



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

Issued by the Department of Transportation on November 3, 2000

NOTICE OF ACTION TAKEN --DOCKET OST 2000-8081

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of Continental Airlines, Inc. filed 10/6/00 for:

XX Authorization to move U.S.-Brazil frequencies:

Continental requests authority to move three weekly frequencies currently allocated for service in the New York/Newark-Rio de Janeiro market to the Houston-Sao Paulo market so that Continental can augment its service to offer daily nonstop service between Houston and Sao Paulo. Continental states that it plans to expand its Houston service on April 2, 2001, and requests prompt action to begin selling its daily nonstop Houston-Sao Paulo service. Continental states that, until April, it will continue operating daily New York/Newark-Rio de Janeiro service with service beyond Rio de Janeiro to Belo Horizonte four days per week.

The City of Houston and the Greater Houston Partnership as well as United Air Lines filed consolidated answers in the captioned docket and in Docket OST-99-6284.¹ The Houston Parties support Continental's request in Docket OST-2000-8081; United states that it has no objection.

Continental submitted a reply, stating that this request is entirely independent of the pending *1999 U.S.-Brazil Combination Service Case* and that the Department should act on this transfer request before reaching a final decision in that case. However, Continental notes its position that Brazil frequencies should be freely transferable from one Brazil route to another, but states that that issue need not be decided before granting this specific request to move three frequencies from one route to another.

Applicant rep: R. Bruce Keiner, Jr. 202-624-2500
DOT analyst: Linda Senese 202-366-2367

DISPOSITION

XX Granted, subject to conditions. (See below)

XX Balance Deferred. (Decision on issue of carrier flexibility to freely move frequencies; see Remarks)

¹ While not formally filing in Docket OST-2000-8081, American Airlines and Delta Air Lines commented on Continental's application in this docket in the context of the *1999 U.S.-Brazil Combination Service Case*, Docket OST-99-6284. American states that it does not object to Continental's application in OST-2000-8081, but states that the frequencies Continental is seeking to move to Houston should be restricted in the same manner that the Department chooses to restrict the frequencies of other U.S. carriers serving the Brazil market. Delta states that it will leave it to the Department to decide whether Continental should be allowed to move frequencies that it had claimed were urgently needed to operate a daily New York-Rio de Janeiro service pattern.

(See Reverse Side)

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The above action was effective when taken: November 3, 2000

Action taken by: Paul L. Gretch, Director
Office of International Aviation

Conditions: Grant of Continental's request is subject to the condition that Continental commences service with these frequencies in the Houston-Sao Paulo market on April 2, 2001, Continental's stated startup date. This means that the authorization to move frequencies will expire on April 2, 2001, unless Continental begins service by that date. If Continental does begin service on or before April 2, 2001, the authorization will remain in effect indefinitely, provided that Continental continues to hold authority to serve the Houston-Sao Paulo market. The authorization is also subject to the condition that the frequencies will revert automatically to the Department for reallocation if they are not used for a period of 90 days from April 2, 2001, or the date on which Continental begins Houston-Sao Paulo service, whichever occurs earlier.

Remarks: We found that approval of Continental's request, subject to the conditions set forth above, was in the public interest. U.S.-Brazil frequencies constitute valuable rights, and Continental's proposed use, in the circumstances presented, will help maximize use of those rights.

We note that Continental has stated on the record that it intends to continue its service in the Newark-Rio de Janeiro market until it moves the frequencies to Houston. We remind Continental that the allocated Newark-Rio de Janeiro frequencies are nonstop frequencies and are subject to a dormancy condition. Should some or all of the frequencies become dormant and revert to the Department, Continental's authorization to move the frequencies to Houston would no longer be effective as to any such dormant frequencies and Continental would have to reapply for an allocation of those frequencies in order to expand its Houston services as proposed here.

Deferred: The issue of broader carrier flexibility to freely move frequencies is being considered in the *1999 U.S.-Brazil Combination Service Case* in Docket OST-99-6284. We believe that the public interest is best served by deferring a decision on this matter with respect to frequencies at issue here until we have completed the proceeding in the *1999 U.S.-Brazil Combination Service Case*. Should we deem appropriate, we may modify or alter this decision in light of a final determination in that proceeding.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) immediate action was required and consistent with Department policy; and (2) grant of the authority was consistent with the public interest. To the extent not granted or deferred, we deny all requests in the captioned docket. We may amend, modify, or revoke the action taken in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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