

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

1999 U.S.-BRAZIL COMBINATION SERVICE CASE

:
:
:

Docket OST-99-6284

BRIEF OF
CONTINENTAL AIRLINES, INC.

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I. INTRODUCTION

By awarding Continental four of the 14 U.S.-Brazil frequencies available so Continental can provide year-round nonstop New York/Newark-Rio de Janeiro service and daily Houston-São Paulo service, the Department can maximize competition and provide far more benefits to travelers and shippers than would be provided by granting the requests of the other applicants in this case. Through its hard work, boldness and commitment, Continental has become the strongest U.S. competitor to American on U.S.-Latin America routes, but Continental will be unable to remain American's most effective competitor without the frequencies to

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reinstitute daily nonstop Rio de Janeiro service at its New York/Newark hub on a year-round basis and to restore daily São Paulo service at its Houston hub.

The Department's first decision in this case should be allocating Continental the single frequency it must have to assure year-round nonstop Rio de Janeiro service for the premier New York/Newark gateway. Continental's single frequency is uncontested, and there is a critical need to maintain daily nonstop service for the thousands of New York/Newark passengers who will use it.

Since the Department's "principal objective" in selecting carriers and gateways in this case is "to maximize public benefits" (Order 99-9-23 at 5), the Department should also award Continental the three additional frequencies it requires to restore daily São Paulo service at Continental's successful Houston hub, which is the only proposed gateway without daily Brazil service. American's increasing pressure tactics throughout Latin America and its ability to shift existing frequencies at will in response to Continental service plans make it imperative that Continental have enough frequencies for its Houston- São Paulo proposal.

Awarding Continental the frequencies it needs to remain an effective competitor for the long-term on U.S.-Brazil and other U.S.-Latin America routes is far more important than adding to the ample arsenals of American and United Brazil frequencies and gateways or squandering frequencies on a Delta Latin America route system which cannot compete effectively with United and American.

Continental is the only applicant bold enough and dedicated enough to continue New York/Newark-Rio de Janeiro service for two years through Brazil's lean times and to inaugurate daily nonstop Houston-São Paulo service during the same economic downturn. Now that Brazil's economy is improving, Continental should have the opportunity to continue its seasonal daily nonstop Rio de Janeiro service on a year-round, permanent basis at its New York/Newark hub and offer daily São Paulo service at its Houston hub.

II. CONTINENTAL'S PROPOSED DAILY NONSTOP NEW YORK/NEWARK-RIO DE JANEIRO SERVICE AND THREE WEEKLY HOUSTON- SÃO PAULO FLIGHTS OVER LIMA WILL PROVIDE FAR MORE PUBLIC BENEFITS THAN THE OTHER APPLICANTS' PROPOSED SERVICES WOULD PROVIDE

A. Continental's New York/Newark-Rio de Janeiro Service Will Provide Significant Public Benefits With A Single Frequency And Is Uncontested

1. New York/Newark Requires Continental's Daily Nonstop Rio de Janeiro Service

As American recognizes, there is a critical need to maintain daily nonstop service for the thousands of New York/Newark-Rio de Janeiro passengers. (AA-N-1 at 1) The Department can accomplish this key objective by granting Continental the single permanent frequency it needs to operate daily nonstop New York/Newark-Rio de Janeiro service and to extend daily service to Belo Horizonte without adversely affecting any other airline's proposal. Continental is so confident of its ability to sustain year-round New York/Newark-Rio de Janeiro service in the improving Brazilian economy that it has advanced its plans to resume year-round

nonstop daily New York/Newark-Rio de Janeiro service by over two months, to June 28, 2000.¹

As Delta's President and Chief Executive Officer testified last month, "New York is the largest and most important international gateway in the United States" as well as "the largest city in the United States and the center of the business and financial world."² He also acknowledged that:

- "New York is the largest metropolitan area in the United States."
- "As a consequence of its huge population base and enormous local economy, New York generates more international passengers than any other U.S. city."
- "New York stands head and shoulders above any other applicant gateway."
- "The New York metropolitan area accounts for more personal income than any other U.S. metropolitan area."
- "New York residents have greater buying power than residents of any other city."
- "New York also has more business establishments and produces more in retail sales than any other U.S. city."³

Continental agrees with Delta and American that New York/Newark's significance is primary. If the Department must choose among those carriers proposing New York/Newark-Brazil service (Continental, American and Delta),

¹ See Direct Exhibits and Rebuttal Exhibits of Continental, March 2 and March 23, 2000, respectively. The Belo Horizonte extension is scheduled to begin on September 12, as originally proposed.

² See Testimony of Leo F. Mullin, President and Chief Executive Officer, Delta Air Lines, Inc., Exhibit DL-T-1, Docket OST-99-6323, February 29, 2000 at 1 ("Mullin Testimony" hereafter).

Continental should receive priority. With one additional frequency, Continental will be able to offer daily service between New York/Newark and both Rio de Janeiro and São Paulo, providing comprehensive service on the local New York/Newark route as well as a competing hub network serving both major Brazilian cities. The Department has recognized that “[t]he ability to offer a daily service can be critical to operation of a fully competitive service.” (Order 98-7-20 at 5)

Only Continental proposes Brazil service at Newark International Airport. American and Delta would operate at New York (JFK). Newark International Airport is growing faster than JFK as an international passenger gateway and a passenger gateway for South America. (CO-R-1114 and CO-R-1115) Continental at Newark International Airport serves more destinations, with more daily departures, than Delta serves at New York (JFK).⁴ Similarly, Continental at New York/Newark operates flights serving many more international destinations nonstop than American at New York (JFK). (CO-R-1185) And Continental’s New York/Newark hub is far larger than either Delta’s or American’s New York (JFK) operations. (CO-R-1121 and CO-R-1178)

As the only airline with a hub in the New York/Newark area and the leading carrier there, Continental will provide genuine competition for incumbent U.S. and

³ Mullin Testimony at 10.

⁴ CO-R-1112. Indeed, JFK ranks number 23 among Delta’s airports with only 1,870 O&D passengers per day. Aviation Daily, April 13, 2000 at 8

foreign airlines at other U.S. gateways, provide on-line service for 14,246 Rio Janeiro passengers through its New York/Newark hub network on the one weekly flight added and continue to meet the needs of local New York/Newark-Rio de Janeiro passengers and shippers for daily service. New Jersey's two U.S. Senators put it well, "As the second largest airline to Latin America, Continental is in the unique position of being able to provide consumers effective competition in the market." (Letter to the Honorable Rodney Slater from Sens. Robert G. Torricelli and Frank R. Lautenberg, dated April 6, 2000)

The Department has consistently recognized the importance of introducing South America service at Continental's New York/Newark hub. When the Department awarded Continental New York/Brazil authority over Delta's request for additional frequencies three years ago, it declared that "allocation of the remaining frequencies to Continental offers greater service and competitive benefits" because

New York-Brazil is the second largest U.S.-Brazil market. Currently, all of the service in the market is operated from JFK. Continental's proposal offers the benefit of an alternative choice of airport for New York passengers. As noted in this proceeding, Newark International Airport is the sixth largest mainland U.S. international gateway with over six million passengers in its catchment area. With Continental's service at Newark, the benefit of this airport choice is significant.

(Order 97-3-8 at 10-11, footnotes omitted) These factors and Continental's consistent commitment to continue New York/Newark-Rio de Janeiro service compel an award of one Brazil frequency to Continental. With a permanent

allocation of the single frequency Continental now holds on a temporary basis, Continental will be able to compete more effectively with American's daily nonstop New York (JFK)-Rio de Janeiro flight, United's daily New York (JFK)-Rio de Janeiro one-stop flight, and Varig's seasonal daily New York (JFK)-Rio de Janeiro one-stop flight.⁵

2. Continental Is The Only Applicant Proposing To Use The Single Frequency At Issue, And The Frequency Is Not Needed For The Remaining Awards

Continental is the only applicant seeking a single U.S.-Brazil frequency, and awarding the single frequency to Continental will not affect the remaining applications in this case. The Department included Continental's one New York/Newark-Rio de Janeiro frequency in this proceeding because "other eligible carriers . . . may have plans to use this frequency." (Order 2000-2-12 at 7) Although other carriers have had abundant opportunities to reveal plans for using this frequency, no other applicant has done so. The exhibits submitted by all applicants confirm that each of the remaining proposals requires at least three frequencies: Continental seeks three frequencies at Houston, American seeks seven frequencies at JFK, Delta seeks three frequencies at Atlanta and seven frequencies at JFK, and United seeks seven frequencies at Los Angeles. No combination of these proposals requires 11 frequencies.

⁵ If the Department were to withdraw American's frequencies used to provide JFK-Rio de Janeiro service, Continental's ability to provide nonstop New York/Newark-Rio de Janeiro service daily would be even more critical.

United argued previously that the Department could award fewer than seven frequencies to applicants seeking daily service (see Consolidated Response of United in Dockets OST-99-6284 and 6759, January 21, 2000 at 4), but neither United nor any other applicant has said it would be willing or able to use fewer frequencies than it has sought. The rebuttal exhibits confirm that Continental's request for a single frequency is uncontested. The American and Delta rebuttal exhibits do not even address Continental's single frequency proposal. United's expert says United should receive seven frequencies for Los Angeles service, and recognizes that awarding one of the other four frequencies "to Continental would give a carrier the ability to provide daily New York-Rio de Janeiro service." (UA-RT-1 at 21)

Since Continental's single frequency proposal is uncontested and an award of that frequency will not affect any other carrier's proposal, the Department should grant Continental's uncontested request for a single frequency before it decides how to allocate the ten contested Brazil frequencies.

B. Continental's Three Weekly Houston-São Paulo Flights Via Lima Will Restore Daily São Paulo Service For The Only Proposed Gateway Without Daily Brazil Service

Continental's proposal for three Houston-São Paulo frequencies should be preferred over Delta's proposals to serve the much smaller Atlanta-Rio de Janeiro route or add U.S.-flag São Paulo service at New York (JFK) and over the proposals of long-time Brazil incumbents American and United, which already have ample Brazil access and frequencies.

Only Continental and Delta have submitted three-frequency service proposals, and Continental's proposal to restore a daily Houston-São Paulo service pattern, with three weekly flights via Lima complementing Continental's four continuing nonstop flights, is the clear winner. Continental's Houston hub is the only U.S. gateway currently without daily Brazil service. In the 1998 Brazil case, the Department recognized the importance of creating an entirely new gateway to Brazil that would promote inter-gateway and inter-carrier competition in the U.S.-Brazil market. Continental's combination of nonstop and one-stop service will provide Houston a daily pattern of São Paulo service while enhancing substantially Continental's ability to compete with American and its allies for U.S.-South America and intra-South America traffic and to provide important new benefits to the public. While Delta and United criticize Continental for proposing one-stop service, Continental has used this one-stop strategy successfully to grow other new Central and South American routes. Delta and United also criticize Continental's proposal to use narrow-body Boeing 757 aircraft, but many U.S.-Latin America routes are currently served with the same aircraft, including Delta's 3,189-mile Atlanta-Lima service. (HOU-R-19) Continental's Boeing 757 service includes Continental's award-winning BusinessFirst service, and unlike Delta's proposal to offer three weekly nonstop Rio de Janeiro flights at a gateway with too few local passengers to support the service, Continental's Houston proposal recognizes both the realities of Brazil's recovering economy and the benefits of offering daily São Paulo service at Houston in conjunction with new Lima- São Paulo service.

Delta's Executive Vice President and Chief Marketing Officer readily admits that "[t]he most critical element" in Delta's plan for Brazil "is the addition of daily New York-São Paulo service" and its "first priority is for daily New York- São Paulo authority" which is the "centerpiece of Delta's proposal." (DL-T-1 at 3, 8 and 20) These statements echo the admission of Delta's Chief Executive Officer in the U.S.-China case that "New York (JFK) is Delta's premier international gateway,"⁶ not Atlanta. While Delta now says it wants three frequencies for frequencies for nonstop Atlanta-Rio de Janeiro service, its sincerity is questionable since Delta failed to begin the service while it had temporary use of Continental's three Houston-São Paulo frequencies this year and there are simply too few Atlanta-Rio de Janeiro local passengers to make the service viable. Delta's recent default on providing Atlanta-Rio de Janeiro service when it had the chance earlier this year comes on top of Delta's default on its Boston-JFK-São Paulo-Montevideo backup authority, its switch from Atlanta-São Paulo to Atlanta-Rio de Janeiro and its elimination of through service between Cincinnati and both São Paulo and Rio de Janeiro.

Delta's claim that Continental is "wasting" the three frequencies at issue is clearly a case of the pot calling the kettle black. While Delta failed to implement the very proposal it relied upon to gain use of Continental's three Houston

⁶ Mullin Testimony at 9.

frequencies,⁷ Continental's commitment to its Houston- São Paulo service has been constant. Contrary to Delta's direct and rebuttal exhibits, Continental commenced the first-ever nonstop service between Houston and São Paulo on November 30, 1999, implementing the daily Houston-Brazil service selected over Delta's duplicative New York(JFK)-São Paulo proposal. (CO-RT-1 at 4) Refusing to retreat from its service proposal, Continental commenced its daily nonstop Houston-São Paulo daily service in the midst of Brazil's economic downturn. Continental continues to operate four weekly nonstop Houston-São Paulo flights and permitting Continental to complement those flights with three Houston-São Paulo flights via Lima will benefit the traveling and shipping public far more than would permitting Delta to add three weekly flights serving the tiny number of Atlanta-Rio de Janeiro passengers. As Continental's Chairman and Chief Executive Officer explained, "Continental's combination of nonstop and onestop service will provide Houston a daily pattern of service to São Paulo while enhancing Continental's ability to compete with American and its allies for U.S.-South America and intra-South American traffic significantly and providing important new benefits to the public." (CO-RT-1 at 5)

⁷ As the Department said when it rescinded the pendente lite frequency allocation awarded to Delta in Order 99-12-27, "we granted Delta pendente lite authority effective January 5, 2000 to use the three Houston frequencies for services between Atlanta and Brazil based on Delta's representations that it would use those frequencies immediately . . . Delta in its pleadings before us has now indicated that it has no firm plans to use the frequencies until June 1, 2000." Order 2000-2-12 at 9.

The Houston-São Paulo route has substantially more passengers than the Atlanta-Rio de Janeiro route. (CO-R-1132) Continental is growing its international gateway at Houston, having added nonstop service to 18 international cities since June 1997. (CO-R-1134) Continental at Houston supports more international nonstop service, more international departures and more international nonstop seats than Delta supports at Atlanta. (CO-546, CO-547, CO-548) Adding three Houston-São Paulo flights via Lima will strengthen Continental's growing international gateway at Houston. (CO-550) The larger Houston gateway should receive daily Brazil service before the much smaller Atlanta gateway receives additional Brazil service.

C. Delta Would Waste Additional Brazil Frequencies

Delta boasts that it is “the strongest and most successful new entrant to Brazil” and says it is “building Atlanta into a major gateway hub to Latin America” (DL-T-1 at 1 and 6), but the facts show otherwise. Delta's onboard passengers per departure are below the industry average for U.S.-São Paulo service and well below Continental's average for New York/Newark-São Paulo. (CO-R-1154). Significantly, Delta's weighted average load factors for all the Atlanta-Latin America flights it has introduced since 1997 are nine percent lower than industry average load factors between other U.S. points and the same Latin American points.

(CO-R-1155) Indeed, on four routes Delta's load factors were well below 50%.⁸

These low load factors may explain Delta's seven percent reduction in the number of Latin American seats offered in 1999 (CO-502) and its unwillingness to serve any but the largest, limited-entry South American points. Delta has been reducing Latin America seats while Continental has been increasing its Latin American presence. (CO-502) Delta has chosen not to utilize open route authority in many Latin America countries. (CO-R-1105) Similarly, although Continental will be operating flights serving 20 points in Mexico this summer, Delta will operate flights serving only four Mexican points. (CO-R-1106) Worldwide, Delta has abandoned 45 international routes since 1992 (CO-R-1150), including five limited-entry Asian routes. (CO-R-1103)

Delta distorts the record by erroneously claiming that Continental "never implemented" one weekly New York/Newark-Rio de Janeiro frequency and three Houston-São Paulo frequencies. (DL-R-203) Delta knows or should know that Continental operated the seventh weekly Newark-Rio de Janeiro frequency for over two years and continues to use it on a seasonal basis, and Continental implemented service using the three Houston frequencies in November 1999. Continental continued to offer New York/Newark-Rio de Janeiro nonstop service after American and United abandoned service on their New York (JFK)-Rio de Janeiro routes.

⁸ Those routes are: Atlanta-Caracas (38%), Atlanta-Panama City (44%), Atlanta-San Salvador (42%) and Atlanta-Lima (41%). (CO-R-1139) Each of these load factors is significantly lower than the load factors of Continental flights Delta claims are performing "poorly" at New York/Newark. (DL-R-T-1 at 8)

Delta also falsely accuses Continental of shrinking “from competition with American and its antitrust immunized partner in Chile” (DL-187) when, in fact, Continental will be offering daily New York/Newark-Santiago service this summer while Delta has offered no Chile service whatever on the open-entry U.S.-Chile routes.⁹

Neither of Delta’s proposals for Brazil is credible. Delta stimulates many connect markets behind Atlanta which do not warrant market stimulation. (CO-R-1138) Delta claims more Rio de Janeiro connecting passengers via Atlanta than Continental forecasts for its less circuitous New York/Newark route. (CO-R-1140) Delta forecasts double-connect passengers on its Atlanta-Rio de Janeiro route, while Continental includes no double-connect passengers in its proposals. (CO-R-1142) Delta also forecasts substantial numbers of Rio de Janeiro passengers over Atlanta from Florida even though the service requires a significant backhaul and Miami, with no backhaul, offers significant nonstop and connecting service for the same passengers. (CO-R-1141) Correcting for inflated market shares and overly ambitious stimulation rates reduces Delta’s Atlanta-Rio de Janeiro forecast by 8,744 passengers. (CO-R-1137)

⁹ CO-R-1105, CO-R-1000 at 3. Delta has just announced its intention to offer Atlanta-Santiago service starting in November, but it remains to be seen whether Delta will be able to operate that route any more successfully than it has operated other Latin American routes. Although Delta said it was eager to begin Chile service as soon as possible, it will be over a year after implementation of the U.S. Chile open skies agreement before Delta’s service begins.

Similarly, on its São Paulo proposal, Delta unreasonably stimulates New York by 15%, given the current level of existing service. (CO-R-1145) Correcting for inflated market shares and overly ambitious stimulation rates reduces Delta's New York (JFK)-São Paulo forecast by over 11%. (CO-R-1143) Additionally, Delta's forecasted transatlantic traffic for New York (JFK) requires an average of over 12 hours in connecting time. (CO-R-1125) Continental's New York/Newark-Rio de Janeiro proposal offers online nonstop to nonstop service for five times as many points as Delta's New York (JFK) proposal. (CO-R-1130)

Ironically, Delta has asked for more Brazil frequencies than any applicant, but Delta's proposed service is unnecessary (Atlanta) and duplicative (JFK) and Delta would be unable to use any new Brazil frequencies effectively without a U.S.-Latin American network.

D. Continental Should Be Awarded Four Brazil Frequencies Before Either American or United Receive Additional Brazil

1. American Is the Least Deserving Applicant

With the largest share of the Brazil frequencies available and its string of Latin American alliances, including an alliance with Brazil's Transportes Aereos Meridionais ("TAM"), American is the least deserving applicant in this case. As Continental's Chairman and Chief Executive Officer notes, "Brazil is the one Latin American country in which American does not have an alliance with the country's largest airline, and American's clear goal in requesting New York (JFK) –Rio de Janeiro frequencies on a permanent basis is weakening the position of new entrants

like Continental.” (CO-T-1 at 6) New York (JFK) is without doubt American’s worst-performing U.S.-Brazil route (DL-R-101), with average load factors in the low 50s. (DL-R-109)

Continental’s New York/Newark hub is far larger than American’s New York (JFK) operation, with more daily departures, more nonstop destinations, more domestic enplanements, many more international nonstop destinations, and more total seats than American at New York (JFK). (CO-R-1178/1185) Continental’s Houston hub is also far larger than American’s New York (JFK) operation, also offering more daily departures and seats, serving more international and domestic nonstop destinations and enplaning more domestic passengers than American at New York (JFK). (CO-R-1181/1186)

Awarding American seven permanent frequencies for the New York (JFK)-Rio de Janeiro service it abandoned totally in favor of Miami before Continental is awarded the one frequency it needs to continue its New York/Newark-Rio de Janeiro service on a year-round basis would be fundamentally unfair and contrary to the public interest. Similarly, it would be contrary to the public interest to award American seven frequencies it does not need before awarding Continental the three frequencies it needs to restore daily Brazil service at its Houston hub.

2. United Does Not Need More Brazil Access

The four frequencies Continental seeks should also be restored before United is awarded seven additional frequencies to duplicate Los Angeles-São Paulo service provided by STAR Alliance member VARIG, on which United code-shares, and the

Los Angeles-São Paulo flights provided by VASP, JAL and Korean Airlines. United and its STAR alliance partner, VARIG, control 37% of all U.S.-Brazil frequencies (CO-R-1167), and United already serves the Los Angeles-São Paulo route (CO-R-1157). Not only is United the second largest U.S. carrier to Brazil in terms of frequencies and routes, but also United has the most comprehensive U.S.-Brazil service network of any U.S. carrier through its alliance with VARIG. (HOU-R-N-1 at 7).

Continental's New York/Newark hub is larger than United's Los Angeles operation, serving many more domestic and international destinations than United at Los Angeles. (CO-R-1161/1162/1163) Continental's Houston hub is far larger than United's Los Angeles operation (CO-R-1158), with Continental offering more domestic seats and serving more international and domestic destinations at Houston than United at Los Angeles. (CO-R-1159/1160/1164) Most of United's connecting domestic cities provide little São Paulo traffic. (CO-R-1166) Despite United's claims, the proposed additional Los Angeles-São Paulo service will provide minimal benefit to connecting western U.S. cities. (CO-R-1168) United artificially inflates its Los Angeles passenger forecast by applying the growth rate for total U.S.-São Paulo traffic to Los Angeles-São Paulo, which has a lower growth rate. (CO-R-1176) United's projected stimulation of 33% for the local Los Angeles-São Paulo market is similarly unsupported by historic performance. (CO-R-1175) Likewise, United overstimulates the local San Francisco-São Paulo market. (CO-R-

1174) With Continental's conservative reforecasting, United's projected load factor drops nearly seven points. (CO-R-1171)

III. RESTORING TO CONTINENTAL FOUR BRAZIL FREQUENCIES WILL IMPROVE MARKET STRUCTURE, ENHANCE COMPETITION ON U.S.-BRAZIL AND U.S.-LATIN AMERICA ROUTES, AND ASSURE CONTINUED SERVICE OVER THE LONG-TERM

The Department has repeatedly recognized the value of developing a strong additional U.S.-South America network by awarding Continental authority on open entry and limited entry routes, thereby enabling Continental to develop a U.S.-Latin America route network that offers critical competition for American (the dominant U.S. carrier), American's foreign partners and other incumbents, including United and its partners. Restoring four Brazil frequencies to Continental will further that pro-competitive policy much more than would awarding Delta ten, seven or even three frequencies it cannot use effectively or further entrenching American or United by awarding either carrier seven more frequencies.

Although United's expert urges the Department to "focus solely on the size of the aircraft, the number of passengers stimulated by the new service, and the value that the market places on service at alternative Brazilian cities" (UA-RT-1 at 1), the Department has articulated other decisional criteria for this case. When it originally instituted this proceeding, the Department announced that it would consider "which applicant will be most likely to offer and maintain the best service for the traveling and shipment public" and "the effects of the applicants' service proposals on the overall market structure and level of competition in the U.S.-Brazil

market, and any other market shown to be relevant” and said it would consider other factors historically used for carrier selection, where relevant. (Order 99-9-23 at 5)

Time and again the Department has recognized the importance of Continental’s development of a South America route network competitive with American’s. For instance, in the U.S.-Colombia Combination Service Case, the Department said, “. . . selection of Continental would promote the development of a third significant U.S.-flag competitor in South America.” (Order 93-9-12 at 7) When Continental was first awarded U.S.-Colombia authority, the Department concluded that “Continental’s proposal will improve market structure in the U.S.-Colombia and U.S.-South America markets by bringing a new entrant into the U.S.-Colombia market . . . and increasing competition in the U.S.-South America market.” (Order 93-7-38 at 9) In the subsequent U.S.-Lima Combination Service Proceeding (1996), the Department said, “. . . Continental’s proposal will provide significantly greater overall public benefits in the form of intergateway competition with Miami, the traditionally dominant U.S. gateway, and in the form of enhanced intercarrier competition with American, the dominant U.S. carrier . . . to much of South America.” (Order 96-4-48 at 6)

In the 1997 U.S.-Brazil Combination Service Proceeding, the Department awarded Continental New York/Newark-Brazil authority, and said the award “will enhance Continental’s participation in South American markets generally, important to Continental’s efforts to develop a South American route network, and

thereby increase Continental's competitive posture in the U.S.-South America market dominated by American and United." (Order 97-3-8 at 11) In that case, the Department also recognized the importance of "developing a competitive South American route network" and rejected Delta's claim that it was entitled to priority because of "Delta's new entry into South America." (Order 97-4-3 at 9)

Continental's efforts to build a complete South American network and its continuation of service on its Brazil routes despite the constriction of Brazil's economy demonstrate that Continental is the applicant most likely to maintain the service it has proposed.

As Continental's Chairman and Chief Executive Officer explained,

Continental is the only U.S. airline committed enough to maintain frequent New York/Newark-Rio de Janeiro service through Brazil's lean times, and despite that country's economic downturn, including daily service provided for two years from September 1997 through September 1999. While Continental was persevering and providing a valuable public service using six of its seven frequencies year-round, American abandoned the New York/Newark-Rio de Janeiro route in favor of entrenching its Miami fortress, United also abandoned the route and Delta failed to even propose nonstop U.S.-Rio de Janeiro service.

(CO-T-1 at 2) While Brazil's economy remained in its decline, Continental also followed through on its proposed Houston-São Paulo service, operating daily nonstop service during the 1999 winter peak season and currently operating four weekly nonstop Houston-São Paulo flights.

United's suggestion that it should receive seven frequencies here because it has received fewer "newly available" Brazil frequencies and nonstop South America

frequencies than other applicants (UA-R-204 and R-205) ignores the fact that United already has more “old” authority in Central and South America than it uses and is retreating in the face of competition. If United truly wanted to operate its own Los Angeles-São Paulo flights, United could fund the service with surplus frequencies.

Despite its claims of success in Brazil (see DL-T-1 at 1), Delta’s low load factors on its Brazil and other Latin America routes make it a poor choice for more additional frequencies. Furthermore, Delta’s failure to fly numerous Latin American routes, its abandonment of other international routes and its failure to follow-through on Brazil service promises provide no assurance that Delta would maintain service on Brazil routes over the long-term.

The Department will further its goal of enhancing market structure, increasing competition and guaranteeing continued service over U.S.-Brazil routes best by awarding Continental one frequency for New York/Newark-Rio de Janeiro nonstop service, with an extension to Belo Horizonte, and three frequencies for Houston-São Paulo service via Lima.

IV. CONCLUSION

For the reasons stated above, the Department’s first decision in this case should be awarding Continental the one permanent frequency it requires to restore daily, year-round Rio de Janeiro service for thousands of passengers and shippers at the New York/Newark gateway on June 28, 2000. The Department should also

select Continental's proposal to restore daily Houston- São Paulo service with three weekly Houston-São Paulo flights over Lima.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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April 13, 2000
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