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Order 2000-7-19



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC

Served: July 14, 2000

Issued by the Department of Transportation  
on the 14<sup>th</sup> day of July 2000

In the matter of  
  
**U.S.-Colombia Combination  
Service Proceeding (2000)**

Docket OST-2000-7655- 1

Applications of  
  
**Continental Airlines, Inc.  
Delta Air Lines, Inc.**  
  
for allocation of U.S.-Colombia frequencies

Docket OST-2000-7186- 9  
Docket OST-2000-7104-10

Application of  
  
**Delta Air Lines, Inc.**  
  
under 49 U.S.C. §41102 for a certificate of  
public convenience and necessity  
(Atlanta-Bogota)

Docket OST-97-3218<sup>1</sup>-16

**ORDER TO SHOW CAUSE**

**SUMMARY**

By this order we tentatively award Delta Air Lines, Inc. certificate authority to operate scheduled combination service between Atlanta, Georgia, and Bogota, Colombia, and tentatively allocate it seven weekly combination frequencies for that service.

<sup>1</sup> Delta's application in this docket requests certificate authority to serve numerous foreign markets, including Colombia. For administrative convenience, we have decided in this order to act only on that part of Delta's certificate application that seeks authority to serve Colombia. We will defer action on the balance of the request.

## BACKGROUND

On March 15, 2000, delegations of the Government of the United States and the Government of the Republic of Colombia signed a Memorandum of Consultations that set forth the text of an understanding and amendments to the 1956 U.S.-Colombia Air Transport Agreement.<sup>2</sup>

Specifically, with respect to scheduled combination services, the understanding and amendments provide that there will be no limitations on the number of airlines that may be authorized to serve the market. They further provide for an expansion in the number of flights U.S. carriers may operate over a three-year period.<sup>3</sup> Effective March 15, 2000, U.S. carriers may operate an additional seven weekly frequencies. These frequencies cannot serve Miami or New York until October 1, 2001. U.S. carrier services may be operated, except as noted, between any point or points in the United States and Barranquilla, Bogota, Cali, Cartagena, and Medellin,<sup>4</sup> and beyond Colombia to points in the Western Hemisphere.

By Notice dated March 29, 2000, the Department invited all U.S. carriers interested in using these seven weekly U.S.-Colombia frequencies to file certificate and/or frequency allocation applications.<sup>5</sup> Applications were due April 10, 2000; answers to applications were due April 17, 2000; and replies were due April 20, 2000.

## APPLICATIONS

Applications were filed by Delta and Continental.

Delta states that it would use the seven frequencies to operate daily service in the Atlanta-Bogota market using B-757 aircraft. It further states that it would be a strong new competitor in the Colombia market, that its selection would establish Atlanta as a new competitive U.S. gateway, and that its Atlanta hub with over 160 daily flights will enhance online service options for passengers to Colombia. In addition, Delta states that grant of its application will improve market structure in the Colombia and Latin America

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<sup>2</sup> The delegations undertook to recommend that their governments adopt this understanding and these amendments. They further stated the intent of their respective aviation authorities to permit operations provided for in the understanding and amendments as of March 15, 2000, pending entry into force of the understanding and amendments through an Exchange of Notes.

<sup>3</sup> American Airlines and Continental Airlines are the two U.S. carriers currently designated to provide scheduled combination services. These carriers collectively now operate 49 weekly frequencies in the market.

<sup>4</sup> The rights of designated airlines to operate air services to, from, and beyond Medellin are not effective until October 1, 2002.

<sup>5</sup> The understanding and amendments provide that seven more frequencies will become available on October 1, 2001, and on October 1, 2002, respectively. The Department's March 29, 2000 Notice stated that we would solicit applications for the year 2001/2002 frequencies at a later date.

markets by enhancing parity among the other airlines serving the region. Delta states that it would begin service within 120 days after a final order is issued by the Department.<sup>6</sup>

Continental requests an allocation of all seven frequencies to operate daily service in the Houston-Cali market using B-737-700 aircraft. Continental states that by adding nonstop Cali service at Houston, Continental will introduce U.S.-Cali service to points throughout the U.S. and offer nonstop service from the only gateway from the western United States. Continental states that it would begin service within 120 days after a final order is issued by the Department. Continental also requests that the Department consolidate its application and Delta's application into a comparative selection proceeding.

### **Responsive Pleadings**

Continental, Delta, The City of Houston and the Greater Houston Partnership (the Houston Parties), and the Georgia and Atlanta Parties filed answers and replies.<sup>7</sup> Continental and Delta also filed further responsive pleadings.<sup>8</sup>

Continental opposes Delta's application, arguing that Atlanta-Bogota service would duplicate U.S.-Bogota service offered at other gateways. Continental states that local demand for Bogota service in the Atlanta area is weak and that the public benefits of an Atlanta gateway for U.S.-Colombia traffic are minimal. Continental maintains that, on the other hand, its Houston-Cali service will be a strong competitor to American's Miami-Cali service in the southern United States, introduce intergateway competition for U.S.-Cali traffic throughout the United States, and offer the only gateway for U.S.-Cali traffic in the underserved western United States.

The Houston Parties support Continental's application and oppose Delta's application for an allocation of seven weekly frequencies. They maintain that the greater Houston area has developed growing trade and economic ties to Colombia and Latin America and that an award to Continental would stimulate intergateway competition and benefit underserved communities throughout the central and western regions of the U.S.

Delta and the Georgia and Atlanta Parties oppose Continental's application for seven weekly frequencies, stating that Continental already operates 7 frequencies in the Houston-Bogota market and 7 frequencies in the Newark-Bogota market and that its

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<sup>6</sup> Delta requests that the Department consolidate its application for certificate authority in the Atlanta-Bogota market (Docket OST-97-3218) with its application for an allocation of the seven weekly frequencies (Docket OST-2000-7104).

<sup>7</sup> The Georgia and Atlanta Parties include the State of Georgia, the City of Atlanta, Hartsfield Atlanta International Airport, and the Metro Atlanta Chamber of Commerce.

<sup>8</sup> These pleadings were accompanied by motions to file otherwise unauthorized documents. We will grant the motions.

application for Houston-Cali service is intended to shut out new entry competition in the U.S.-Colombia market. They argue that Delta's proposed daily nonstop service between Atlanta and Bogota will provide urgently needed direct service between Colombia and the Georgia and Atlanta metropolitan areas served by Hartsfield Atlanta International Airport, and maintain that Delta's service will provide strong network competition with the services to Colombia that are operated by other U.S. and foreign flag carriers. Delta states that it serves over 160 cities from its Atlanta hub and will be able to provide travelers throughout the United States with enhanced online service options to Colombia, building upon Atlanta's proven success as a hub gateway. Delta further argues that its proposal would add 48 per cent more capacity to the market than Continental's<sup>9</sup> and that this factor coupled with Delta's new entrant status make its proposal superior to that offered by Continental, which already offers 14 weekly flights in the Bogota market.

With respect to procedures, Continental requests that the Department consolidate its application and the application of Delta. Continental states that, since only seven U.S.-Colombia frequencies are available now for allocation and two airlines have applied for all seven frequencies, the applications are mutually exclusive and the Department should institute a comparative-selection proceeding to develop an adequate evidentiary record to decide between the applications. Delta opposes Continental's request for further evidentiary procedures, arguing that such procedures are not necessary. Delta maintains that the issues in this case are not complex and can be addressed adequately based on the existing record as the Department has done in other comparable cases, and that Continental has presented no evidence to demonstrate why the Department should deviate from that precedent. Given that the route rights are available now, Delta urges the Department to move promptly to issue a show-cause order to select Delta to serve the Colombia market and provide needed competition with the services of American and Continental.

#### **TENTATIVE DECISION**

We have tentatively decided to (1) select Delta Airlines for allocation of the seven available weekly U.S.-Colombia combination frequencies for services between Atlanta and Bogota and to grant Delta certificate authority for this service and (2) select Continental Airlines as the backup carrier for service in the Houston-Cali market.

The U.S.-Colombia market is the third largest U.S.-South America market, generating over 1 million passengers in calendar year 1998.<sup>10</sup> Until the recent MOC and related amendments to the 1956 aviation agreement, U.S. carrier services have been limited to only two airlines and those services have been subject to frequency limitations. Thus, the

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<sup>9</sup> See April 25, 2000 surreply of Delta, at 6. Delta states that it would serve Colombia with a 183-seat B-757 aircraft compared to Continental's 124-seat B-737 aircraft.

<sup>10</sup> T-100 reports filed with the Department.

new agreement, which enables the United States for the first time in a number of years to expand services and to authorize additional airlines under a three-year transition period, provides a valuable opportunity to develop the U.S.-Colombia market and to expand the range of service options available to consumers.

While both of the applicants in this case have presented proposals that would benefit travelers, based on our review of the record and all relevant factors, we tentatively conclude that Delta is the better choice. Delta's proposal offers greater service benefits and better fulfills our goal of increasing competition in the U.S.-Colombia market. Delta would provide Colombia service at a new U.S. gateway, thereby benefiting both local and connecting passengers. Furthermore, selecting Delta would add a significant new competitor to a major South America market.

Currently, American and Continental are the two carriers authorized to serve Colombia. American operates 35 weekly frequencies, all from its large Miami gateway, with three daily flights to Bogota and a daily flight each to Barranquilla and Cali. Continental operates 14 weekly flights to Bogota with a daily flight each from its two major hubs—Newark and Houston. Colombian carriers operate 47 weekly frequencies, nearly all from Miami.<sup>11</sup> Bogota is by far the largest market, as reflected by the predominant level of services provided to that city. American operates the majority of its services to Bogota, Continental operates all of its services to Bogota, and the Colombian carriers serve Bogota on over half of their services.

Delta's proposal would offer the public service to this important Colombian destination from a new U.S. gateway, Delta's hub at Atlanta. This service would afford Atlanta passengers their first nonstop service to Colombia. Delta's Atlanta hub, which serves passengers throughout the United States with over 150 daily flights, would also provide travelers in the Atlanta catchment area with an important competitive service option for connecting service to Colombia to the services offered by American at Miami and Continental at Houston. Given the size of Delta's Atlanta hub and the fact that U.S. services are now provided by U.S. carriers from only two U.S. cities, the addition of a new gateway will increase significantly the service options for Colombia passengers.

Furthermore, we tentatively find that the selection of Delta offers significant structural benefits as well. As noted above, for a number of years only two U.S. carriers could be authorized to serve Colombia. Delta's entry into the market would add a new competitor

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<sup>11</sup> July 2000 *Official Airline Guide, International Edition*. AVIANCA operates 10 weekly flights in the New York-Bogota market. The remaining 37 weekly frequencies are operated by AVIANCA and ACES from Miami and serve Bogota (16 weekly flights), Barranquilla (7 weekly flights), Cartagena (7 weekly flights), and Medellin (7 weekly flights).

enhancing competition with American and Continental, as well as with Colombian carriers. Moreover, with its substantial hub at Atlanta, Delta's service at Atlanta will offer valuable intergateway competitive benefits for connecting passengers with the services of American at Miami and Continental at Houston. We view these benefits as particularly significant and compelling in a market that has been artificially restricted for so many years.

In making these tentative findings we have fully considered Continental's arguments that Atlanta is a small local market and that the benefits from an Atlanta gateway for U.S.-Colombia traffic would be minimal, but do not find them persuasive. Atlanta is Delta's major hub and Delta operates service throughout the United States and internationally from Atlanta. Delta has successfully inaugurated service to several South America cities from Atlanta. It currently serves Venezuela, Peru, and Brazil, all of which it has operated on a continuous basis, and has announced plans to begin service to Chile this fall. Therefore, contrary to Continental's arguments, we believe that the Atlanta gateway has demonstrated its ability to provide valuable competitive services for travelers in the South America market, and we have found nothing in the record to persuade us that this successful history could not be repeated by Delta's proposed Colombia service.

In recognizing the strengths of Delta's proposal, we also recognize that Continental's proposed service in the Houston-Cali market is not without service and competitive benefits of its own. The majority of services in the Colombia market now serve Bogota. Continental's service would expand U.S. traveler access to other cities in Colombia. In addition, as noted by Continental, the proposed Houston-Cali service would offer competition to American's daily Miami-Cali service. These operations would expand the level of services now offered by Continental in the U.S.-Colombia market vis-à-vis American and increase the level of competition between the two U.S. carriers now serving Colombia. Although we support the expansion of service to less well served cities in Colombia, we tentatively conclude that the public interest is better served by using the first new service opportunity in many years for service to Colombia to promote entry in the market by an additional U.S. carrier from a new gateway--and that the public benefits of such service outweigh the benefits of expanded service by Continental in this case.

Finally, we are not persuaded by the arguments of Continental that further evidentiary procedures are necessary before we issue a decision in this case. Both carriers have presented full descriptions of their proposed services and arguments in support of their proposals. In addition, all parties have had a full opportunity to comment on each applicant's proposal. We perceive no unresolved issues of relevant fact that would

benefit from further evidentiary procedures here.<sup>12</sup> Given the information and arguments presented, we find that the record is adequate to proceed to a tentative decision in this case.

### **BACKUP AWARD**

We have tentatively decided to select Continental's Houston-Cali proposal as a backup to Delta's Atlanta-Bogota services. Selection of Continental for backup will ensure that, should Delta not inaugurate service, Continental would be authorized to enter the market without further regulatory proceedings. While we have tentatively selected Delta's proposal for Atlanta-Bogota over Continental's proposal for Houston-Cali, the record of this case shows that Continental's proposal would also provide significant public benefits. As Continental currently serves Colombia from Houston, it would be in a position to commence its proposed services promptly should Delta not inaugurate its Atlanta-Bogota services.

### **CERTIFICATE AND STARTUP CONDITIONS**

If our tentative selection of Delta is made final, we propose to issue Delta a five-year experimental certificate of public convenience and necessity for service in the Atlanta-Bogota market. We have also tentatively decided to require institution of service within 120 days after the service date of a final order in this case. In this regard, both Delta and Continental have stated that they would be prepared to institute service within 120 days of a final order, and we believe that this is a reasonable period for the carrier to obtain the necessary foreign government authority and to promote and mount its selected service. In addition, we propose to subject both Delta's primary allocation of frequencies and Continental's backup to our standard 90-day dormancy condition whereby the frequencies allocated would expire and revert automatically to the Department if not used for a period of 90 days. We note that Continental currently holds certificate authority on Route 645 to serve the Houston-Cali market and thus, requires only a backup award of frequencies in order to operate its proposed service. The 90-day period will begin on the carriers' required startup date, or the date on which the carrier begins service, whichever is earlier.

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<sup>12</sup> See Orders 98-7-25 and 98-10-19 at 4.

**ACCORDINGLY,**

1. We establish Docket OST-2000-7655 for allocation of U.S.-Colombia scheduled combination service opportunities;
2. We consolidate the applications of Delta Air Lines, Inc., in Dockets OST-97-3218 and OST-2000-7104 and Continental Airlines, Inc., in Docket OST-2000-7186 into the *U.S.-Colombia Combination Service Proceeding (2000)*, Docket OST-2000-7655;
3. We tentatively select Delta Air Lines, Inc., to provide scheduled foreign air transportation of persons, property, and mail in the Atlanta-Bogota market and allocate it seven weekly frequencies for that service;
4. We tentatively select Continental Airlines, Inc. as backup and allocate it seven weekly frequencies to provide scheduled foreign combination air service in the Houston-Cali market;
5. We defer action on the application of Delta Air Lines, Inc. (Docket OST-97-3218) to the extent that it seeks authority to serve countries other than Colombia;
6. We direct all persons to show cause why we should not issue an order making final our tentative findings and conclusions;
7. We direct interested persons wishing to comment on our tentative 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-2000-7655, U.S. Department of Transportation, 400 Seventh Street, SW, Room PL-401, Washington, DC 20590, no later than 10 calendar days from the date of service of this order; answers thereto shall be filed no later than 7 calendar days thereafter;<sup>13</sup>
8. If objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action;<sup>14</sup>
9. If no objections are filed to our tentative decision, we shall deem all further procedural steps to have been waived, and will proceed to enter a final order subject to Presidential review under section 41307 subtitle VII of Title 49, the United States Code (Transportation);

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<sup>13</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. 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 at the web site.

<sup>14</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 grant all motions for leave to file otherwise unauthorized documents in the captioned dockets;

11. To the extent not granted, we deny all motions and requests in the captioned dockets; and

12. We will serve this order on Delta Air Lines, Inc.; Continental Airlines, Inc.; The Greater Houston Partnership; The Georgia and Atlanta Parties, the Ambassador of Colombia in Washington, DC; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

**A. BRADLEY MIMS**  
Acting Assistant Secretary for  
Aviation and International Affairs