



Order 2001-1-14

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

Issued by the Department of Transportation
on the 11th day of January, 2001

Served: January 19, 2001

1999 U.S.-Argentina Combination Service Case

Docket OST-1999-6210 - 339

FINAL ORDER

Summary

By this order, we make final our tentative decision in Order 2000-12-13 to select Delta Air Lines, Inc. and Continental Airlines, Inc. to serve the U.S.-Argentina market and to allocate each carrier seven weekly frequencies for its proposed services. Delta's award will be for services commencing April 1, 2001, in the Atlanta-Buenos Aires market and Continental's award is for services commencing December 1, 2001, in the Newark-Buenos Aires market. We also make final our tentative selections of Continental, with service from Houston, as the backup carrier to Delta's Atlanta award, and United Air Lines, Inc., with service from Los Angeles, as the backup carrier for Continental's primary award.

Background

Currently, U.S. carriers may operate 42 weekly combination service frequencies between the United States and Argentina. American Airlines and United Air Lines are the two carriers authorized to serve the market and each is allocated 21 weekly frequencies for its services.

Under a November 24, 2000 Exchange of Notes between the United States and Argentina fourteen additional frequencies will be available for U.S. carrier services, with seven becoming available on April 1, 2001, and the remaining seven on December 1, 2001.

Delta and Continental, two new entrants to the Argentina market, sought some or all of the new frequencies. In addition, United, an incumbent carrier, requested seven of the new

frequencies to expand its existing services. Delta proposed service from Atlanta; Continental from Newark and Houston; and United from Los Angeles.¹

By Order 2000-12-13, the Department tentatively selected Delta to use the seven frequencies available in April for services from Atlanta, and Continental to use the seven frequencies available in December for services from Newark. The Department also selected Continental for services from Houston as backup to Delta's primary award and United for services from Los Angeles as backup to Continental's primary award. Objections to the Department's tentative decision were due on December 26, 2000, and answers to objections were due on December 29, 2000.

Responsive Pleadings

All three carrier applicants as well as the Georgia and Atlanta Parties and the Houston Parties filed comments or objections to our tentative decision.² The three carrier applicants, Houston and the Los Angeles Parties filed answers to the objections and comments.³

Delta and the Georgia and Atlanta Parties support the Department's tentative decision and urge the Department to finalize the awards quickly so that Delta can proceed with plans to implement its Atlanta-Buenos Aires service. They state that the Department correctly determined that selection of Delta for the first award opportunity would provide the greatest public benefits, including new competition in the U.S.-Argentina market, the first daily nonstop service to Argentina from Atlanta, and important connecting services for passengers on a nationwide basis through its Atlanta hub. The Georgia and Atlanta parties further state that Argentina is one of the most important destinations in South America and that daily nonstop service by a U.S. carrier will greatly benefit not only Atlanta but also passengers throughout the U.S. using Delta's Atlanta hub. Delta further notes that the Argentina service will be Delta's fifteenth new nonstop Latin America route since 1997 and will greatly benefit its South American network and competition in the region. Delta disagrees, however, with the Department's decision to grant backup awards in this case and urges us to follow precedents set in the recent *U.S.-Brazil* and *U.S.-China* cases and to refrain from selecting a backup carrier so that the Department may reach the best new public interest determination should an unanticipated default occur. Delta states that it has additional interest in serving Argentina and that it should be able to compete for additional Argentina authority should it become available.

¹ See Order 2000-12-13 for a description of the circumstances affecting the availability of the frequencies at issue in this case.

² The Georgia and Atlanta Parties consist of the State of Georgia, the City of Atlanta, the Hartsfield-Atlanta International Airport, and the Metro Atlanta Chamber of Commerce. The Houston Parties consist of the City of Houston and the Greater Houston Partnership.

³ The Los Angeles Parties consist of the Los Angeles World Airports and the Los Angeles Convention and Visitors Bureau.

Continental and the Houston parties support the Department's decision to select Continental for seven of the new frequencies, but disagree with the Department's decision not to award Continental all 14 available frequencies. Continental further states that it is disappointed that the Department has tentatively decided to delay the benefits to Newark to December 1, 2001, and urges the Department to modify its decision to award Continental the first set of available frequencies, should Continental ultimately be awarded only seven frequencies in this case. Continental states that the Department's tentative decision allows Delta to provide duplicative service at Atlanta eight months before Continental can begin Newark service and would deny Houston passengers and shippers the opportunity for nonstop service from one of Continental's primary hubs for Latin America service. Continental argues that its proposal for Newark service should be awarded the first seven frequencies, since Atlanta already has some service and Newark does not. Continental claims that its Newark service would provide Newark its first nonstop or single-plane service, would promote intragateway competition in the New York/Newark area, and would end JFK's monopoly on Argentina service from the New York metropolitan area by the long-standing incumbents American, United, and Aerolineas Argentinas. It reiterates arguments that the benefits of Delta's Atlanta proposal are overstated because of Delta's unrealistic reliance on South Florida traffic. It claims that Florida passengers would not use Delta's Atlanta services because of the backhaul involved, and that without the Florida traffic, there is insufficient traffic in the Southeast region of the U.S. to support Delta's Atlanta proposal. Finally, Continental claims that the Department failed to consider the compelling arguments showing that Continental's Houston proposal is superior to Delta's Atlanta proposal, since Continental at Houston would open a totally new gateway for Argentina service, and since its Houston service would provide particularly convenient service throughout the western United States. Continental argues that the combination of service through its Newark and Houston hubs offers the greatest public benefits and warrants an award of all 14 of the available frequencies.

Houston adds that an award of all 14 frequencies to Continental would ensure a strong third competitor in the U.S.-Argentina market, would create public benefits throughout the United States, and would especially benefit passengers in the underserved southwest and western regions of the U.S. It states that Houston would be an effective gateway for Argentina service since it is a strong connecting hub and has developed strong community-of-interest ties with Argentina, and is home to the sixth largest Hispanic community as well as Argentina's consulate for the southwest region of the U.S. It further argues that Continental would be a stronger competitor in the market than Delta, since Continental has invested in long-term development of a comprehensive network that would compete effectively with the 21 frequencies now operated by each of the incumbent carriers.

United objects to the Department's tentative decision not to grant United's request for seven of the available frequencies for its Los Angeles-Buenos Aires service. United

argues that the Department's order stated that the primary objective in the case was to select carriers that would provide the greatest public benefits, but yet failed to give adequate consideration to the public benefits of United's Los Angeles proposal. United states that a comparison of its proposal to those of the other applicants demonstrates that United would carry more overall passengers, more nonstop passengers, provide the most seats, would serve the largest U.S.-Argentina market without U.S.-flag service and the largest U.S. gateway without nonstop service. United further argues that Los Angeles is the third largest U.S.-Argentina O&D market overall and that United's proposed Los Angeles service would benefit passengers and shippers in the Western U.S., a region that represents 30 percent of the total U.S.-Argentina traffic. United states that it does not oppose the selection of Delta in this case, since Atlanta, like Los Angeles, does not now have U.S.-flag nonstop service. However, since the Department had the ability to select two carriers and two gateways in this case, United maintains that given the superior public benefits of its Los Angeles proposal, the Department should have used one of the service opportunities for service at Los Angeles rather than adding a fourth service in the New York/Newark market based on Continental's new entrant status.⁴ United contends that its new service at its Los Angeles hub will serve more local and connecting passengers in a region of the country not served over the new or existing gateways to Argentina. It contends that Continental's Newark proposal does not offer these same benefits and that it is a serious mistake for the Department to favor private economic interests, such as Continental's interest in expanding its South America network, to overcome the superior consumer benefits that would accrue from adding service at a gateway such as Los Angeles.

United further argues that while the Department cites the ability of Newark to compete with JFK in support of Continental's award, it overlooks the fact that Los Angeles, the third largest Argentina market, has no U.S.-carrier nonstop service and that the connecting services available at Los Angeles, which the Department contends make Los Angeles less in need of service than Newark, are also available for Newark passengers and, thus, do not support the Department's tentative finding that Newark needs service more than Los Angeles. Similarly, United contends that the Department tentatively selected Delta over Continental for the first set of frequencies because the Atlanta area had lower service levels than the New York/Newark area. Although Los Angeles has the same service as Atlanta, the Department nonetheless selected Continental at Newark over United at Los Angeles for the second award. United contends that the large western market should get its first hub service before the Eastern U.S. gets a fourth. In addition, United maintains that the hub benefits attributed to Continental at Newark are misplaced as Newark's location in the northeast is poorly situated as a hub for passengers traveling to Argentina, and that with Delta's Atlanta hub, United's hub at Chicago, and American's hub at Miami, Continental's Newark hub offers no benefits not readily available over these other

⁴ United also argues that Continental has recently filed for antitrust immunity with COPA, a Panamanian carrier, and would be able to serve the Newark-Argentina market via Panama City. United contends that this constitutes a further reason why Continental should not be selected in this case.

networks. On the other hand, United contends that its hub at Los Angeles would benefit many passengers in an underserved region and that it would use its strong hub at Los Angeles to compete with the foreign-flag carriers serving Los Angeles.

United argues that the Department's failure to consider the benefits to the underserved western region of the U.S. are inconsistent with its own policy and precedent, including the objective to enhance the access of U.S. cities to the international air transportation system. United contends that the Department found that factor compelling in the *1999 U.S.-Italy Combination Service Case*, Order 99-4-21, where Delta, an incumbent, was selected over new entrants, and applies equally well in this case with respect to United's Los Angeles proposal where the western region of the U.S. clearly lacks U.S. carrier service. Moreover, United argues that the Department's "bias" against incumbent carriers is inconsistent with the Department's actions in contemporaneous selection cases involving other Latin America markets, specifically Brazil and Mexico, where the Department favored American, the largest U.S. carrier incumbent in Latin America, at the expense of United at Los Angeles. In the *Brazil Case* United contends that the Department relied on the service needs in the New York-Rio market and in the *Mexico Case* the Department has tentatively decided that American is a new entrant to the Los Angeles-San Jose del Cabo market. United claims that both findings are equally applicable to its Los Angeles proposal in this case, as Los Angeles is more in need of service than Newark, and United would be a new entrant to the Los Angeles-Buenos Aires market.

Finally, United states that it is unclear when additional growth opportunities will become available in South America in general, and Argentina, in particular. United therefore urges the Department to review its tentative decision and based on that review to allocate seven of the frequencies to United for its proposed Los Angeles-Buenos Aires service.

In its response to the objections filed, Delta states that only Continental has opposed Delta's award and that Continental's objection consists almost entirely of rearguing the relative merits of adding an alternative airport in the New York/Newark metropolitan area and renewing its "unrealistic" request for all of the available frequencies so that Continental can operate service from both Newark and Houston. Delta maintains that the Department properly prioritized Delta's Atlanta service over both of Continental's proposals and urges the Department to make the award final quickly so that Delta will have sufficient time to promote its service. Finally, Delta expresses concern based on statements in Continental's objection that Continental may not intend to operate its proposed Newark service on a nonstop basis and urges the Department to put Continental on notice in the final order that any award of the U.S.-Argentina frequencies is for nonstop service and that single-plane service would constitute a material default of its service proposal. Should Continental default on its award, Delta maintains that Delta should have an opportunity to submit a proposal for those frequencies.

Continental maintains that only United has opposed its selection in this case and that United's objection reflects United's fear of effective competition for Argentina traffic in the New York/Newark area and throughout the northeastern U.S. given United's weak position at JFK and its desire to preserve its duopoly on New York/Newark-Argentina service. Continental argues that United does not provide any significant new facts or arguments that the Department has not already considered. It further maintains that, notwithstanding United arguments to the contrary, new entry has consistently been a Department criterion in carrier selection cases in Latin America, that such a policy is fully consistent with the Department's International Aviation Policy Statement and the Statute, and that the Department properly applied that criterion in this case. It reiterates its arguments that United's traffic forecast is seriously overstated and maintains that the Department should not be persuaded by United's arguments of the superior public benefits of its proposal to support its selection for an award in this case.

With respect to United's argument that Continental may now be able to offer code-share service to Buenos Aires via Panama City under its alliance arrangement with COPA, a Panamanian carrier, Continental notes that United similarly can offer such service with two of its code-share partners, Varig and Lufthansa, and thus, that such service should not disqualify Continental for an award in this case. Continental further states that the potential entry of two other Argentine carriers to the Los Angeles market will provide Los Angeles with additional service and even less justification for an award to United. Continental also reiterates arguments that United is free to institute service at Los Angeles under its large existing allocation if it is so convinced of the traffic potential at that gateway.

Finally, Continental supports the objections of the Houston parties and restates arguments that Continental should be allocated all 14 of the available frequencies so that it could operate service from both Newark and Houston. If the Department grants Continental only seven of the available frequencies, Continental urges the Department to make final its backup award for Houston service.

United responds to Continental and Houston's objections, maintaining that under any analysis, United's Los Angeles proposal offers superior consumer benefits and should be awarded frequencies in this case before Continental.

Continental, Houston, and United urge the Department to reject Delta's proposal not to issue backup awards in this case. They all maintain that the cases cited by Delta involved considerably different circumstances not applicable to this case. United adds that the struggles experienced by Delta and Continental in implementing new U.S.-South America authority demonstrate the need for backup authority here. Continental contends that if Delta does not institute its Atlanta service or discontinues it in the first year, Continental should not be denied the opportunity to institute its Houston service without delay and

further procedures. Houston echoes Continental's comments and reiterates its commitment to support the Houston-Buenos Aires service proposed by Continental.

The Los Angeles parties support the objections of United and urge the Department to reconsider its tentative primary award of frequencies to Continental instead of United. Los Angeles maintains that the Department did not give sufficient consideration to its statutory mandate to increase the number of nonstop gateways receiving international U.S. carrier service and relied too heavily on the benefits to the new entrant carriers. In addition, Los Angeles argues that the Department did not give sufficient consideration of the need for new service from the West, which constitutes 30 percent of the U.S.-Argentina traffic and would be better served via Los Angeles than via eastern gateways. Finally, Los Angeles argues that the Department should consider how United's proposal would serve the important and growing business community in Los Angeles, especially the high-technology and entertainment industries, which need regular and reliable service to international business centers such as Buenos Aires. While the community of Los Angeles has invested heavily in airports to develop such a global hub for transportation and businesses, Los Angeles argues that whenever United, the only hub carrier at Los Angeles, applies to provide new service, the Department has denied United's request.

Final Decision

We have decided to make final our tentative decision in Order 2000-12-13 to select Delta and Continental to serve the U.S.-Argentina market and to allocate each carrier seven weekly frequencies for its services. We allocate Delta the seven weekly frequencies available on April 1, 2001, for its proposed Atlanta-Buenos Aires service, and Continental the seven frequencies available on December 1, 2001, for its proposed Newark-Buenos Aires service. We also make final our proposed backup awards to Continental and United.

This case is the outgrowth of long-term efforts to liberalize the aviation regime with Argentina. Until now services between the United States and Argentina have been limited to two U.S. airlines. While these airlines have been able to increase their services over the years and now operate three daily services each, we have been unable to authorize services by other airlines and, thus, to provide consumers with greater choices for services in this important market. For this reason, a major objective of liberalizing the aviation regime with Argentina was to create new opportunities for additional carriers to serve Argentina.

It is in this context that we considered the applications of Delta, Continental, and United to use the 14 available frequencies in this proceeding and concluded that the proposals of Delta at Atlanta and Continental at Newark provided the greatest combination of service and competitive benefits meeting that objective. Specifically, we noted that both Delta and Continental would be new entrants to Argentina and thus would offer consumers two additional airline choices for service to Argentina. We also noted that both would serve from their airline hubs, thereby providing service benefits not only to the local markets, but also to passengers using connecting services to Argentina through those hubs, and both would offer

services to compete with those provided by the two long-term incumbents in the market. Delta would open a new gateway for U.S.-flag service through its extensive hub at Atlanta from which it offers numerous other South America services. Continental would provide the first nonstop service from Newark, affording passengers in the New York/Newark area, the second largest U.S.-Argentina market, the important choice of airport, as well as competition with the existing services, all of which are provided through New York's JFK airport, including those provided by United and American.

We have carefully reviewed the objections to our tentative decision and find that no party has presented any new arguments or evidence that warrants modifying our tentative selections in this case.

As to United's arguments, as we noted above, at issue here is a market that has been closed to new entry for over 50 years. The two long-term incumbent carriers now operate three daily services each between the U.S. and Argentina. The selection of Continental and Delta enables us to provide the U.S.-Argentina market with two new entrants and therefore to increase by 100 percent the airline choices available to consumers in the market. With the selection of these two carriers, consumers in the U.S.-Argentina market will have the benefit of four U.S. airline choices offering services through their major airline hubs, and their services will afford the public the broadest range of competitive services in the portion of the country that generates nearly 70 percent of the U.S.-Argentina traffic. Thus, the selection of Continental and Delta should provide the incentive for other airlines to offer the service that consumers need, particularly in the large New York/Newark market. Moreover, the selection of Continental and Delta will provide two major U.S. cities, Atlanta and Newark, with their first nonstop service to Argentina. No other proposals offer a comparable combination of service and competitive benefits to further our public interest goal in the expansion of service to Argentina.

In making these selections, we fully considered the benefits of United's proposal. Indeed, we recognized that United's Los Angeles proposal also offered significant public benefits, including the first daily U.S.-flag service from Los Angeles, a major U.S.-Argentina market, and competition with the foreign-flag services now available at the gateway. If we could, we would have authorized all of the services proposed, thereby enabling the marketplace to determine the cities served and level of service provided. As United has recognized, however, limited opportunities are available. While United's proposal would clearly benefit Los Angeles, its selection in this case would foreclose the opportunity to provide Atlanta and Newark with new nonstop service and to provide consumers in the Argentina market the ability to choose from a greater range of airline service products. Taking into consideration all of the circumstances in this case, including the large number of frequencies now held by United and its significant presence in the market with three daily services from three different gateways, including its hub at Chicago, we do not find, on balance, that the benefits from an

award to United outweigh the combined service and competitive benefits for the U.S.-Argentina market as a whole offered by the new entrant proposals of Continental and Delta.⁵ We are unpersuaded by United's argument that Continental may soon be able to code share in the Argentina market via Panama with its alliance partner, COPA, and that such service detracts from Continental's selection in this case. As Continental has pointed out, code-share opportunities in the U.S.-Argentina market are also available to United under its code-share arrangement with Varig, a Brazilian carrier, as well as with its alliance partner, Lufthansa. Both carriers therefore will have the ability to expand their services through third-country code-share service, as will American and Delta. All such services will benefit the public and expand the range of price/service options available for Argentina service. Therefore, we do not view the issue of third-country code-share service as decisional in this case, a case in which we are selecting among nonstop proposals for service to Argentina.

Finally, we find no merit to the renewed arguments of Continental and Houston for allocation of all 14 frequencies available in this proceeding or Continental's arguments that its Newark proposal should be selected for the first available frequencies. A principal objective in this case is to maximize the competitive service options available to consumers in the U.S.-Argentina market. The award of all 14 frequencies to one carrier would deprive the public of a fourth airline service option. Continental has provided no persuasive reason why allocation of the flights to one airline would better serve the public interest. Continental proposed to operate its second service from Houston, one of its major hubs. Delta also proposes to serve from its major hub, Atlanta, in the same general region. Both carriers would provide numerous connections through their hubs for cities throughout the United States. In these circumstances, we cannot find that granting Continental's request would produce such public benefits as would outweigh the loss of competition.

We are also unpersuaded by Continental's renewed arguments for allocation of the first available frequencies. As we noted in our show-cause order, while both carriers would open service at airports not now receiving U.S.-flag service, passengers in the Atlanta region have fewer convenient service options available to them than passengers in the New York/Newark metropolitan area. In these circumstances, we maintain our view that as between the two entrant carriers selected, allocating the first available frequencies to Delta offers greater public benefits in this case. Continental has presented no new arguments that persuade us otherwise.

The new frequencies at issue in this proceeding represent an important step toward liberalizing our aviation regime with Argentina. It is clear from the proposals in this case, from both the incumbent carriers in the market and the new carriers we are now authorizing, that there continues to be significant demand for more services between the United States and Argentina. We intend to continue our efforts to expand the aviation relationship further to bring consumers the benefits of a more open aviation environment.

⁵ We do not view either the *Brazil* or *Mexico* cases cited by United as apposite. United claims that these cases support additional route awards to incumbent carriers. However, the *Brazil* case, unlike the present case, involved competing service proposals from carriers that already had established operations in the Brazil market. With respect to Mexico, that case is still pending.

Backup Authority

We will make final our tentative decision to make Continental backup to Delta's primary award for services from Houston and United backup up to Continental's primary award for services from Los Angeles. Only Delta has opposed our tentative awards and urged the Department not to grant backup awards for the authorized Argentina services. It has been our standard practice to grant backup awards in certificate cases for the first year of authorized operations. This ensures that valuable route rights will be used, that the public will benefit from the services without delay and the need for further procedures during the first year of service. Delta has presented no basis to deviate from that policy in this case. The fact that Delta does not have a proposal for backup authority before us is not a basis to refrain from issuing backup authority. Moreover, the cases cited by Delta in support of its position, the recent *U.S.-China (2001) Case* and the *1999 U.S.-Brazil Combination Service Case*, are inapposite. Both involved circumstances not applicable here.⁶ Therefore, we will make final our backup awards for the primary selections in this case. As noted in our show-cause order and affirmed here, we find that both carriers will be in a position to implement their backup awards should the primary carriers not institute service or should they discontinue service during the first year of operations and that the backup services authorized will provide valuable public benefits.

As we stated in our show-cause order, with respect to both backup awards, should the primary carrier not use all of the frequencies allocated to it for its services, we are prepared to permit a portion of the frequencies to be reallocated to the backup carrier during the year term of the backup award should the backup carrier seek to use them.⁷

Economic Authority

As we proposed in our tentative decision, we will issue Delta and Continental experimental certificates of public convenience and necessity for their proposed Atlanta-Buenos Aires and Newark-Buenos Aires services.⁸ We will also issue Continental a backup certificate for Houston-Buenos Aires authority. As United already holds authority on Route 632 to serve Los Angeles-Buenos Aires, no additional certificate authority is needed. The primary certificates will be for a period of five years; the backup awards will have a one-year duration. The awards will also be subject to startup conditions. In response to interrogatories in this case, Delta proposes a 90-day startup condition, Continental proposes a 120-day startup condition, and United proposes a 60-day startup condition. Accordingly, we will require that Delta begin service within 90 days of the effective date of its certificate award. As

⁶ The *China Case* involved not only selecting between combination and all-cargo carrier applicants for one new designation for service to China, but also selection between two very different types of cargo services. The *Brazil Case* did not involve the award of certificate authority or of any authority involving new entrant airlines to the market.

⁷ See *1997 U.S.-Brazil Combination Service Proceeding*, Order 97-4-13.

⁸ Delta has questioned whether Continental intends to operate its Newark services on a nonstop basis. December 29, 2000 Answer of Delta at 6. We did not read Continental's comments in its objection to our show-cause order as suggesting that it contemplates serving Newark under its award here on other than a nonstop basis. Our award here is based on Continental's proposal to operate nonstop service in the Newark-Buenos Aires market and we expect that it will operate the service in that manner. Should it not do so, that fact could be used as a basis by other carriers to seek to challenge its award here.

Continental has been allocated the second set of frequencies that become available on December 1, 2001, which is beyond Continental's proposed startup date, we will require that Continental begin services no later than December 1, 2001.

The frequency allocations in this proceeding for both the primary and backup awards will be subject to our standard 90-day dormancy condition. The dormancy period will begin on the required startup date for the services or the date on which the carriers commence service, whichever occurs earlier, as applicable.

ACCORDINGLY,

1. We make final our tentative findings and conclusions in Order 2000-12-13;
2. We select Delta Air Lines, Inc. and Continental Airlines, Inc. and issue each carrier, in the form attached, a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property, and mail between Atlanta, Georgia, and Buenos Aires, Argentina, and between Newark, New Jersey, and Buenos Aires, respectively;⁹
3. We select Continental Airlines, Inc. as the backup carrier for Delta's Atlanta award and issue it a backup certificate of public convenience and necessity authorizing service between Houston and Buenos Aires in the form attached;
4. We select United Air Lines, Inc. as the backup carrier for Continental's Newark award;
5. We allocate Delta Air Lines, Inc. seven weekly frequencies for its services between Atlanta and Buenos Aires for services commencing no earlier than April 1, 2001;
6. We allocate Continental Airlines, Inc. seven weekly frequencies for its authorized services between Newark and Buenos Aires for services commencing no earlier than December 1, 2001; and up to seven weekly frequencies for its Houston-Buenos Aires service should its backup authority be activated;
7. We allocate United Air Lines, Inc. up to seven weekly frequencies for its Los Angeles-Buenos Aires service should its backup award be activated;

⁹ We find that Delta and Continental are fit to provide the authorized services. Both carriers have previously been found to be citizens of the United States and fit, willing, and able to provide scheduled foreign air transportation of persons, property, and mail under section 41102 of Title 49 U.S.C. See, e.g., Order 2000-4-5 with respect to both carriers. We further find that issuance of the certificates granted will result in a near term increase in annual fuel consumption in excess of 10 million gallons. See Exhibits CO-401 & 402 and DL-401. As a result our action constitutes a "major regulatory action" under the Energy, Policy, and Conservation Act of 1975, as defined by section 313.4(a)(1) of the Department's regulations. We find, however, that the service provided under the authority granted and resulting public benefits outweigh any adverse effects that may be caused by the increased fuel consumption.

8. Subject to the provisions of the backup awards, the frequencies allocated by this order are effective immediately for services commencing no earlier than April 1, 2001 for Delta (at Atlanta) and no earlier than December 1, 2001 for Continental (at Newark), and will remain in effect indefinitely, *provided that* the holder continues to hold the necessary underlying authority to serve the markets authorized; and *provided further* that the frequencies will become dormant and will revert automatically to the Department if they are not used for a period of 90 days;¹⁰

9. To the extent not granted, we deny all requests in the captioned proceeding;

10. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order and the attached certificates shall become effective upon the 61st day after its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;¹¹

11. We will not entertain petitions for reconsideration of this order; and

12. We will serve this order on all parties to this docket; the Ambassador of Argentina in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

SUSAN MCDERMOTT
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*

¹⁰ The 90-day dormancy period with respect to Delta's frequencies will begin on the date that Delta commences its Atlanta service consistent with the applicable startup provisions of the certificate. The 90-day dormancy period with respect to Continental's frequencies will begin on December 1, 2001.

¹¹ This order was submitted for section 41307 review on January 11, 2001. On January 19, 2001, we received notification that the President's designee under Executive Order 12597 and implementing regulations did not intend to disapprove the Department's order.



Experimental Certificate of Public Convenience and Necessity

**For Route
798**

This Certifies that

Delta Air Lines, Inc.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 2001-1-14
On January 11, 2001
Effective on January 19, 2001**

**Susan McDermott
Deputy Assistant Secretary for
Aviation and International Affairs**

Terms, Conditions and Limitations

Delta Air Lines, Inc. for **Route 798**

is authorized to engage in scheduled foreign air transportation of persons, property, and mail:

Between Atlanta, Georgia, and Buenos Aires, Argentina.

This authority is subject to the following conditions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights and has notified the foreign country(ies) involved that any such selected carrier(s) has the required authority. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for authority.

(5) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all FAA requirements concerning security.

(6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. § 40102(a)(15).

(7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(10) The holder may combine services on this certificate with all services authorized by other Department of Transportation certificates or exemptions, provided, that such operations are consistent with the applicable bilateral aviation agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first 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 the holder's authority by virtue of the route integration authority granted here, but not being used, the holding of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

*Issued by
Order 2001-1-14
Route 798
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This certificate shall become effective on January 19, 2001. It shall expire April 19, 2001; provided, however, that if the holder inaugurates service under this certificate on or before that date, the authorization will continue in effect until five years after its effective date unless the Department earlier suspends, modifies, or deletes the authority.

* This certificate is issued to reflect the award of new authority to serve the Atlanta-Buenos Aires market.



Experimental Certificate of Public Convenience and Necessity

**For Route
799**

This Certifies that

Continental Airlines, Inc.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 2001-1-14
On January 11, 2001
Effective on January 19, 2001**

**Susan McDermott
Deputy Assistant Secretary for
Aviation and International Affairs**

Terms, Conditions and Limitations

Continental Airlines, Inc. for **Route 799**

is authorized to engage in scheduled foreign air transportation of persons, property, and mail:

Between Newark, New Jersey, and Buenos Aires, Argentina.

This authority is subject to the following conditions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights and has notified the foreign country(ies) involved that any such selected carrier(s) has the required authority. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for authority.

(5) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all FAA requirements concerning security.

(6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. § 40102(a)(15).

(7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.

(8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(9) In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(10) The holder may combine services on this certificate with all services authorized by other Department of Transportation certificates or exemptions, provided, that such operations are consistent with the applicable bilateral aviation agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first 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 the holder's authority by virtue of the route integration authority granted here, but not being used, the holding of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

*Issued by
Order 2001-1-14
Route 799
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This certificate shall become effective on January 19, 2001. It shall expire December 1, 2001; provided, however, that if the holder inaugurates service under this certificate on that date, the authorization will continue in effect until five years after its effective date unless the Department earlier suspends, modifies, or deletes the authority.

* This certificate is issued to reflect the award of new authority to serve the Newark-Buenos Aires market.



**Experimental Certificate
of Public Convenience and Necessity
(Backup award)
For Route
800**

This Certifies that

Continental Airlines, Inc.

is authorized, subject to the provisions of Subtitle VII of Title 49 of United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.

This Certificate is not transferable without the approval of the Department of Transportation.

By Direction of the Secretary

**Issued by Order 2001-1-14
On January 11, 2001
Effective on (See Attached)**

**Susan McDermott
Deputy Assistant Secretary for
Aviation and International Affairs**

Terms, Conditions and Limitations

Continental Airlines, Inc. for **Route 800**

is authorized to engage in scheduled foreign air transportation of persons, property, and mail:

Between Houston, Texas, and Buenos Aires, Argentina.

This authority is subject to the following conditions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any order of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights and has notified the foreign country(ies) involved that any such selected carrier(s) has the required authority. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative and low-priced air transportation it proposed in its application for authority.

- (5) The holder's authority is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all FAA requirements concerning security.
- (6) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. § 40102(a)(15).
- (7) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of 49 U.S.C. or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (8) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.
- (9) In the event that the holder ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.
- (10) The holder may combine services on this certificate with all services authorized by other Department of Transportation certificates or exemptions, provided, that such operations are consistent with the applicable bilateral aviation agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first 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 the holder's authority by virtue of the route integration authority granted here, but not being used, the holding of such authority by route integration will not be considered as providing any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

Issued by
Order 2001-1-14
Route 800
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This certificate shall not become effective until either (1) Delta notifies the Department that it is not using all of the frequencies allocated in this proceeding and relinquishes those frequencies to the Department for reallocation, or such frequencies become dormant and automatically revert back to the Department under the dormancy conditions imposed on frequency allocation, in which case the dormant frequencies, upon request and further order of the Department, will be allocated to Continental for Houston services or (2) the certificate authority of Delta has expired or has been deleted or suspended; and it shall expire on January 19, 2002; provided, however, that if this authority becomes effective before that date, it shall not expire until January 19, 2006, unless the holder fails to inaugurate service within 120 days of that effective date, in which case, this certificate will expire on the 121st day.