

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

LOVE FIELD SERVICE INTERPRETATION
PROCEEDING

:
: Docket OST-98-4363
:
:

ANSWER OF
CONTINENTAL EXPRESS, INC.
TO MOTION FOR STAY

Communications with respect to this document should be sent to:

James B. Ream,
President
CONTINENTAL EXPRESS, INC.
P.O. Box 4607 – HQSCE
Houston, TX 77210-4607

R. Bruce Keiner, Jr.
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(202) 624-2615

Counsel for
Continental Express, Inc.

November 26, 1999

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

LOVE FIELD SERVICE INTERPRETATION
PROCEEDING

:
: Docket OST-98-4363
:
:

ANSWER OF
CONTINENTAL EXPRESS, INC.
TO MOTION FOR STAY

American¹ and the City of Fort Worth have asked the Department to stay any action relying on its orders in this proceeding because those orders “are under active review by the Fifth Circuit.” (Joint Motion at 2) Continental Express opposes the motion to stay actions by the Department which rely on its well-reasoned decisions in this proceeding and urges the Department to deny the motion for the following reasons:

1. American and Fort Worth have not even alleged grounds for staying the Department’s decisions interpreting the Wright and Shelby Amendments and related legal issues. The Department requires a party requesting a stay of a decision to demonstrate “it is likely to succeed on the merits; it will suffer

¹ Common names for airlines carriers are used.

irreparable harm without a stay; [the party adversely affected by a stay] would suffer little harm; and the public interest favors a stay.” (Order 90-2-23 at 1) American and Fort Worth have not even alleged that they are likely to succeed on the merits or that they would suffer irreparable harm without a stay. In sharp contrast, Continental Express is harmed irreparably every day by its inability to operate Love Field-Cleveland service, and the very existences of Legend and Ozark are threatened by American and Fort Worth’s request. Finally, as the Department has concluded repeatedly, the public interest in providing additional service at Love Field far outweighs any conceivable harm to American and Fort Worth which could result from bringing the benefits of airline and airport competition to the Dallas/Fort Worth metroplex.

2. Although the Fifth Circuit has “exclusive jurisdiction” to “affirm, amend, modify, or set aside any part” of the orders under review (49 U.S.C. § 46110(c)), the Department should continue to give effect to its orders pending petitions on review. Both the Department and the Federal Aviation Administration are required to interpret and enforce the aviation laws, and they would be derelict in their duties if they failed to do so simply because a petition for review is pending.² Indeed, American itself has only recently argued that the Department

² Even if the Department’s orders in this proceeding were stayed, FAA should continue its own proceeding in FAA Docket No. 16-99-17 on Ozark’s complaint against Dallas and make its own assessments of the relevant facts and law.

should “amend” or “modify” an order under review in a court of appeals despite its claim here that the Department cannot take such actions when an order is under review.³

3. Having failed to allege before the Department any grounds to meet the standards for granting a stay, American/Fort Worth’s motion must be denied. Although American and Fort Worth may follow through with their threat to seek a stay in the Fifth Circuit, they will be precluded there from raising arguments not raised before the Department in seeking a stay. Thus, the Department should deny the American and Fort Worth motion for stay and expect the Fifth Circuit to do the same.

Respectfully submitted,

CROWELL & MORING LLP

R. Bruce Keiner, Jr.
rbkeiner@cromor.com

Counsel for
Continental Express, Inc.

November 26, 1999

³ American has asked the Department to “amend” or “modify” the Department’s Order 99-7-1, which American has appealed to the D.C. Circuit, and recognized that the Department’s proceedings on Brazil frequency reallocation can continue despite American’s pending petition. See American’s July 19 answer and petition in Docket OST-96-1065 and its October 7 petition and October 15 answer in Docket OST-99-6284.

CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on all parties to this proceeding in accordance with the Department's Rules of Practice.

R. Bruce Keiner, Jr.

November 26, 1999
1673799