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Order 2002-5-16



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

Issued by the Department of Transportation
on the 21st day of May, 2002

Served: May 21, 2002

Application of

AMERICAN AIRLINES, INC.

For a permanent allocation of seven weekly
combination service frequencies
(Dallas/Ft. Worth-Buenos Aires)

Docket OST-2002-12114-8

FINAL ORDER ALLOCATING FREQUENCIES

SUMMARY

By this order, we grant the application of American Airlines, Inc. (American), for allocation of seven weekly frequencies for combination air transportation services between Dallas/Ft. Worth, Texas, and Buenos Aires, Argentina, for a two-year period. We dismiss without prejudice American's request for longer-term frequency allocation authority.

BACKGROUND

Currently, U.S. carriers hold frequency allocations to operate 49 weekly combination services between the United States and Argentina. American and United Air Lines, Inc. (United) each hold 21 weekly frequencies, and Delta Air Lines, Inc. (Delta) holds seven weekly frequencies. Under our aviation agreement with Argentina, we have rights that became available on December 1, 2001, for U.S. airlines to provide seven additional frequencies between the United States and Argentina. The Department instituted an expedited proceeding in July 2001 to select an airline to use these rights. ¹ Following the events of September 11, 2001, however, that proceeding was terminated after the applicants stated they could not meet the December 1, 2001, startup date. ² In terminating that proceeding, the Department stated that it intended to begin a new case early in 2002 to award the rights.

¹ See Order 2001-7-12, Docket 2001-10198 (*2001 U.S.-Argentina Combination Service Proceeding*).

² See Order 2001-10-11.

Before instituting a new case, on February 14, 2002, the Department requested that each of the four U.S. carriers that had participated in earlier proceedings for Argentina service confirm whether it remained interested in the allocation of Argentina frequencies and, if so, the date on which it would be prepared to commence service.³ All of the carriers indicated that they remained interested in using the seven available frequencies. However, each of the parties recognized the downturn in the Argentine economy and the uncertainty surrounding its recovery. In this regard, Delta and Continental could not provide firm plans for inauguration of new service in the market. Continental urged the Department to defer action to allocate the frequencies until the end of 2002. United stated that it was unlikely to be in a position to start new service in the market before the Summer 2003 season, and urged the Department to await the recovery of the Argentine economy before allocating the subject frequencies. American also noted the economic conditions in Argentina, but stated that it would begin its proposed Dallas/Ft. Worth-Buenos Aires service no later than November 2002, and possibly sooner, depending upon the availability of aircraft and other factors. American urged the Department to institute a proceeding promptly to allocate the available frequencies.

After examination of the responses received, on April 3, 2002, the Department issued a Notice regarding the allocation of the seven available U.S.-Argentina frequencies. In the Notice, we concluded that, under the circumstances presented, it was not in the public interest to make a decision then on the permanent award of the authority at issue. We went on to say, however, that we were mindful of the public benefits of ensuring that limited-entry route rights are being used to the fullest extent possible. In keeping with this objective, we stated that we were prepared to award the seven weekly frequencies to American on a temporary basis, pending completion of a proceeding for the long-term award of the rights.

APPLICATION AND RESPONSIVE PLEADINGS

On April 15, 2002, American filed its present application, seeking permanent allocation of the seven frequencies in question to provide Dallas/Ft. Worth-Buenos Aires service beginning November 1, 2002. American states that its service would open Dallas/Ft. Worth as the only U.S. gateway to Argentina west of the Mississippi, providing single-connection on-line service between Buenos Aires and over 90 points behind Dallas/Ft. Worth, including 34 cities that will gain on-line single connection services to Buenos Aires for the first time. In its application, American declined the Department's offer to receive the allocations on a temporary basis. In declining, American stated that it cannot be expected to open Dallas/Ft. Worth as a new gateway to Buenos Aires, incurring major development expenses to operate a new long-haul international route on a temporary basis, while bearing the risk that the Department might later award the authority to another carrier on a permanent basis.

Dallas/Ft. Worth International Airport ("DFW Airport"), filed an answer supporting American's application. Continental, Delta, United, and the Metropolitan Washington Airports Authority (MWAA), filed answers in opposition. American filed a reply.

DFW Airport argues that American will open Dallas/Ft. Worth as a new nonstop U.S. gateway to Argentina – the only one west of the Mississippi – and make prompt and immediate use of valuable limited-entry operating rights. DFW Airport agrees with American that American needs

³ The four carriers are American, Continental Airlines, Inc. (Continental), Delta, and United.

assurances that it will be able to operate in the Dallas/Ft. Worth-Buenos Aires market long enough to have an opportunity to recoup its expenses in developing a new route.

Continental, Delta, United, and MWAA each urge the Department to defer or dismiss American's instant application and institute a proceeding for the permanent award of the U.S.-Argentina frequencies when the Argentina market can better support the new service. Each of the parties states that it remains interested in an award of the frequencies and that it is prepared to participate in any renewed proceeding in this matter. Delta also argues that there is no basis for the Department to accede to American's demand for a permanent allocation here when the Department was not willing to consider a permanent allocation to Delta for Atlanta-Rio de Janeiro service, due to difficult market circumstances.⁴ Delta points out that the Department has historically used temporary awards to promote the beneficial use of frequencies when circumstances make permanent allocation impractical or imprudent, such as when the Department gave American a temporary award of U.S.-Brazil frequencies in 1996.⁵

In its reply, American states that the opposition is without merit. American argues that none of the carrier opponents submitted competing applications for the subject authority, yet the carriers urge the Department to abandon its well-established principle that valuable, limited-entry route rights should be awarded and used. American argues, further, that the opponents' attempts to draw an analogy to the Department's recent action involving Brazil frequencies is misplaced, as is Delta's reliance on a 1996 Departmental decision awarding American a temporary allocation of Brazil frequencies. American states that it is willing to accept the financial risks and make the necessary investments to ensure the long-term success of the new Dallas/Ft. Worth-Buenos Aires route, and that its established presence in Argentina and its long-term commitment to the U.S.-Argentina market, fully support the requested award of additional frequencies on a permanent basis.

DECISION

We have decided to grant American's application for allocation of seven weekly frequencies to provide combination services in the Dallas/Ft. Worth-Buenos Aires market for a two-year period. We will dismiss without prejudice American's request for longer-term frequency allocation authority here.

By Notice dated April 3, 2002, we decided, based on the record before us, including notably the comments from interested carriers on the condition of the Argentine economy and the uncertainties surrounding its recovery, that it was in the public interest to defer institution of a proceeding to make a permanent award of the seven weekly combination service frequencies for U.S.-Argentina service. At the same time, we were mindful of the public benefits of ensuring that limited-entry route rights be used to the fullest extent possible. In this regard, we noted that American had stated that it was prepared to commence services in the Dallas/Ft. Worth-Buenos

⁴ By Order 2002-4-19, the Department granted the application of Delta for a temporary allocation of four weekly U.S.-Brazil service frequencies for Atlanta-Rio de Janeiro services (Docket OST-2002-11627). The Department deferred action on the application of Delta for a permanent allocation of four weekly U.S.-Brazil service frequencies (Docket OST-2002-11711). In taking these actions, the Department found that, among other things, it would not be appropriate to make any decisions regarding permanent reallocations or back-up awards regarding U.S.-Brazil frequencies given the economic climate in the U.S.-Brazil market.

⁵ See Delta's discussion of Order 96-3-47, in Delta's answer at 6-7.

Aires market by this November. We offered to award the frequencies to American on a temporary basis, pending completion of a future proceeding for long-term award of the rights. However, we did not specify a fixed period for the award. American declined that offer as part of its present application.

We remain fully committed to the position that the public interest calls for awarding the valuable limited-entry rights at issue here so that they can be used. In this connection, we see justification in American's concerns as regards the uncertain period of the award we offered in our April 3 notice. In light of the fact that American is the only carrier that has proposed new Argentina services for use this year and is the only carrier requesting allocation of the frequencies now, and in recognition of the concerns that American has raised, we will make a specific award to American of seven weekly frequencies to provide nonstop Dallas/Ft. Worth-Buenos Aires combination services, and we will make the award for a defined two-year period.⁶

We believe that such action is consistent with our desire to make full use of operating rights available to U.S. carriers in limited-entry markets, and to ensure a variety of service options to the traveling and shipping public. At the same time, we see our action as also consistent with our conclusion that this is not the appropriate time to reach a decision on the long-term allocation of Argentina frequencies. In this regard, our award here will not confer on American any preference in a future carrier selection proceeding for the permanent award of U.S.-Argentina frequencies.

We will impose both a startup condition and a dormancy condition on the frequencies allocated by this order. We will require American to start services in the Dallas/Ft. Worth-Buenos Aires market no later than November 1, 2002, American's proposed startup date.⁷ Consistent with our standard practice, the frequencies allocated will also be subject to the condition that once service has been instituted, any frequencies not used for a period of 90 days will become dormant and automatically revert to the Department for reallocation. Further, we will require American to file a written notice with the Department confirming that it has instituted service on or before November 1, 2002.⁸ To the extent that American may institute less than the seven weekly frequencies authorized here, that information should be included in the notice, as well.

We will monitor the U.S.-Argentina market with the hope of instituting a proceeding in late 2003 or early 2004, or at such subsequent time as may be appropriate, for the permanent award of seven weekly combination frequencies for U.S.-Argentina services.

⁶ Significantly, we do not see our previous actions on the two Brazil cases cited by the parties as having decisional weight here, given the very different fact situations present in each. Our decision to award Delta temporary Brazil frequencies earlier this year (Order 2002-4-19), was made in recognition of the fact that the frequencies were already held by other U.S. carriers, which were not then in a position to use them, a situation not present here, where the frequencies in question have not yet been allocated by the Department. In the 1996 Brazil case, the imminence of bilateral negotiations with the Brazilians clearly influenced our decision.

⁷ Should American not commence seven weekly frequencies in the Dallas/Ft. Worth-Buenos Aires market by November 1, 2002, any unused frequencies will automatically revert to the Department for reallocation.

⁸ The notice should be filed in Docket OST-2002-12114, and served on all parties to this proceeding.

ACCORDINGLY,

1. We grant the application of American Airlines, Inc., in Docket OST-2002-12114, for allocation of seven weekly combination frequencies to provide air transportation service in the Dallas/Ft. Worth-Buenos Aires market;
2. The frequencies allocated to American Airlines, Inc., are effective immediately and the allocation as to each frequency shall remain in effect for two years from the service date of this order, provided that the carrier begins service with that frequency by November 1, 2002, and provided further that the carrier continues to hold the necessary underlying economic authority to serve the authorized market;
3. As to each frequency allocated in ordering paragraph one, above, the allocation will expire and the frequency will revert automatically to the Department if it is not used by November 1, 2002, and, in the event that service is begun by that date, then thereafter if it is not used for a period of 90 days;⁹
4. We require American Airlines, Inc., to file a written notice with the Department confirming that the carrier has commenced new Dallas/Ft. Worth-Buenos Aires services on or before November 1, 2002;
5. We dismiss without prejudice the application of American Airlines, Inc., in Docket OST-2002-12114, to the extent that the carrier requests longer-term frequency allocation authority;
6. We may amend, modify, or revoke the authority granted by this order at any time at our discretion without notice or hearing;
7. To the extent not granted, we deny all requests in the captioned docket; and

⁹ The 90-day dormancy period will begin November 1, 2002, American's proposed startup date for Dallas/Ft. Worth-Buenos Aires services. However, since American's frequency allocation here would expire by its terms should American not inaugurate service by November 1, 2002, the 90-day dormancy provision would have meaning in American's case only if the carrier began service by the prescribed date and thereby retained an effective allocation.

8. We will serve this order on American Airlines, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; United Air Lines, Inc.; The Metropolitan Washington Airports Authority; Dallas/Ft. Worth International Airport; the Ambassador of Argentina in Washington, D.C.; the Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220);

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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