

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

LOVE FIELD SERVICE INTERPRETATION
PROCEEDING

:
: Docket OST-98-4363
:
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SURREPLY OF
CONTINENTAL EXPRESS, INC.

Communications with respect to this document should be sent to:

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December 13, 1999

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As part of their continuing effort to delay competition for American¹ and Dallas/Fort Worth International Airport, American and Fort Worth have submitted an unauthorized reply to the answers submitted by Legend and Continental Express opposing the American/Fort Worth motion for a stay of the Department's decisions in this proceeding.² The American/Fort Worth motion neglected even to mention the Department's standards for granting stays pending appeal, much less

¹ Common names for airlines are used.

² The Department's Rules of Practice do not provide for replies to answers to motions, although the American/Fort Worth reply was accepted for filing without a motion for leave to file. Similarly, Legend's response to the American/Fort Worth reply was accepted without a motion. Continental Express's surreply should also be accepted to ensure a complete record since the American/Fort Worth reply sets forth the bases for their stay request for the first time.

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demonstrate that the movants had met those standards, so they now seek to remedy that deficiency in a reply. Since this belated effort to shore up the American/Fort Worth request fails to demonstrate that the standards for stays pending appeal have been met, if the Department decides to consider the American/Fort Worth reply at all it should deny the movants' request for a stay for the following reasons.

1. The Department cannot conclude that American and Fort Worth have a substantial likelihood of success on appeal in the Fifth Circuit. Although the movants claim that they have a substantial likelihood of success on the merits, they cite no support for this proposition other than the briefs submitted by American, Fort Worth and the other anti-competition forces supporting them in the Fifth Circuit. The arguments in those briefs have been rebutted amply by the Department, Legend and Continental Express. The movants seek to preserve the status quo at Love Field forever without regard to federal aviation law decisions reached by the Department, and their efforts to delay competition should not be rewarded by staying Federal Aviation Administration investigations of Dallas's restrictions imposed on Love Field service at the behest of American, Fort Worth and the Texas courts.³

³ The Department issued its declaratory orders so that the Texas courts then considering the issues could consider the Department's interpretation. At the request of American and Fort Worth, however, the Texas courts have refused to consider the Department's decisions. Since no case was then pending in the Fifth Circuit, the American/Fort Worth citation to Order 98-12-27 is misplaced.

2. The Department has concluded repeatedly that there would be no significant injury to American or Dallas/Fort Worth International Airport if Love Field were opened to the service mandated by the Wright and Shelby amendments,⁴ and the Department now has no basis whatever to conclude that any significant injury, much less irreparable injury, would occur as a result of the Department's refusal to grant the stay requested by American and Fort Worth. Although Continental and Continental Express withdrew their appeal of the Texas District Court's injunction, they are continuing to contest in the Texas proceedings claims by American, Fort Worth and Dallas/Fort Worth International Airport that any significant injury to any of these parties would arise if Continental Express operates the Love Field-Cleveland flights it has proposed. The Department's order on reconsideration in this proceeding has already rejected the evidence proffered by the movants regarding irreparable injury and concluded that no significant injury would occur from compliance with the Wright and Shelby amendments as interpreted correctly by the Department.⁵

3. Although Continental Express has been enjoined by the Texas courts from instituting Love Field-Cleveland service, it has not been enjoined from exercising its other rights at Love Field pursuant to the Wright and Shelby amendments as interpreted correctly by the Department. Since both Legend and

⁴ See Order 98-12-27 at 37-38.

⁵ See Order 99-4-13 at 14-16.

Ozark require access at Love Field to fulfill their business plans, which depend on serving Love Field, not Dallas/Fort Worth International, where American not only dominates the airport but, according to the Department of Justice, takes extraordinary actions to force new entrants to terminate their operations. Thus, Continental Express, Legend and Ozark may also suffer irreparable harm unless the Department enforces its orders and ensures access to Love Field is available pursuant to the Wright and Shelby amendments.

4. Rather than serving the traveling and shipping public in the Dallas/Fort Worth metropolitan area well for more than twenty years, as the movants claim, the status quo has prevented effective competition for American and Dallas/Fort Worth International Airport, particularly for long-haul and business travelers throughout the United States who wanted to use Love Field for its convenient access but could not do so. The presence of Continental Express and Legend at Love Field will produce significant fare benefits, schedule options and alternative airport service as well as providing network competition to American for business passengers on Continental Express's connections at the Houston and Cleveland hubs and Legend's proposed nonstop long-haul flights. Just as the American and Fort Worth battle to keep low-fare, short-haul Southwest out of Love Field was adverse to the public interest, so is the American and Fort Worth battle to keep Continental Express and Legend from operating services clearly authorized by the Wright and Shelby amendments. Rather than continuing to block the wheels of progress by enforcing the status quo and preventing market forces from working

at Love Field within the constraints of the Wright and Shelby amendments, the Department should deny the movants' request for stay to serve the public interest in opening routes to competition.

For the reasons stated in Continental Express's November 26, 1999 answer and this surreply, Continental Express urges the Department to deny the motion for stay.

Respectfully submitted,

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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.

Edward B. Glennon

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