

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

**1999 U.S.-BRAZIL
COMBINATION SERVICE CASE**

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) **Docket OST-99-6284**
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**BRIEF OF
DELTA AIR LINES, INC.**

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April 13, 2000

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I. INTRODUCTION AND SUMMARY OF ARGUMENT.

Overwhelming public interest considerations compel the Department to use the available frequency opportunities to rebalance the competitive structure of the U.S.-Brazil marketplace. Delta urgently requires ten additional Brazil frequencies to compete effectively against American, Continental and United, each of which enjoys tremendous advantages in terms of Brazil frequencies and corresponding route structures. Only Delta's full package of daily New York-Sao Paulo-Montevideo service and three nonstop Atlanta-Rio de Janeiro flights will maximize the public benefits of the opportunities that are available as a result of American's misuse and Continental's disuse of Brazil frequencies.

American and Continental have failed to maximize the utilization of these valuable rights. This is evidenced by American's attempt to move its flights from New York to Miami, and by Continental's failure to use three of the seven

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frequencies it was awarded to provide daily nonstop Houston-Brazil service. The Department should not return any frequencies to American or Continental based on their present proposals, which are identical to the service patterns that precipitated their original defaults. Awarding frequencies to United would not maximize competition or market structure benefits, given that United is the second-largest U.S.-flag Brazil incumbent.

Without the ability to offer nonstop Brazil service at New York -- a right enjoyed by every other U.S. flag carrier -- Delta has been unfairly handicapped in the competitive battle for U.S.-Brazil and U.S.-Latin America traffic. The Department's highest priority should be to enable new competitive entry by Delta on the critically important New York-Sao Paulo route. This would also facilitate Delta's introduction of the first single-plane service between New York and Montevideo.

In order to accomplish this primary objective, the Department must reallocate at least seven of the eleven available frequencies to Delta. The richest and least deserving U.S.-Brazil frequency holder is American. With some 49 frequencies at its disposal, American holds nearly half of the entire U.S. pool of 105 frequencies. It would be untenable for the Department to return the seven *pendente lite* frequencies to American to operate a route it voluntarily abandoned

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less than a year ago, thereby enabling American to block competitive entry by Delta at New York.

A major theme of American's Rebuttal case is that nonstop service on the JFK-Rio de Janeiro route "*depends*" on granting American's application. This is rubbish. In fact, just this month, American has launched *two* new nonstop Brazil services by reallocating seven of its 28 Miami frequencies to other cities: four to fund new Orlando-Sao Paulo service, and three to double-up Sao Paulo flights at American's DFW hub. American now operates triple-daily Brazil service from Miami, double-daily Brazil flights at New York, ten weekly Brazil flights at DFW, and four new nonstop Orlando-Brazil flights.

With so many frequencies at its disposal, American can pick and choose Brazil routes at will. If American believes that nonstop service on the New York-Rio de Janeiro route is important, American has demonstrated that it possesses the frequency resources and operational flexibility to maintain that service using its existing allocation of 42 U.S.-Brazil frequencies.

In actuality, the only services that truly *depend* on the Department's decision in this case are those proposed by Delta. Delta holds just seven weekly Brazil frequencies, by far the fewest of any applicant, and enough to provide only a single daily service. Delta has no discretion to offer any new nonstop Brazil

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service without an award from the Department in this proceeding. By contrast, American, United and Continental hold approximately three to seven times the number of frequencies as Delta, and each of the other applicants can fund its proposed services from existing frequencies.

The other critical consideration that *depends* on the Department's decision is whether there will be a meaningful increase in the level and effectiveness of competition and an improvement to the U.S.-Brazil competitive market structure as a result of an award. With just seven frequencies, Delta's competitive position has been artificially restrained. While Delta has proven very effective at capturing flow traffic via its highly successful Atlanta hub, Delta has not been allowed compete on a head-to-head basis with its much larger U.S.-flag rivals on the vitally important New York-Sao Paulo nonstop route. An award of seven frequencies will double Delta's size and impact on U.S.-Brazil competition, and an award of ten frequencies will increase Delta's competitive impact by nearly 150 percent.

With American, United and Continental each having staked its claim on the critical New York-Sao Paulo route, they are now unanimous in hanging out the "No Vacancy" sign on competition at New York. The fact that each U.S. flag incumbent (as well as most Brazilian flag carriers) provides New York-Sao Paulo

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service is compelling evidence of just how important this route is to having an effective presence in Brazil.

At over 150,000 annual O&D passengers, New York-Sao Paulo is the largest and most important U.S.-Brazil route. Moreover, because the New York-Sao Paulo route effectively links the business and financial capitals of North and South America, a competitive presence on this route is absolutely essential for a carrier to be identified as a major player in Latin America in the minds of businesses, travel agents and consumers. If United, American and Continental believe there is too much service and competition on New York-Sao Paulo, they are, of course, free to move their own frequencies to less amply served routes, such as, for example, Los Angeles-Sao Paulo, Houston-Sao Paulo, or JFK-Rio de Janeiro.

In order to maximize the public benefits of an award, Delta must be given the ten frequencies it needs to realize its potential as a major Brazil competitor by offering the beneficial new services it has proposed. The following list summarizes the key benefits of Delta's proposal:

- An award to Delta will best enhance the U.S.-Brazil competitive market structure. Delta holds only enough frequencies for a single daily flight, while American, United and Continental each hold approximately three to seven times more frequencies than Delta.

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- Delta is the only applicant in this proceeding that has submitted a new service proposal. The proposed services of American, Continental and United all involve routes for which those carriers previously held authority, and voluntarily abandoned or failed to implement service for commercial reasons.
- Delta will add a new entrant competitor at the largest and most important U.S. gateway to Brazil, providing enhanced intragateway competition at New York for travel to Sao Paulo.
- Delta will provide the first and only single-plane service between New York and Uruguay.
- Only an award to Delta will establish a new nonstop U.S.-Rio de Janeiro competitor. Delta's Atlanta-Rio de Janeiro proposal will provide nonstop-to-nonstop Rio de Janeiro connections to nearly 130 U.S. cities.
- Delta will benefit over 150,000 total passengers, including 110,000 New York-South America passengers on its daily JFK service, and 43,000 passengers on its three weekly Atlanta-Rio de Janeiro flights.
- Delta's New York proposal will benefit 38,000 more passengers than American's New York-Rio de Janeiro service, assuming American is able to achieve its best ever historical performance for the route.
- Delta's Atlanta-Rio de Janeiro nonstop service will benefit over 20,000 more nonstop passengers than Continental's Houston-Brazil onestop service, even accepting Continental's highly exaggerated forecast at face value.

II. DELTA'S TWO ROUTE NEW YORK-SAO PAULO AND ATLANTA-RIO DE JANEIRO PROPOSAL WILL MAXIMIZE THE USE OF THE AVAILABLE FREQUENCIES.

A. Delta's Service Proposal.

Delta will use seven frequencies to operate daily service on a New York-Sao Paulo-Montevideo routing, plus three frequencies to operate new nonstop Atlanta-Rio de Janeiro service. In order to maximize the efficient use of limited U.S.-Brazil and beyond rights, Delta's JFK-Sao Paulo flight will be timed to cross-connect with its existing Atlanta service, permitting passengers from the Atlanta flight to make connections at Sao Paulo to/from Montevideo, and permitting passengers from the New York flight to make connections at Sao Paulo to/from Rio de Janeiro. DL-101, 102, 103.

Delta will operate all of its proposed Brazil services with Boeing 767-300ER aircraft outfitted in a two-class 195 seat configuration. DL-400. This modern and efficient intercontinental aircraft is used by Delta extensively in its international network and is widely accepted by and popular with consumers. The 767-300ER aircraft is perfectly suited for the development of long-haul international service to Brazil. Delta also operates larger intercontinental aircraft such as the MD11 and 777, which gives Delta the flexibility to increase capacity as demand and market conditions warrant. In fact, Delta recently upgauged its Atlanta-Brazil services from 767 to MD-11 aircraft.

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Last year, Delta introduced its highly acclaimed BusinessElite service, which offers travelers first class service at a business class fare. Delta will be the first and only competitor to offer this innovative new product on JFK-Brazil routes, which are heavily populated by business travelers. DL-156.

B. Delta's Traffic Forecast.

Delta expects to transport a total of over 153,000 U.S.-South America passengers on its New York and Atlanta flights during the forecast year.

- Delta's New York service will benefit approximately 110,000 passengers, including 75,000 New York-Sao Paulo local passengers, 16,000 New York-Montevideo passengers and 17,000 online connecting passengers.
- Delta's three weekly Atlanta-Rio de Janeiro flights will benefit an additional 43,000 passengers, including 7,000 local Atlanta-Rio de Janeiro passengers and 35,000 online connecting passengers.

III. DELTA WILL PROVIDE MORE SERVICE AND COMPETITIVE BENEFITS THAN ANY OTHER APPLICANT.

A. Delta Must Be Given Additional Frequencies to Allow It to Compete More Effectively on Critical U.S.-Brazil Routes.

Delta's efforts to become a leading competitor to Latin America will be significantly enhanced by the selection of Delta to provide the New York-Brazil-Montevideo and Atlanta-Rio de Janeiro services it has proposed in this proceeding. The award of additional frequencies to Delta will produce substantially greater competitive impacts and market structure benefits on the U.S.-Brazil and U.S.-Latin America marketplaces than any other possible choice.

An award of seven frequencies will *double* the number of Delta services to Brazil and an award of ten frequencies will increase Delta's Brazil service presence by nearly 150 percent. Because each of the other applicants' current frequency holdings outnumber Delta by a factor ranging between three and seven, there are comparatively fewer benefits to be gained by authorizing additional services by the much larger incumbents. For example, a change in American's frequency count from 49 to 42 frequencies results in a reduction of only 14 percent of its total Brazil operations, which American could readily offset by operating larger equipment. DL-155.

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A strong presence in Brazil is crucial to Delta's ability to develop an effective network between the United States and Latin America. Brazil is by far the largest U.S.-South America air travel market. With 30% of U.S.-South America passengers, Brazil is nearly twice as large as the next largest country, Venezuela. Exhibit DL-125. Brazil's commanding share of U.S.-South America traffic is not surprising in light of the fact that Brazil's gross domestic product accounts for almost half of South America's aggregate economic activity. Exhibit DL-127. Brazil's already large traffic base has averaged a 12% annual growth rate, increasing from 1.7 million passengers in 1994 to over 2.6 million passengers in 1998. Exhibit DL-126.

Delta has made the most of the limited entry Brazil authority it has been awarded. The Department's selection of Delta to provide nonstop service between Atlanta and Brazil has been confirmed by the route's overwhelming success since Delta initiated service in June of 1997. In fact, last December, Delta dramatically increased capacity on the route by upgauging its Atlanta-Brazil services to MD11 aircraft. Delta has also followed on the success of its Brazil service by building Atlanta into a major gateway hub to Latin America, adding 49 new weekly nonstop flights between Atlanta and six Latin American countries, including Costa Rica, El Salvador, Guatemala, Panama, Venezuela and Peru. DL-110.

B. Delta Continues To Boldly Expand U.S.-South America Services With New Nonstop Atlanta-Santiago Service.

Just this week, Delta announced the introduction of new nonstop service between Atlanta and Santiago, Chile. This is the first and only nonstop new U.S.-flag service to be introduced since the effectiveness of open skies, and will provide important new service and competitive benefits to South America travelers and shippers. The introduction of Chile service by Delta is particularly important in light of the failure of Continental's Newark-Santiago flight and its complete withdrawal from the U.S.-Chile nonstop marketplace. Delta will be the only new entrant nonstop competitor to American and Lan Chile on U.S.-Chile routes.¹

The introduction of nonstop Atlanta-Santiago flights now brings Delta's nonstop U.S.-Latin America service to a total of 112 weekly nonstop flights, including service to a half dozen open-entry Latin America countries. It is unclear to Delta just how many services it will need to operate before it is no

¹ United, the other longstanding U.S.-Chile incumbent, provides nonstop service from Miami.

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longer regarded as a Latin American “toddler” by Continental’s Chairman. On the other hand, it is clear to Delta that as long as Continental is allowed to maintain its overwhelming advantage in terms of limited-entry Latin American authority, such as in Brazil where Continental outnumbers Delta’s frequencies by nearly three-to-one, Delta will be unable to challenge Continental and the other major Latin American incumbents on even terms.

**C. Delta Is Unfairly Disadvantaged
By its Lack of Brazil Frequencies.**

Delta is currently restricted to offering the fewest flights and least capacity of any U.S. carrier serving Brazil. DL-115. Delta’s next-closest competitor, Continental, holds nearly three times the number of frequencies -- more frequencies than it has been able to use -- and is able to offer almost triple the number of seats to Brazil as Delta. DL-113, 114, 115. United offers over four times as many seats as Delta, and American tops the charts with more than six times the capacity of Delta. Id.

With only seven weekly frequencies, Delta is able to offer service to Brazil from just one city, Atlanta. DL-105. By contrast, American offers 49 weekly nonstop flights from four different gateways; United offers four daily nonstop flights from three nonstop gateways, and Continental offers double-daily Brazil service from Newark plus four weekly flights from Houston. DL-106, 107, 108.

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Since Continental, United and American have several times the number of frequencies held by Delta, each of these carriers has the flexibility to operate its proposed service in this proceeding, while still preserving nonstop Brazil service from every city it currently serves. DL-151, 162. Delta has no such flexibility.

The Department should not allow American to retain frequencies to operate the New York-Rio de Janeiro service it voluntarily abandoned, or allow Continental to reclaim the default frequencies from its failed attempt to introduce daily nonstop Houston-Brazil service, at the expense of affording Delta its first opportunity to compete at New York and its first opportunity to introduce beneficial nonstop Rio de Janeiro service at Atlanta. Nor should United be awarded any more frequencies, when it already has the discretion to provide Los Angeles service with a portion of its 28 existing frequencies.

**D. New York-Sao Paulo Is Critical To
Delta's South America Competitiveness.**

New York-Sao Paulo nonstop service is the centerpiece of Delta's proposal. New York and Sao Paulo are the business and financial capitals of North and South America, making New York-Sao Paulo nonstop service an essential route for any carrier hoping to develop a recognized presence in Latin America. New York-Sao Paulo is the largest U.S.-Brazil route, and supports nearly a half million annual air passengers. DL-133, 134. Without nonstop New York-Sao Paulo

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service -- a service provided by every one of Delta's U.S. and foreign flag Brazil competitors -- Delta's ability to be identified in the minds of travel agents, corporations and consumers as a major service provider to Latin America is unfairly constrained. DL-109.

American, United and Continental have all staked out a place for themselves on the critical New York-Sao Paulo route. Yet now, with the prospect of new entry by Delta, each of the established incumbents decries the absence of any need for additional service or competition on the route. The ability to offer New York-Sao Paulo nonstop service is every bit as critical to Delta's effort to develop a comprehensive Latin America network as it is to each of the incumbents. If American, United and Continental feel that New York-Sao Paulo service is unimportant and that U.S.-Brazil frequencies could be better used elsewhere, those carriers are, of course, free to move their own New York-Sao Paulo frequencies to operate the various other routes they have proposed in this proceeding.

Delta is rapidly emerging as a leading carrier to Latin America. However, Delta's efforts to challenge American, United and Continental have been handicapped by Delta's lack of frequencies to adequately serve Brazil. In order to become a world-class competitor to Latin America, Delta must be able not only to challenge the incumbents for online connecting traffic -- as Delta has done

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successfully with its Atlanta-Brazil service -- but also to compete head-to-head with American, United and Continental on the critical New York-Sao Paulo route. Delta has the unfortunate distinction of being the only Brazil competitor without any nonstop authority from New York. DL-109.

Because Delta is prevented from offering nonstop service due to its lack of frequencies, Delta has been unable to effectively compete for New York-Sao Paulo traffic. Delta carries just three passengers per day between New York and Sao Paulo, whereas Delta's U.S. flag competitors carry between sixteen and twenty times more New York-Sao Paulo passengers. DL-111.

Delta's inability to compete for New York-Sao Paulo traffic is an odd paradox in light of Delta's strong international presence at JFK. Delta offers 113 daily nonstop flights from JFK to 51 points around the world, making Delta uniquely qualified to enhance both intragateway and intergateway competition from JFK. DL-140, 141.

Year after year, Delta has successfully grown its JFK operation, both in terms of number of flights and number of passengers. DL-142. The proposed New York-Sao Paulo-Montevideo service would be an important addition to Delta's JFK network, opening Delta's first route between New York and South America, and inaugurating Delta service to a new South American country. Delta

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has developed its JFK gateway into one of the premier gateways for nonstop service to Europe, and, given the opportunity, Delta can and will accomplish the same distinction for service between JFK and Latin America. DL-110.

E. Montevideo Single-Plane Service.

Delta's proposed single-plane service to Montevideo is the logical next step in expanding Delta's South American route network beyond Brazil. A prime indicator of Delta's future success on this route is the healthy growth rate of U.S.-Montevideo traffic, which has averaged a 14 percent annual increase over the past five years. DL-192. Uruguay has a close economic relationship with the United States, and U.S. exports to Uruguay have risen 14 percent since 1991, outpacing the rest of South America by three percentage points. DL-190, 191, 192. New York-Montevideo is slightly larger than Miami-Montevideo, and is almost three times larger than Chicago-Montevideo, yet Miami and Chicago both have daily single-plane service to Montevideo but New York does not. DL-193.

Delta's single-plane service to Montevideo will provide important service and competitive benefits. With single connection service to 130 U.S. cities, Delta's proposal will significantly improve the service and competitive options available to Uruguay travelers and shippers. DL-202. Delta will provide the first single connection service to 47 U.S. points and the first competitive single connection service between Uruguay and 54 U.S. points. Id.

F. Atlanta-Rio de Janeiro Nonstop Service.

The establishment of nonstop service between Atlanta and Rio de Janeiro is an important new benefit that will dramatically improve service and convenience for passengers and shippers on this route. All of Delta's Atlanta-Rio de Janeiro services currently operate on a one-stop basis via Sao Paulo. This necessarily increases travel time on the route, and diminishes the ability of Delta's Atlanta hub to compete for Rio de Janeiro connecting passengers compared to nonstop gateways, such as Miami.

Delta's Atlanta-Brazil services have proven to be a resounding success. However, because Delta holds just seven U.S.-Brazil frequencies – enough for just a single daily flight – Delta has been precluded from serving more than one Brazilian city on a nonstop basis from its Atlanta hub. The Department should take action to remove this restriction by awarding Delta the three additional frequencies for nonstop Rio de Janeiro service from its highly successful Latin American gateway hub at Atlanta.

With respect to the award of Brazil frequencies, the Department has recognized the importance of “provid[ing] consumers the special convenience of nonstop service in a nonstop market that does not receive it.” Order 98-12-33 at 7. The new Atlanta-Rio de Janeiro services proposed by Delta will provide Atlanta with that important convenience.

Delta's Atlanta-Rio de Janeiro proposal will provide more U.S. cities with nonstop connections to Rio de Janeiro than any other carrier. DL-171. Traffic between the interior U.S. points and Rio de Janeiro is growing substantially faster than traffic at the established gateways, and no carrier provides more comprehensive coverage to more of the United States than Delta at Atlanta. DL-172, 173. Delta will provide nearly 130 cities with online single-connection service to Rio de Janeiro, including 56 cities with first single-connection service and 36 cities with first competitive single-connection service. DL-209.

IV. THE OTHER APPLICANTS' PROPOSALS DO NOT MATCH THE SERVICE AND COMPETITIVE BENEFITS OF DELTA'S SERVICE PROPOSAL.

Delta has provided many affirmative reasons why its New York-Sao Paulo-Montevideo and Atlanta-Rio de Janeiro proposals merit the highest priority for an award in this proceeding. An analytical review of the other applicants' proposals only strengthens the conclusion that Delta should receive all ten frequencies it is requesting to implement its full package of service benefits.

A. American.

American has tried to present the Department with the false choice that it must somehow award American the seven *pendente lite* frequencies in order to preserve nonstop service between JFK and Rio de Janeiro. This is nonsense. With 42 permanent frequencies at its disposal, American has more than adequate

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resources to maintain its nonstop New York-Rio de Janeiro service, if that is the highest and best use of American's frequencies. Indeed, American has just launched two more completely new U.S.-Brazil services, funded from its large stockpile of 28 Miami frequencies.

The real issue to be decided is whether American should be allowed to perpetuate its dominance of U.S.-Brazil service by permanently securing effectively half of the entire U.S.-Brazil frequency pool and preempting new entry by Delta at New York. American has 42 permanent Brazil frequencies and should not receive a further award of the seven *pendente lite* frequencies that have been placed at issue due to American's voluntary abandonment of New York-Rio de Janeiro service less than a year ago and American's clear violation of the highly conditional terms of its original default award. The public interest would be far better served by enabling Delta to operate its second daily nonstop Brazil service, than American its seventh.

American's decision to abandon JFK-Rio de Janeiro service was no accident. The evidence of record shows without question that JFK-Rio de Janeiro is American's worst-performing U.S.-Brazil route. DL-R-101. In three years of service, the best load factor American has been able to achieve on the route was an anemic 57 percent, and load factors in the low 50s have been common. DL-R-109. In light of this fact, it is not surprising that American decided to abandon its

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JFK-Rio de Janeiro service. An American spokesperson summed it up best:
“American is ending its New York-Rio de Janeiro nonstop April 30 because the route was not performing as we would have liked.” DL-R-101.

What is surprising is that American would seek to re-institute service on the poorly performing New York-Rio de Janeiro route, when there are obviously more productive uses for which the frequencies could be deployed (even by American). Beginning April 1, 2000, American has decided to fund two new U.S.-Brazil services (four new Orlando-Sao Paulo nonstop flights, and three additional DFW-Sao Paulo flights) with a portion of its 28 Miami-Brazil frequencies – all of which were performing significantly better than its New York-Rio de Janeiro service. DL-R-101, R-102.

American correctly points out in its rebuttal exhibit AA-R-215 that Delta’s exhibits contemplate the continuance of American service between New York and Rio. However, contrary to American’s erroneous conclusions, the maintenance of its Rio de Janeiro service does not require an award of frequencies in this case, since this service is entirely feasible with American’s remaining allocation of 42 frequencies.

American has now tried to seize on the post-hoc rationalization that its resumption of JFK-Rio de Janeiro service had something to do with Varig’s

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withdrawal from the marketplace. American's assertions are belied by the fact that American's July 19, 1999 Petition for Reconsideration, begrudgingly announcing the service resumption and asking the Department to dismiss this proceeding as moot, makes no mention whatsoever of the need to replace Varig's service. Indeed, American's Petition continued to argue its right to use the conditional New York frequencies in other markets (Docket OST-96-1065).

American's resumption of the JFK-Rio service was motivated solely by American's miscalculation that it would be able to avoid this proceeding and block competitive entry by Delta at New York by resuming the JFK-Rio de Janeiro service. DL-R-105. This is not rational free-market behavior, nor is it consistent with the public interest, especially considering that less than a year ago, American was attempting to transfer frequencies from New York to Miami, because that was a more productive use of the frequencies.

The Department should put an end to the shell games that American has been playing with its *pendente lite* awards of New York-Rio de Janeiro and Miami-Rio de Janeiro frequencies. With its huge cache of 49 Brazil frequencies, American is able to launch new Brazil services at will, such as its Orlando service, and American is also permitted the luxury of doubling up services at DFW. Delta, on the other hand, is limited to a single daily Brazil flight, and must compete for each new opportunity in a carrier selection process. DL-R-103.

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American has plainly violated the terms of its original conditional award of New York frequencies. The very circumstances that led the Department to impose those conditions -- specifically, the availability of sufficient designations and the need for new competitive entry to better serve the long-term needs of the market -- have now come to pass and compel an award of the New York frequencies to Delta.

Moreover, as discussed above, if American is seriously interested in maintaining New York-Rio de Janeiro service, it has the flexibility to do so using a portion of its 42 permanent frequencies. DL-R-104. For instance, rather than doubling up DFW-Brazil flights, and launching new Orlando service, American could use those frequencies to maintain nonstop Rio de Janeiro Service at New York. Id.

In light of American's historical poor performance -- which American itself acknowledged when it abandoned the JFK-Rio de Janeiro route less than a year ago -- American's forecast is utterly lacking in credibility. Thus, American now claims that it will achieve a 79 percent load factor for New York-Rio when the best load factor it achieved in three prior years of service was only 57 percent. DL-R-109, R-110. Furthermore, despite its historical poor performance, American is now proposing a larger aircraft (the 767-300) than it has ever operated on the route (the 767-200). DL-R-111. If American had operated the

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larger –300 series aircraft that it is now proposing, American’s best historical performance would have been only a 52 percent load factor. Id.

Giving American the benefit of the doubt, and applying its best historical load factor of 57 percent to its current proposal, American will carry only 74,000 passengers, and would fall over 36,000 passengers short of its forecast traffic. DL-R-110. By contrast, Delta reasonably expects to carry nearly 112,000 passengers on its New York service, and, accordingly, Delta will benefit approximately 38,000 more U.S.- South America passengers than American.

The public interest urgently requires that the Department use this proceeding to rectify the competitive imbalance in the U.S.-Brazil and U.S.-Latin America marketplaces. American is the dominant, entrenched incumbent, not only in Brazil, but in Latin America as a whole. DL-R-106, R-107. Brazil is the economic powerhouse of South America, and an effective presence in Brazil is essential to any carrier’s ability to effectively serve the region. American’s dominant position in Brazil is a direct result of its huge frequency advantage. DL-150.

The long-term needs of the U.S.-Brazil market require the allocation of additional frequencies to Delta, so that it can compete more effectively with American and the other dominant incumbents. Delta is the only U.S. flag carrier

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to Brazil that is foreclosed from offering New York-Brazil service. It would be contrary to the public interest to allow American to perpetuate its dominance of U.S.-Brazil routes by continuing the poorly performing JFK-Rio de Janeiro service it voluntarily abandoned, only to block new competitive entry by Delta at New York.

B. Continental.

With barely a shadow of a service proposal, consisting of an ineffective narrow-body Houston-Lima-Sao Paulo tag service and a single nonstop Newark-Rio de Janeiro flight that even today is not operating, Continental's case consists mostly of name-calling and pointless attempts to denigrate Delta's highly successful Latin America service expansion.

The Department must determine whether the public interest would be better served by enabling Delta to establish the first-ever nonstop Rio de Janeiro service from its extremely successful Latin America hub at Atlanta, or whether, in lieu of the nonstop service Continental originally proposed and failed to implement, that carrier should be permitted to waste three highly valuable Brazil frequencies to

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operate a narrowbody tag flight from Houston to Lima, then on to Sao Paulo.²

The choice is not even close.

Continental's proposed one-stop flight would be an exceedingly poor use of valuable U.S.-Brazil rights. Not only is Continental the only carrier in this proceeding that has failed to submit a nonstop widebody service proposal, but Continental's three-frequency Houston onestop proposal would be the only such deficient use out of the entire U.S. pool of 105 Brazil frequencies. Delta's Atlanta proposal will deliver over 34,000 more annual *nonstop* seats to Brazil than Continental's *onestop* Houston-Lima-Sao Paulo service. DL-R-204. The Department should not countenance Continental's unprecedented and wasteful use of these valuable limited-entry rights.

Moreover, at 13.5 hours, Continental's one-stop flight would not be competitive with the numerous nonstop options that are available in the U.S.-

² Continental's Chairman incorrectly asserts that "Continental's request for one permanent New York/Newark-Rio de Janeiro frequency is uncontested. . ." CO-RT-1 at 2. Neither Delta nor any other carrier has stated that Continental should receive preferential consideration in the route case for its one frequency request. Now that the Department has decided to put all 11 dormant and otherwise misused frequencies at issue in one case, the Department may well decide that it would be better, for instance, to award the single frequency to United or American to enable them to increase service on the less-than-daily routes they are operating or have indicated they would operate, rather than allowing the frequency to continue to remain dormant in Continental's hands.

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Brazil marketplace. Accordingly, Continental's proposed service would be of little value to travelers and shippers. DL-R-201. In fact, Houston-Brazil travelers already have superior elapsed time connecting options. DL-R-209.

The lengthy delay entailed by the one-stop Lima service completely vitiates any benefit Continental might claim for its Houston connecting complex. In fact, some 70 percent of Continental's behind-Houston forecast passengers have significantly better Sao Paulo elapsed travel times via its own Newark hub. DL-R-209. And, given the critically poor performance that Continental's Newark-Brazil flights are experiencing, they could certainly use the additional traffic support. See, e.g., DL-177, Docket OST-99-6210 (Newark-Rio de Janeiro at 49 percent load factor; Newark-Sao Paulo at 60 percent load factor).

In contrast to Continental, Delta's Atlanta-Rio service will provide convenient, competitive and non-circuitous travel options for U.S.-Brazil travelers in every region of the country. Atlanta's ideal Southeast location gives it a substantial advantage in terms of circuitry, enabling Delta to draw U.S.-Brazil traffic from more cities across the country. DL-R-112. Delta generates passengers from over 170 points in North America on its Latin America services via Atlanta. DL-R-221. Nearly 80 percent of U.S.-Rio de Janeiro traffic lies within 20 percent circuitry of Atlanta, whereas only 40 percent of U.S.-Sao Paulo

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traffic lies within 20 percent circuitry of Houston (to say nothing of the additional mileage and time delay entailed by the Lima stop). DL-R-213.

Consequently, Delta will produce vastly greater network competitive benefits than Continental. Delta will benefit over five times more U.S.-behind-gateway cities than Continental (147 cities to 27), and Delta will carry over eight times more connecting passengers than Continental (34,097 passenger to 3,849). DL-R-211, 219.

Even taking Continental's exaggerated Houston forecast at face value, Delta's Atlanta-Rio de Janeiro proposal will benefit over 20,000 more annual U.S.-Brazil passengers than Continental at Houston. DL-R-205. However, Continental's forecast is grossly over-inflated. Continental claims *160 percent stimulation* at Houston for the three incremental onestop flights on top of its existing nonstop service. By contrast, Delta claims only 30 percent stimulation at Atlanta for the first-ever Atlanta-Rio de Janeiro nonstop service – some 130 percentage points lower than Continental. DL-R-206. Adjusting Continental's forecast for its completely unreasonable local market stimulation yields an uneconomic load factor of only 46 percent. DL-R-207.

The uneconomic nature of Continental's proposed Houston operation is consistent with the fact that Continental failed to implement the daily nonstop

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service it promised in the 1998 Brazil Case. The viability of Continental's proposed Houston service and the substantial likelihood of its default was a major issue in the prior case. As it turns out, Delta was right. Continental wasted 49 percent of its allocated Brazil frequencies in 1999, defaulting on both its Newark-Rio de Janeiro and Houston-Sao Paulo proposals. DL-186.

Continental's attempt to deflect attention from its own service failures by calling into question Delta's commitment to operate single-plane Montevideo service, based on Delta's alleged "abandonment of CVG-ATL-GRU-GIG single plane service", is a red herring. With 11 daily nonstop flights between Atlanta and Cincinnati, Delta has hardly "abandoned" that route. Based on its high level of domestic service and actual traffic-generating experience, Delta determined that Cincinnati-Brazil could be more efficiently served by connections. Contrary to Continental's assertions, Delta has maintained single-plane service similar to its Montevideo proposal between Sao Paulo and Rio de Janeiro for some three years.³

³ Continental's misplaced comparisons about the relative success of Delta's Brazil services based on Continental's allegedly larger number of passengers per departure are also without merit. Continental's larger departure volume is a function of its inappropriate equipment selection. Continental's ancient and oversized DC-10s have produced seriously uneconomical results on all of Continental's South America routes, precipitating a string of service defaults. The results speak for themselves. Moreover, Delta has recently substantially increased capacity on its U.S.-Brazil routes by upgauging its 767 aircraft to 40 percent larger MD-11 equipment.

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The Department should reallocate the three available Houston default frequencies to Delta for use between Atlanta and Brazil. It would be a serious mistake to even consider authorizing Continental's scaled-back narrowbody one-stop Houston-Lima-Sao Paulo proposal, when Houston has been proven incapable of sustaining daily nonstop service.

C. United.

The Department should not award any additional Brazil frequencies to United, the second largest U.S. carrier to Brazil, at the expense of authorizing Delta's full package of ten new flights, including daily nonstop JFK-Sao Paulo service and three nonstop Atlanta-Rio de Janeiro flights. With 28 frequencies -- four times the number of frequencies as Delta -- United has considerable discretion in choosing which routes to operate. DL-301. United is able both to participate on the critically important New York-Sao Paulo route, and to offer nonstop service to Rio de Janeiro. Because Delta has just seven weekly frequencies, it is limited to servicing the single Atlanta-Sao Paulo nonstop city-pair.

United's rebuttal testimony devotes considerable energy to explaining the relative unimportance of nonstop service to Rio de Janeiro vis-à-vis Sao Paulo: "Rio de Janeiro is much more of a tourist spot and, holding other things equal,

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markets generally attach lower values to the service provided to leisure destinations. There are a number of reasons for this. . . .” UA-RT-1 at 27.

Nonetheless, United ignores the fact that it uses a full seven of its 28 Brazil frequencies to provide daily nonstop service between Miami and Rio de Janeiro. The obvious solution for United is to simply heed its own advice, use its Miami-Rio frequencies to introduce nonstop service between Los Angeles and Sao Paulo, and replace its “less valuable” Miami-Rio flights with tag service, as Delta has been doing for several years.

United holds enough U.S.-Brazil frequencies to allow it to maintain daily nonstop Brazil service at each gateway it currently serves and to add new Brazil service at Los Angeles. DL-R-303. United has already demonstrated its flexibility to add new gateways to Brazil and Argentina by moving frequencies from Miami, where United is waging a losing battle with American. DL-R-302. United can do the same for Los Angeles. DL-R-303. On the other hand, with only seven frequencies, the only way Delta can provide New York-Sao Paulo or Atlanta-Rio de Janeiro service is to receive an award of frequencies available for allocation in this proceeding.

The small local market size is a significant weakness of United’s service proposal. New York-Sao Paulo traffic is over five times greater than Los Angeles-

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Sao Paulo traffic. DL-R-312. There are also approximately three times more available nonstop seats per passenger at Los Angeles than New York. DL-167. It should not be forgotten that United previously commenced Los Angeles-Sao Paulo service, only to abandon the route six months later. DL-R-304. During its brief service period, United faced significantly less competition in the market than it will face today. However, even now, foreign flag carriers such as JAL have recognized that New York is a stronger local market, and have shifted their fifth-freedom Brazil services from Los Angeles to more productive use at New York. DL-R-311.

While United touts the fact that it would be the first nonstop U.S. carrier service in the western United States, a mere 17% of the U.S.-Sao Paulo traffic is located in that entire region. DL-R-309. In contrast, Delta's New York gateway alone accounts for 22% of U.S.-Sao Paulo traffic. DL-R-310.

With a substantial lack of U.S.-Brazil traffic in the western United States, United's proposed Los Angeles service offers fewer benefits to U.S. passengers than either Delta's New York-Sao Paulo or Atlanta-Rio de Janeiro proposals. Los Angeles' west coast location makes it poorly situated to serve as a connecting gateway for Brazil traffic. In contrast, over 80 percent of U.S. O&D traffic lies within 20 percent circuitry of Atlanta (DL-R-212), and Delta's JFK connecting

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complex will provide significantly improved South America travel options for dozens of U.S. cities. DL-R-116.

United's codeshare arrangement with Varig, the dominant Brazilian-flag carrier, gives United a total of 58 frequencies a week -- including daily nonstop United codeshare service from Los Angeles. DL-R-306, R-307. Together, United and Varig operate more than a third of all U.S.-Brazil frequencies. DL-R-308.

United has now indicated that it would operate its Los Angeles service on a less than daily basis. United could maintain all of its nonstop services by serving Rio de Janeiro on select days of the week from Miami, as Delta will be doing from Atlanta. Furthermore, since Varig operates daily nonstop service on the Miami-Rio de Janeiro and Los Angeles-Sao Paulo routes, United would enjoy the advantage of being able to hold out UA-coded service seven days a week from each gateway. DL-R-306, R-307.

Finally, the Department has already concluded that Delta's New York-Sao Paulo service will produce superior public benefits to United's Los Angeles-Sao Paulo proposal. In awarding Delta backup authority over United in the 1998 Case, the Department found that Delta's frequency handicap in the U.S.-Brazil market and its proposal to provide service at the critically important New York gateway would "enable [Delta] to provide greater intergateway competitive benefits and to

have a greater positive impact on market structure than United.” Order 99-3-26 at

7. Those observations are equally true today, and continue to compel an award of frequencies to Delta over United.

V. CONCLUSION.

This case provides the Department with the important opportunity to maximize the public interest benefits and correct the competitive imbalance in the present allocation of Brazil frequencies. Neither American nor Continental should be awarded frequencies based on the same inferior Brazil proposals that precipitated their original service defaults, and United, as a major incumbent, should also not receive any more frequencies.

The time has come for the Department to optimize the future course of U.S.-Brazil service and competition by reallocating the available Brazil frequencies. Only an award of all ten frequencies to Delta, which will enable the introduction of two new U.S.-Brazil services, as well as new service to Montevideo, will maximize the long-term public interest benefits of the award.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Brief of Delta Air Lines were served this 13th day of April, 2000 upon all of the persons listed on the attached Service List.

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