seven weekly flights) and with Czech Airlines (CSA) via Prague from one U.S. gateway to Bucharest (two weekly flights); Delta with Swissair via Zurich from nine U.S. gateways to Bucharest (14 weekly flights); Northwest with KLM Royal Dutch Airlines via Amsterdam from 14 U.S. gateways to Bucharest (10 weekly flights); and United with Lufthansa German Airlines via Frankfurt from 11 U.S. gateways to Bucharest (10 weekly flights) and via Munich from three U.S. gateways to Bucharest (seven weekly flights). Key features of the proposals are set forth in the attached Appendix.

### **RESPONSIVE PLEADINGS**

All of the applicants filed answers and replies.

Continental states that it opposes the applications of Delta, Northwest, and United to the extent they would prevent the Department from approving Continental's application. Continental argues that if the Department's goal is to expand U.S.-Romania traffic and U.S.-Eastern Europe airline competition, Continental should be preferred over Delta, Northwest, and United. These other applicants, Continental argues, have abundant U.S.-Eastern Europe code-share authority, whereas Continental has only limited third-country code-share authority and no authority at limited-designation third-country points. It also argues that it would introduce an entirely new network competing for traffic between the U.S. and Eastern Europe, including Romania, via Continental's Newark and Houston gateways. Finally, Continental argues that Delta's proposed code-share service with Swissair via Zurich would offer few new service options between the U.S. and Bucharest because Swissair currently operates from most of Delta's proposed gateways.

Delta, Northwest, and United each argues that the record in this case demonstrates it should be awarded one of the three Romania third-country code-share opportunities because its proposal falls within the top three in significant carrier-selection categories—number of weekly flights to Romania, number of U.S. gateways served, and number of same-day connecting flights. The three carriers also argue that Continental's proposal is the weakest of the four proposals by virtue of the fact that it ranks last in all of the significant carrier-selection categories. In addition, each carrier argues that its proposal should be selected ahead of the other two based on various criteria. For example, Delta argues that it would offer the most same-day connecting flights in the U.S.-Romania market; Northwest states that it would serve the most U.S. gateways; and United states that it would offer the most weekly flights to Romania.

## DECISION

We have tentatively decided to (1) select Delta, Northwest, and United to serve Romania under their respective third-country code-share arrangements beginning April 1, 1999, and (2) select Continental to serve Romania under its third-country code-share arrangements beginning November 1, 1999.

The 1998 U.S.-Romania agreement provides valuable opportunities for U.S. carriers to operate service between the U.S. and Romania on their own and on a code-share basis with third-country carriers. Currently, no U.S. carriers serve the market. Thus, implementation of the code-share opportunities under the agreement will represent the only U.S.-carrier services in this market. In these circumstances, we believe that the public would be best served by using these opportunities to maximize the level of U.S.-Romania services offered, thereby facilitating development of the market.

All four of the proposals presented are similar in certain respects—all would serve Bucharest, Romania, with code-share service via one or more European connecting points, and all propose to begin service April 1, 1999, when the rights become available.

Three of these proposals, however—those of Delta, Northwest, and United—offer the greatest number of frequencies and would provide service from the most U.S. cities. Collectively, the proposals of these three carriers would offer the public 41 weekly flights to Romania from cities throughout the United States. The record shows that under these proposals 16 different communities would receive online connecting service to Romania. No other combination of proposals offers the same level of services. Therefore, we tentatively conclude that the proposals of Delta, Northwest, and United would provide the greatest benefits to the traveling public and should be authorized to use the three opportunities available in April to offer third-country code-share services in the U.S.-Romania market.

In reaching this tentative conclusion, we fully considered Continental's argument that it should be selected for one of the April 1999 opportunities because it would introduce a new competitive network of code-share services in the U.S.-Eastern Europe market in competition with the existing code-share services of the other three applicants. As discussed below, we believe that this factor is a positive element of Continental's proposal. However, given our goal of maximizing service levels in the now unserved U.S.-Romania market, we are not persuaded that the benefits cited by Continental outweigh those deriving from the greater number of U.S. cities that would receive nonstop-to-nonstop connecting service to Romania, and the higher levels of weekly service to Romania offered by the other applicants' proposals for use of the three April 1999 opportunities.

That said, we tentatively believe that Continental's proposal would provide important service options in the U.S.-Romania market for travelers and shippers and that we should use the fourth opportunity for U.S.-carrier code-share services to authorize Continental's proposed code-share operations, beginning November 1999. Continental would operate code-share services to Romania from its hubs at Newark and Houston and also from Miami and would offer service via two European intermediate points, Paris and Prague. In addition, its code-share arrangements with Air France and CSA would introduce a new code-share network between the U.S. and

Eastern Europe, including Romania, and provide competitive services with the third-country services that would be provided by the other authorized U.S./foreign-carrier code-share services. In these circumstances, we tentatively conclude that the public benefits offered by Continental's proposal warrant its selection for the third-country code-share opportunity available November 1, 1999.

As we had not originally proposed to award the fourth code-share opportunity at this time (see our September 19, 1998 Notice), we will serve a copy of this order on all certificated carriers operating large aircraft in order to allow them an opportunity to respond to our tentative decision to award the November 1, 1999, third-country code-share opportunity and to file competing applications for the fourth opportunity. If any competing applications are received, we will establish additional procedures, if necessary, for considering those applications.

### **ECONOMIC AUTHORITY**

In the event we make final our tentative selections of Delta, Northwest, United, and Continental, we would grant Continental's application for a new certificate authorizing its proposed service in the U.S.-Romania market via Paris and Prague under its third-country code-share arrangements with Air France and CSA, respectively. As is our standard practice in limited-entry markets, we would issue Continental a five-year experimental certificate. Delta, Northwest, and United already hold the necessary underlying authority to conduct their proposed services and, thus, additional underlying authority for these carriers would not be necessary. With respect to statements of authorization for the proposed code-share services, Lufthansa and Swissair have blanket statements of authorization for their code-share services with United and Delta, respectively, and no additional authority would be needed; KLM filed a timely renewal of its statement of authorization to code-share with Northwest, and we would renew its authority; Continental has stated that Air France and CSA would file for statements of authorization for their code-share services with Continental if the Department grants Continental authorization for U.S.-Romania third-country code-share services.

### **ACCORDINGLY,**

1. We establish Docket OST-99-5096 for authorization of U.S.-Romania third-country code-share services;
2. We consolidate the applications of Continental Airlines, Inc., in Docket OST-98-4509; Delta Air Lines, Inc., in Docket OST-98-4508; Northwest Airlines, Inc., in Docket OST-98-4506; and United Air Lines, Inc., in Docket OST-98-4507 into Docket OST-99-5096;
3. We tentatively select Delta Air Lines, Inc., Northwest Airlines, Inc., and United Air Lines, Inc., to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-Romania market under their code-share arrangements with Swissair (via Zurich), KLM Royal Dutch Airlines (via Amsterdam), and Lufthansa German Airlines (via Frankfurt and Munich), respectively, beginning April 1, 1999;

4. We tentatively select Continental Airlines, Inc., to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-Romania market under its code-share arrangements with Air France (via Paris) and Czech Airlines (CSA) (via Prague) beginning November 1, 1999;
5. We direct all persons to show cause why we should not issue an order making final our tentative findings and conclusions;
6. We direct interested persons wishing to comment on our findings and conclusions, or objecting to the issuance of the order described above, to file their comments or objections with the Department, Dockets, Docket OST-99-5096, U.S. Department of Transportation, 400 Seventh Street, SW, Room PL-401, Washington, D.C. 20590, no later than 10 calendar days from the date of service of this order; answers thereto shall be filed no later than 5 calendar days thereafter.<sup>2</sup> Carriers interested in filing competing applications for the November 1, 1999 third-country code-share opportunity shall file their applications by the date specified for objections;
7. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action;<sup>3</sup>
8. If no objections are filed to our tentative decision on the award of the three April 1, 1999, third-country code-share opportunities, we shall deem all further procedural steps to have been waived, and proceed to enter a final order;
9. If no objections are filed to our tentative decision on the award of the November 1, 1999, third-country code-share opportunity, or no competing applications for that opportunity are filed, we shall deem all further procedural steps to have been waived, and proceed to enter a final order subject to Presidential review under § 41307 Subtitle VII of Title 49, the United States Code (Transportation); and

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<sup>2</sup> The original submission is to be unbound and without tabs on 8½" x 11" white paper using dark ink (not green) to facilitate use of the Department's docket imaging system.

<sup>3</sup> As we are providing for the filing of objections to this tentative decision, we will not entertain petitions for reconsideration of this order.

10. We will serve this order on Continental Airlines, Inc.; Delta Air Lines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; all certificated U.S. carriers operating large aircraft; the Ambassador of Romania in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

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

(SEAL)

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

