



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

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**1999 U.S.-ARGENTINA COMBINATION
SERVICE CASE**

Docket OST-99-6210

ORDER INSTITUTING PROCEEDING

SUMMARY

By this order, we institute the *1999 U.S.-Argentina Combination Service Case* to select a carrier or carriers to operate 14 weekly U.S.-Argentina frequencies that will become available for U.S.-Argentina combination services (seven frequencies beginning on September 1, 2000 and seven on June 1, 2001).

BACKGROUND

On August 12, 1999, representatives from the United States and Argentina initialed a Memorandum of Consultations and a set of amendments to the U.S.-Argentina Air Transport Services Agreement, providing for an open-skies accord between the countries after a three-year transition period for combination services. During the transition, the number of U.S.-Argentina scheduled combination service frequencies that can be operated by U.S. carriers, beyond the 42 weekly flights that can be operated currently, are increased in phases.¹ Specifically, U.S. carriers may use seven additional frequencies per week beginning on September 1, 2000, and an additional seven each on June 1, 2001, and June 1, 2002. All frequency limitations between the U.S. and

¹Currently, American Airlines and United Air Lines each operate 21 weekly frequencies between the U.S. and Argentina.

Argentina will be lifted by June of 2003, subject to certain contingencies.² There are no limitations on the number of U.S. carriers that may be designated to serve the market.

During the first phase of the transitional agreement (September 1, 2000 to May 31, 2001), U.S. carriers may serve from any points in the U.S. via intermediate points to Buenos Aires, Cordoba, and one additional point in Argentina to be selected by the U.S., and beyond to Santiago, Chile, and Montevideo, Uruguay. Under the second phase (June 1, 2001 to May 31, 2002), U.S. carriers may serve from any points in the U.S. via intermediate points to Buenos Aires, Cordoba, and two additional points in Argentina to be selected by the U.S., and beyond to Santiago, Chile, and Montevideo, Uruguay.

By Notice dated September 8, 1999, we requested that all U.S. carriers interested in making use of the 14 frequencies available under the first two phases file applications with the Department. The applications were due by September 22, 1999; answers were due by September 29, 1999; and replies were due by October 6, 1999.

APPLICATIONS AND RESPONSIVE PLEADINGS

Three U.S. carriers applied for the available frequencies: United Air Lines, Delta Air Lines, and Continental Airlines.³

United requests, as its first choice, allocation of the seven U.S.-Argentina combination service frequencies that become available on September 1, 2000 ("Phase 1"), or, as a secondary alternative, the seven frequencies that become available on June 1, 2001 ("Phase 2"). United would serve the Los Angeles-Buenos Aires market using B777-200 aircraft and would offer single-flight-number behind-gateway service to San Francisco. Delta also requests allocation of the seven frequencies available September 1, 2000 as a first choice and the Phase 2 frequencies as a secondary alternative. Delta proposes to operate between Atlanta and Buenos Aires using B767-300ER equipment. Finally, Continental requests 14 frequencies to provide service to Buenos Aires from Newark under the Phase 1 frequencies and from Houston under the Phase 2 frequencies, serving both routes with DC-10-30 aircraft.⁴ Continental states that its Houston proposal is secondary to its Newark proposal in the event that it is selected for only one of the two available phases. Each applicant would operate on a year-round basis.

In addition to the primary and secondary service proposals outlined above, Delta seeks backup Phase 2 authority to serve the New York (JFK)-Buenos Aires market in the event that it is selected to use the Phase 1 frequencies from Atlanta and another carrier is selected for Phase 2 but does not operate the proposed services. For its part, Continental requests backup Phase 1

²August 12, 1999 Memorandum of Consultations and *ad referendum* amendments to Annex I of the 1985 U.S.-Argentina Air Transport Services Agreement (Attachment A, Annex I, Section 6).

³Continental filed a motion to consolidate its application with Delta's application to ensure that both proposals receive comparable consideration. By Notice dated September 8, 1999, the Department granted Continental's motion and consolidated the initial applications of Continental and Delta (Dockets OST-99-6166 and OST-99-6108, respectively) into this proceeding (Docket OST-99-6210).

⁴Continental states that it intends to substitute B767 or B777 aircraft on these routes in the future.

authority to provide service from Newark in case it is not selected under that phase. United does not seek any backup award in this case.

Both Continental and Delta seek certificate authority and the attendant frequency allocation to operate the proposed services. United already holds certificate authority to serve the Los Angeles-Buenos Aires market and seeks only a frequency allocation for the proposed services.

The City of Houston and the Greater Houston Partnership (“the Houston Civic Parties”), the Georgia and Atlanta Parties (“the Georgia Civic Parties”), and each of the carriers filed answers to the applications. The Regional Business Partnership (“Newark”), the Georgia Civic Parties, the City of Los Angeles, and each of the carriers filed replies. The Houston Civic Parties filed an additional response.⁵

Each of the carriers offers arguments in support of its own proposal and opposes the other applications to the extent that they would preclude grant of its own request. Both Continental and Delta request that the Department institute a carrier selection proceeding in this case to determine how the frequencies should be allocated.

Each of the civic parties supports new services to its community and region. Specifically, the Houston Civic Parties and Newark support Continental’s application; the City of Los Angeles supports the application of United; and the Georgia Civic Parties support Delta’s application.

DECISION

We have decided to institute the *1999 U.S.-Argentina Combination Service Case* to select a carrier or carriers to operate the 14 weekly U.S.-Argentina frequencies that will become available for U.S.-Argentina combination services (seven flights beginning on September 1, 2000 and seven on June 1, 2001).⁶ The transitional open-skies aviation agreement with Argentina provides valuable opportunities to expand service in the U.S.-Argentina market in the near term. Three U.S. carriers have applied to use these opportunities, seeking a greater number of frequencies than are available. In these circumstances, we believe that the public interest is best served by instituting a comparative proceeding to determine how these frequencies should be allocated.

As we have already solicited applications from U.S. carriers interested in allocation of these frequencies, we will not solicit further applications to use the new frequencies.

Whether authorizing carriers for this service is consistent with the public convenience and necessity will not be at issue. The traffic rights involved constitute a valuable resource obtained in exchange for granting Argentina route opportunities for its airlines to serve the United States.

⁵A motion to file an otherwise unauthorized document accompanied the additional response filed by the Houston Civic Parties. We will grant the motion.

⁶We recognize that the availability of these route opportunities, as set forth in the August 12, 1999 Memorandum of Consultations (MOC), is subject to certain contingencies. We are instituting this case to ensure that all of our necessary procedural steps will have been completed for the selected carrier(s) to pursue the new opportunities immediately in the event that the rights become available as set forth in the 1999 MOC.

The introduction of additional U.S. carrier service will provide new service options to travelers and shippers and will enhance competition in the U.S.-Argentina market. In these circumstances, we find that the public interest clearly calls for the use of the rights.

In determining which carriers/gateways will be authorized, our principal objective will be to maximize the public benefits that will result from award of the authority in this case. In this regard, we will consider which applicants will be most likely to offer and maintain the best service for the traveling and shipping public. We will also consider the effects of the applicants' service proposals on the overall market structure and the level of competition in the U.S.-Argentina market, and on any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where they are relevant.

The U.S.-Argentina agreement provides for beyond services to Santiago, Chile, and Montevideo, Uruguay. We are prepared to consider in this proceeding the award of the beyond authority set forth in the agreement, provided that such proposals are consistent with, and may be implemented under, the relevant bilateral aviation agreements.

In order to assure that the valuable route rights are not wasted, we intend to issue backup authority in this proceeding should the selected carrier(s) not operate the proposed services. The carriers in this case have proposed service from different gateways. The considerations that lead to the selection of a carrier and a gateway are entirely interrelated, and a gateway's selection for primary service by a particular carrier does not mean that a different carrier at the same city would necessarily represent the next-best alternative. Our primary focus in awarding backup authority is to maximize use of the available route rights in the event that the primary carrier does not institute service or discontinues service during the first year of operations, not to ensure continuation of service from a particular gateway.

PROCEDURES AND EVIDENCE

We believe that written, non-oral show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750) are appropriate and that by using these procedures we can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. We find no material issues of fact that would warrant an oral evidentiary hearing in this case, and we note that the three carriers who have sought the frequencies have not requested oral, evidentiary procedures. We are confident that the issues in this case can be addressed adequately on a written record.

We have appended to this order an evidence request for the benefit of the parties to this case. We emphasize that the evidence request includes specific instructions regarding the type and format of the information to be submitted and, in some instances, the sources of information to be used. We view adherence to these directives as critical to our consideration of the proposals in carrier selection cases. We put all applicants in this case on notice that we expect full compliance with the evidence request appended in this order. Any carrier not complying in any material respect with our request will be subject to elimination from consideration for an award in this case.

In addition to the material requested, applicants and any other parties may submit any additional information that they believe will be useful to us in reaching a decision. To the extent that carriers want to offer alternative traffic forecasts, based on fully documented sources, they are free to do so as additional information for our consideration and comment by other parties to this case. At a minimum, however, applicant carriers must provide a forecast in the format and using the sources set forth in the appended evidence request.

We will also require, whether or not they participate in this proceeding, American Airlines and United, the U.S. carriers currently providing combination service in the U.S.-Argentina market, to file the service data set forth in the attached Appendix (Appendix A at 2, Section IV A.2). We believe that such data are necessary for a complete record in this case, and therefore, we are exercising our power under 49 U.S.C. 41708 to require these carriers to file these data.

Consistent with our policy with respect to limited-entry route rights, we will award the U.S.-Argentina authority at issue in this proceeding in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41102(c) to the extent that carriers require new certificate authority to implement their proposals. The duration of the authority will be five years in duration for the primary carrier and one year for the backup carrier, unless the latter authority is activated during that time, in which case, it will continue in effect for five years.⁷

We will not award certificates authorizing generalized U.S.-Argentina and beyond route authority broader than that specifically proposed to be served. In a comparative selection proceeding carriers are selected based on their specific service proposals, and the experimental certificates awarded make clear that the award is intended to ensure that the carrier can be measured on the proposal for which it was selected.⁸ Therefore, it has been our practice to issue the certificate authority for the markets the carriers actually have submitted a proposal to serve. We expect all applicants to provide very specific proposals at the direct exhibit stage. Carriers should not expect a final award in this case to grant them authority other than that which is included in the service proposals presented in this proceeding.

Consistent with our current practice, the frequencies allocated in this proceeding will be for an indefinite term, provided that the carrier continues to hold the underlying economic authority for the specific markets authorized. The frequencies to be awarded will also be subject to our standard 90-day dormancy condition, wherein the frequencies will be deemed dormant if they are not operated for 90 days in the market authorized, except where service in the market is seasonal. In all such instances of seasonal service, however, a carrier must notify the Department that its operations are of a seasonal nature; otherwise, the dormancy condition will apply. Under the dormancy condition if flights allocated are not used for 90 days, the frequencies expire automatically, and the frequencies revert to the Department for reallocation so that they can be available for other carriers on an immediate basis should they seek to use them.

⁷See Section 399.120 of our regulations.

⁸See Order 95-10-24 at 10 (*U.S.-Peru Combination Service Proceeding*, Docket OST 95-370) and Order 97-9-2 at 6 (*1997 U.S.-Brazil Combination Service Proceeding*, Docket OST-96-2016).

PROCEDURAL TIMETABLE

Under the transitional service regime, the first phase of the new service rights becomes effective September 1, 2000. It is our intent to ensure that the selected carrier(s) will be in a position to commence the authorized services as soon as the rights become available. To this end, we are establishing the following procedural schedule for submissions in this case:

Petitions for Reconsideration:	[10 days from service date]
Answers to Petitions for Reconsideration:	[5 calendar days from petitions]
DOT Information Responses:	December 10, 1999
Carrier Information Responses:	December 10, 1999
Direct Exhibits:	January 10, 2000
Rebuttal Exhibits:	February 7, 2000
Briefs:	March 6, 2000

All dates are delivery dates and all submissions must be filed in the docket assigned to this proceeding. An original and five copies of all submissions are to be received by the Department of Transportation Dockets no later than the dates indicated.⁹ In the alternative, filers are encouraged to use the electronic submission capability through the Dockets DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site. For the convenience of the parties, service by facsimile is authorized. Parties should include their fax numbers on their submissions and should indicate on their certificates of service the methods of service used.

ACCORDINGLY,

1. We institute the *1999 U.S.-Argentina Combination Service Proceeding*, Docket OST-99-6210, to be decided by non-oral, show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750);
2. The proceeding instituted in ordering paragraph one will consider the following issues:
 - a. Which carrier(s) and which gateway(s) should be selected for use of the available 14 weekly frequencies and which carrier(s)/gateway(s) should be selected for backup service;
 - b. What other authorities, including route integration authority, should be granted in conjunction with the Argentina services authorized in this proceeding; and
 - c. What terms, conditions, and limitations should be imposed on any existing certificate authority, and any new certificate authority or frequency allocation awarded in this proceeding.

⁹The original filing should be on 8½" x 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system.

3. We require all U.S. carriers providing scheduled combination service in the U.S.-Argentina market, whether or not they seek new or additional authority in this proceeding, to file the incumbent carrier data requested in Section IV.A.2 of the attached evidence request;

4. We grant all motions to file otherwise unauthorized documents; and

5. We will serve this order on American Airlines, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; United Air Lines, Inc.; the City of Houston and the Greater Houston Partnership; the Georgia and Atlanta Parties; the Regional Business Partnership (Newark); the City of Los Angeles; the Ambassador of Argentina in Washington, DC; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

A. BRADLEY MIMS
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/report_aviation.asp*

EVIDENCE REQUEST

I. Advisory Regarding Compliance

In responding to this evidence request, all parties are advised to heed the admonitions and notice regarding compliance contained in the attached order, at 4-5.

II. Public Disclosure of Data

Pursuant to section 241.19-6 of the Department's regulations, we have determined that the Department's T-100 data for the period January 1, 1996, through final Department decision in this proceeding, and the Origin & Destination Survey Data (Data Bank 2-A) for the period January 1, 1995, through final Department decision in this proceeding, for operations between the United States and Argentina, are material and relevant to a final determination of the issues in this case. We have also determined that O&D data between all points in the United States and Santiago, Chile, and Montevideo, Uruguay, via Argentina, for the 12 months ended June 30, 1999, are material and relevant to a final determination of the issues in this case. These data have been released to the U.S. carriers and U.S. non-airline civic and governmental parties to this proceeding, who will be free to use these data to the extent they deem necessary.

III. Procedures and Ground Rules

In the interest of a complete and adequate record, the parties should submit the following information in the form of exhibits. The exhibits should contain sufficient detail, including sources, bases, all assumptions, and methodology, so that, without further clarification, any party can derive the final results from the basic data.

IV. Requests for Information and Evidence

A. Information Responses

1. DOT Data

The Competition and Policy Analysis Division of the Office of Aviation Analysis will make available to the parties the following data in the form of information responses:¹

¹Due to the volume of this material, we will be unable to print and distribute copies to the parties. One copy of these materials will be made available for the parties' use in Room 4201, 400 Seventh Street, SW, Washington, DC, upon request. In addition, the Department will issue on request copies of the information requests on computer diskettes. Parties who wish to receive diskette versions of the information responses, should contact the Competition and Policy Analysis Division, at (202) 366-2352. The Department will make this material available on December 10, 1999.

Use of the data contained in the Department's Information Responses (either from hard-copy or computer diskette) is restricted to representatives of applicant carriers and interested U.S. parties (*i.e.*, those that have filed applications or comments) in this proceeding.

- (a) T-100 nonstop segment data, by month, beginning January 1, 1996, through the latest available month, between the United States, on the one hand, and Argentina, on the other.
- (b) T-100 on-flight market data, by month, beginning January 1, 1996, through the latest available month, between the United States, on the one hand, and Argentina, on the other.
- (c) For the Calendar Years 1995 through 1998, and the 12 months ended June 30, 1999 O&D traffic from Table 15 of the Department's O&D Survey between all U.S. points, on the one hand, and Buenos Aires and Cordoba, Argentina, on the other.
- (d) For the 12 months ended June 30, 1999 from the Department's O&D Survey between all U.S. points, on the one hand, and Buenos Aires and Cordoba, Argentina, on the other, that used the following gateways: Atlanta, Houston, Los Angeles, Miami, New York (Newark), New York (JFK), San Francisco, and "all others."
- (e) For the 12 months ended June 30, 1999, from the Department's O&D Survey between all U.S. points, on the one hand, and Santiago, Chile, and Montevideo, Uruguay, via Argentina, on the other.

2. Incumbent Data (American and United)

For each month for the twelve months ended October 31, 1999, provide the number of flights and complete flight itinerary for all flights operated in each city-pair market where service was provided in the U.S.-Argentina market, and the type of aircraft used in providing those services. If service was seasonal, the markets and level of service should be clearly identified.

B. Direct Exhibits

The applicant carriers are directed to provide the sources, in exhibit form, for their traffic forecast. The source data for traffic forecasts made by any party shall be (1) the Department's O&D Survey and/or (2) the U.S. International Air Travel Statistics (commonly referred to as INS Data), or (3) a combination of these data sources, provided that the respective contributing role of each source is clearly delineated. Indicate growth rates, stimulation rates, and participation rates, and clearly outline the bases for such rates.²

Any party may provide a separate, additional forecast based on other source data if it wishes, but if so, that party should clearly explain the differences between its data source and the two specified above (*e.g.*, differences in collection methods, or adjustments made to raw data). Furthermore, the information in such additional forecast shall be set forth in such a manner that any other party could construct a traffic forecast from the exhibits without the necessity of having the actual source document at hand.

²The base year for traffic forecasting purposes should be 12 months ended June 30, 1999, and the forecast year should be the 12 months ended September 30, 2001. Carriers desiring the Phase 2 frequencies should also provide a separate forecast for the 12 months ended June 30, 2002.

1. Applicant Carriers

Submit, at a minimum, the following:³

- (a) Firm date for instituting service in the market, a breakdown for peak and off-peak seasons, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the forecast year (12 months ended September 30, 2001).⁴ If carriers intend to offer seasonal service only, they must so specify and specify the period during which the seasonal service would be offered;

Schedules should contain flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points), departure and arrival times, equipment types (including seat configuration by class of service), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service;

- (b) Separate passenger traffic forecasts on an O&D market-by-market (city-pair) basis (single-plane and on-line connecting and, to the extent possible, interline connecting) for the 12 months ending September 30, 2001 for each market on the proposed routing.⁵ The forecasts should be based upon the applicant's proposed schedules and should detail specifically the data sources of all traffic. Include any anticipated traffic changes in other markets on the applicant's existing system, including, but not limited to, diversion and service level/aircraft changes as a result of the proposal in this case. The basis for any forecasting technique used should be clearly explained. Indicate any anticipated seasonal fluctuations;
- (c) An indication whether or not the aircraft to be used in the proposed schedules

³The original filing should be on 8½" x 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, filers are encouraged to use the electronic submission capability available through the Dockets DMS Internet site (<http://dms.dot.gov>) by following the instructions in the web site.

Carriers should also provide the Department with a computer diskette of all information responses, exhibits, and briefs prepared using electronic spreadsheet or word processing programs. Such diskettes should be filed with the Department's Competition and Policy Analysis Division of the Office of Aviation Analysis, X-55, Room 6401, 400 Seventh Street SW, Washington, DC 20590. Diskettes should be DOS formatted. Submissions prepared with Microsoft Excel®, Lotus 1-2-3® (version 3.x or earlier), Microsoft Word®, or WordPerfect® (version 5.2 or earlier) should be filed in their native formats. Parties using other software may either (1) file IR's, exhibits and briefs in the foregoing formats, or (2) contact Mr. Michael Lane at 202-366-2352 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy of all submissions, however, will be the official record.

⁴Carriers desiring the Phase 2 frequencies should also provide separate schedules for the 12 months ended June 30, 2002.

⁵Carriers desiring the Phase 2 frequencies should also provide a separate forecast for the 12 months ended June 30, 2002.

are on hand or on order. If on hand, indicate where and to the extent to which those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate whether the aircraft to be used comply with FAR-36. If not, indicate plans for achieving compliance;

- (d) Estimated number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed service;
- (e) A description of any code-sharing agreements with foreign carriers providing for the applicant's proposed service to be marketed under the foreign carrier's codes, or for U.S.-Argentina service operated by a foreign carrier to be marketed under the applicant's code, including a description of integrated connecting services to be provided by the applicant's code-sharing partners.⁶ Any carrier proposing to operate under a code-share agreement that has not filed that agreement, or any revisions thereto, with the Department should provide a copy of that agreement, and any revisions, in its direct exhibits. If both code-share and separate operations will be conducted, the applicant's exhibits should clearly reflect the full scope of the carrier's operations, including the levels of service under each operational arrangement, the cities to be served and traffic forecasts.
- (f) Responses to the following interrogatories:⁷
 - (1) Will the carrier, if selected as backup, accept a condition in its certificate which (a) permits it to implement authority within the first year should the primary carrier withdraw from the market, and (b) expires at the end of one year should the authority not be activated?
 - (2) Will the carrier selected for primary authority accept a condition in the the certificate requiring institution of service by a date specified by the Department? What date should the Department specify?
 - (3) If an applicant seeks primary authority to serve under more than one of the transitional phases and/or from more than one gateway, what is the order of precedence for each of the applicant's proposals?
 - (4) If an applicant seeks backup authority under more than one of the transitional phases and/or from more than one gateway, what is the order of precedence for each of the applicant's proposals?

⁶Traffic forecasts under IV.B.1(b), *supra*, should separately show connecting feed from the applicant's foreign-flag code-sharing partner(s).

⁷Any certificate issued in this case for primary authority will be for five years' duration, and any backup certificate issued will be for one year.