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Order 2001-11-15



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

Issued by the Department of Transportation  
on the 29th day of November, 2001

Served: November 30, 2001

In the matter of

ALL U.S. AIR CARRIERS

Waiver of the dormancy conditions on limited-  
entry route authority

Docket OST-2001-11065 - /

Applications of

UNITED AIR LINES, INC.  
NORTHWEST AIRLINES, INC.  
AMERICAN AIRLINES, INC.  
CONTINENTAL AIRLINES, INC.  
DELTA AIR LINES, INC.  
US AIRWAYS, INC.

for a temporary blanket waiver of dormancy  
conditions

Docket OST-2001-10699 - 9  
Docket OST-2001-10750 - 8  
Docket OST-2001-10769 - 8  
Docket OST-2001-10771 - 8  
Docket OST-2001-10781 - 3  
Docket OST-2001-10808 - 4

Application of

DELTA AIR LINES, INC.

for temporary allocation of U.S.-Brazil  
combination service frequencies for Atlanta-Rio de  
Janeiro service

Docket OST-2001-10782 - 13

ORDER GRANTING TEMPORARY WAIVERS

## **Summary**

By this order, we grant all U.S. carriers holding limited-entry international route authority a waiver of the dormancy conditions applicable to their authorities through March 31, 2002, subject to the conditions set forth in this order.

## **Applications/Responsive Pleadings**

On September 25, 2001, United Air Lines filed an application for a blanket waiver of the dormancy conditions attached to its limited-entry route authorities. United states that since the events of September 11 United has been reducing its route schedule, reducing its work force, and concentrating on implementing new security initiatives applicable to its airline services. As a result of the events and the impact on United's operations, United seeks a temporary waiver from any Department dormancy conditions applicable to its international operating authority. United asks that the 90-day dormancy period for these authorities not begin until March 31, 2002, (*i.e.*, after the 2001/2002 Winter season), and thus, that the applicable authorities would not be deemed dormant until June 30, 2002. United further states that it would notify the Department as soon as it decides to discontinue any service that is subject to a dormancy condition for 90 days or longer. United also states that the Department should grant similar relief to any other U.S. carrier that seeks it. By granting the waivers, United states that the Department will relieve the carriers and the Department of the expense and delay of processing and responding to each individual request.

American Airlines, Continental Airlines, Delta Air Lines, Northwest Airlines, and US Airways filed applications for similar relief.<sup>1</sup> Answers to the applications were filed by United Parcel Service Co. (UPS), Federal Express Corporation, and Delta. United and Continental filed a joint consolidated reply. United, Continental, American, and Delta filed further responsive pleadings.

UPS supports the requests for blanket waiver, provided that the Department grants temporary authority to other carriers interested in using the limited-entry route rights while they are not being used, thereby ensuring service to the public in certain markets. UPS also urges that, where necessary, the Department require the holder of the authority to provide progress reports as to its resumption of service on the route.

Federal Express also supports the waiver requests, but urges the Department to grant all U.S. carriers the necessary relief without the need to specifically apply for it. Federal Express maintains that the notification provisions proposed by United are sufficient.

Delta supports an award of temporary blanket relief, but initially argued that the waiver relief should expire on March 31, 2002, with a requirement that the holders notify the Department

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<sup>1</sup> Continental also included in its application a request to waive until October 1, 2002, the dormancy condition for service in its authorized Newark-Cali/Medellin markets. Continental has already been granted a dormancy waiver until June 1, 2002 with respect to its Cali services. See Notice of Action Taken, dated June 20, 2001, in Docket OST-2001-8910.

no later than January 7, 2002, of the routes that they would not be serving beginning April 1 so that the rights would be available at the start of the peak summer season for permanent reallocation to other airlines. Delta subsequently changed its position and now supports grant of the relief as proposed by United, *i.e.*, through June 30.<sup>2</sup>

United and Continental argue that carriers need flexibility to resume services within the 90-day period following the end of the Winter traffic season, and that providing such flexibility ensures that service will resume before the peak of the summer season in July and August, unless additional ad hoc extensions of the dormancy waiver are granted. They opposed Delta's separate reporting condition, but stated that, if the Department nonetheless decides to adopt a reporting condition, the notification date should be February 15 rather than January 7, so that carriers can provide more accurate information about their service plans.

### **Decision**

We have decided to grant the captioned carriers temporary blanket relief from the dormancy conditions on their limited-entry route authorities, subject to certain conditions, described below. We will also grant such relief to all other U.S. carriers holding limited-entry international authority that is subject to our standard dormancy conditions.

As the carriers have noted in their applications and other responsive pleadings, airline services have been in a temporary period of adjustment since the events of September 11. Given these circumstances, we find that temporary blanket relief from the dormancy conditions is warranted and in the public interest, and will serve to afford the carriers needed flexibility to resume their international services on a phased-in basis, without risk that they will lose their route awards for nonuse. All of the parties filing applications and comments support the award of temporary relief.

At the same time, we recognize the value of limited-entry route awards and the importance of ensuring that services in restricted markets are available to consumers to the full extent possible. Taking these factors into consideration, we have decided to grant carriers a waiver of the dormancy conditions through March 31, 2002, *i.e.*, through the 2001/2002-winter traffic season. Under the terms of this waiver, any limited-entry authorities that have not been used for the applicable dormancy period prior to April 1, 2002, will be deemed dormant as of that date. We will also require all U.S. carriers to notify the Department, in writing, no later than February 15, 2002, of the limited-entry route rights that they will not be using beginning April 1.<sup>3</sup>

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<sup>2</sup> Delta altered its position in connection with a change in position by parties that had opposed its application for temporary allocation of unused U.S.-Brazil combination service frequencies. See letters dated October 26 and November 1 in Docket OST-2001-10782 as well as the captioned dockets.

<sup>3</sup> The notice should be filed in the new docket established by this order and served on all other U.S. carriers. To the extent that a carrier may institute less than its fully authorized service in a particular market, the market involved and limited-entry route rights not being used should be included in the notification.

While the applicants in this case have offered a somewhat different proposal for the duration of the dormancy relief and attendant conditions, we believe that our decision here best balances our objectives to provide the carriers needed flexibility in resuming their international airline services, while at the same time encouraging the use of valuable route rights to the benefit of the traveling and shipping public. In this regard, we note that the waiver would afford carriers over six months since September 11 to resume services in their authorized limited-entry markets. The February 15 notice requirement will provide all interested carriers notice of any authorities that will be dormant after expiration of the blanket waiver, and sufficient time to plan for services during the summer traffic season, including receipt of the necessary regulatory authorities.

Moreover, we recognize that specific cases may call for relief going beyond that which we have deemed justified on a blanket basis. In this regard, carriers are free to seek extension of the dormancy waiver beyond March 31 for specific city-pair limited-entry services where they can demonstrate that circumstances warrant.<sup>4</sup> However, carriers should file such requests in sufficient time for other interested carriers to comment and for the Department to make a decision in a timely manner with respect to disposition of the authority at issue.

Finally, we will entertain applications from other carriers for temporary reallocation of limited-entry route authorities that are not being used during the blanket waiver period. This will facilitate greater use of the rights available and the potential for more services to the public in important international markets during the blanket waiver period.

#### **Delta's Temporary Brazil Frequency Allocation**

On October 4 and supplemented on November 1, Delta requested temporary allocation of four unused U.S.-Brazil combination service frequencies. Delta requested that the frequencies be allocated at least through March 31, 2002, subject to recall on no fewer than 90 days' notice. United, American, and Continental opposed Delta's request to the extent that it sought allocation of the frequencies beyond March 31, 2002, pending approval by the Department of the requests for blanket dormancy relief through June 30, 2002. If the Department approved the blanket waiver requests through June 30, the carriers stated that they would not oppose a longer-term reallocation of frequencies to Delta.

On November 2, 2001, the Department granted Delta's request through March 31, 2002, and deferred action on the balance of its request for allocation of the frequencies beyond March 31.<sup>5</sup>

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<sup>4</sup> We will also grant Continental's request for a dormancy waiver until October 1, 2002, with respect to its authorized Newark-Cali/Medellin, Colombia services. No party has opposed Continental's request even though it seeks relief beyond that sought in the blanket requests. In these circumstances, we find no public interest reason to deny the carrier's request with respect to these specific city-pair markets.

<sup>5</sup> At the same time, we granted American, Continental, and United dormancy waivers for their U.S.-Brazil services through March 31, 2002, and deferred action on the balance of their requests in the captioned dockets, pending our decision on the requests for blanket dormancy relief.

We have decided to deny the balance of Delta's request for allocation of the frequencies beyond March 31, 2002. For the reasons stated above, we have granted all U.S. carriers blanket dormancy relief for their international services, including Brazil, through March 31, 2002. In these circumstances, we are not persuaded that granting a longer-term Brazil allocation to Delta at this time is in the public interest. Should one of the other authorized carriers seek a further extension of the dormancy waiver for its Brazil services, Delta, at that time, can seek a further extension of its frequency allocation. We remind all carriers of the need to ensure a smooth transition of services in circumstances involving temporary reallocation of limited-entry route authorities.

**ACCORDINGLY,**

1. We grant all U.S. air carriers a waiver of the dormancy conditions applicable to their limited-entry route authorities;
2. We consolidate the applications of United Air Lines, Inc. in Docket OST-2001-10699, Northwest Airlines, Inc. in Docket OST-2001-10750, American Airlines, Inc. in Docket OST-2001-10769, Continental Airlines, Inc. in Docket OST-2001-10771, Delta Air Lines, Inc. in Docket OST-2001-10781, and US Airways in Docket OST-2001-10808 into Docket OST-2001-11065 established by this order;
3. The waivers granted by this order are effective from the date of service of this order and shall expire March 31, 2002;<sup>6</sup>
4. We require all carriers granted waivers by this order to file a notice no later than February 15, 2002, in Docket OST-2001-11065 listing each limited-entry market as set forth in the text of this order in which it will not resume service beginning April 1, 2002;
5. We deny the request of Delta Air Lines, Inc. in Docket OST-2001-10782 to the extent that it seeks allocation of four U.S.-Brazil combination service frequencies beyond March 31, 2002;
6. We grant the request of Continental Airlines for a waiver until October 1, 2002 of the dormancy conditions applicable to its Newark-Cali/Medellin, Colombia services;<sup>7</sup>
7. We grant all motions for leave to file otherwise unauthorized documents in the captioned dockets;
8. To the extent not granted by this order, we deny all requests in the captioned dockets; and

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<sup>6</sup> As discussed in the text of this order, any dormant limited-entry route authorities not resumed by April 1, 2002, will revert automatically to the Department.

<sup>7</sup> If Continental has not commenced services in these markets by October 1, 2002, its frequencies will automatically revert to the Department.

9. We will serve this order on all U.S. certificated air carriers; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-200).

By:

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

(SEAL)

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