

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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1999 U.S.-BRAZIL COMBINATION :  
SERVICE CASE : Docket OST-99-6284  
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Application of :  
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CONTINENTAL AIRLINES, INC. :  
 : Docket OST-00-6759  
for exemptions pursuant to 49 U.S.C. § 40109 :  
(Houston-Lima-São Paulo and Houston-Brazil :  
Dormancy) and a Peru-Brazil frequency allocation :  
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MOTION OF  
CONTINENTAL AIRLINES, INC.  
FOR IMMEDIATE FREQUENCY ALLOCATION

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April 18, 2000

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MOTION OF  
CONTINENTAL AIRLINES, INC.  
FOR IMMEDIATE FREQUENCY ALLOCATION

Continental<sup>1</sup> moves pursuant to Rule 11 of the Department's Rules of Practice for immediate grant of its uncontested request for permanent allocation of one weekly U.S.-Brazil frequency for New York/Newark-Rio de Janeiro service now scheduled to begin June 28, 2000, with Belo Horizonte to be added to the route in September. Immediate award of the requested frequency will provide competitive year-round daily nonstop New York/Newark-Rio de Janeiro service options for thousands of passengers at the premier New York/Newark gateway without

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<sup>1</sup> Common names are used for airlines.

affecting the applications of any other carriers in the 1999 U.S.-Brazil Combination Service Case.

Continental states as follows in support of its motion:

1. Continental is the only applicant seeking a single U.S.-Brazil frequency, and there is no reason to delay the award of a single frequency to Continental pending allocation of the ten contested Brazil frequencies. The Department decided to continue including Continental's one New York/Newark-Rio de Janeiro frequency in the 1999 U.S.-Brazil Combination Service Case 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 any plans they might have to use this frequency, no applicant other than Continental has made any proposal which would require the use of this frequency. Exhibits and briefs submitted by all applicants in the 1999 U.S.-Brazil Combination Service Case 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.<sup>2</sup> While Delta and United have argued at various times that the Department could award fewer than seven frequencies to applicants seeking daily service (see Brief of Delta, April 13, 2000 at 26 n.2; Consolidated Response of United in Dockets OST-99-6284 and 6759, January 21, 2000 at 4), neither Delta, United nor American has said it would be willing or able to use fewer frequencies than it has sought. American says its “application for seven of the 11 frequencies available for permanent allocation should be granted in full” (Brief of American at 5), Delta claims it “urgently requires ten additional Brazil frequencies” and says its “full package” should be approved (Brief of Delta at 1), and United declares it “has not” made any proposal to “operate Los Angeles-São Paulo service on a less-than-daily basis.” (Brief of United at 39) Granting Continental’s motion now would have the additional benefit of streamlining the decisional analysis for the 1999 U.S.-Brazil Combination Service Case to simplify the remainder of the case.

2. Continental is committed to providing year-round daily New York/Newark-Rio de Janeiro service, and immediate, permanent reallocation of the single U.S.-Brazil frequency it now holds on a pendente lite basis will

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<sup>2</sup> The possible combinations, excluding Continental’s New York/Newark-Rio de Janeiro proposal, require six frequencies (Continental’s Houston proposal plus Delta’s Atlanta proposal), 10 frequencies (Continental’s Houston proposal or Delta’s Atlanta proposal plus one of the proposals for seven frequencies) or more than the 11 available frequencies (any combination of the seven-frequency proposals, or Continental’s Houston proposal plus Delta’s Atlanta proposal plus one of the seven-frequency proposals).

enable Continental to fulfill that commitment. 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 daily service to June 28, 2000, over two months earlier than previously proposed.<sup>3</sup> The Department can guarantee Continental's ability to provide effective network competition for the long term on the key New York/Newark-Brazil routes by allocating Continental one permanent New York/Newark frequency for its Rio de Janeiro service. As New Jersey's two U.S. Senators recognize, "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 Senators Robert G. Torricelli and Frank R. Lautenberg, dated April 6, 2000, attached hereto as Exhibit A)

3. Continental's pendente lite allocation is effective through December 28, 2000, or until 90 days after a final decision in the 1999

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<sup>3</sup> See Continental's January 7, 2000, response and its direct and rebuttal exhibits in Docket OST-99-6284. Continental will initiate Belo Horizonte service on September 12, 2000.

U.S.-Brazil Combination Service Case, whichever is earlier.<sup>4</sup> Continental seeks permanent allocation of this single U.S.-Brazil frequency now so it can sell its year-round daily New York/Newark-Rio de Janeiro-Belo Horizonte service beyond the December 28 pendente lite allocation expiration date.<sup>5</sup> This need is particularly acute since the pendente lite expiration occurs during the winter holiday season, when travel between the New York /Newark region and Brazil peaks. Permanently allocating Continental a single U.S.-Brazil frequency for its New York/Newark-Rio de Janeiro service will facilitate effective marketing of Continental's services, provide New York-area consumers with enhanced travel options and predictability and allow Continental to compete more effectively with American's daily nonstop New York (JFK)-Rio de Janeiro nonstop flight and United's daily New York (JFK)-Rio de Janeiro one-stop flight. Continental's ability to provide continuing daily nonstop service is particularly important since American and United have the lion's

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<sup>4</sup> See Order 99-12-27 at 8. Continental started its seasonal daily service during the 90-day startup period imposed by the Department and plans to reinstate daily service on a year-round, permanent basis on June 28, two months earlier than it said it would when the Department considered Continental's proposal to use the pendente lite authority starting September 12 and said "Continental continues to be authorized to use this frequency under the pendente lite award granted in Order 99-12-27." (See Order 2000-2-12 at 7)

<sup>5</sup> If the Department is unwilling to grant Continental's motion for immediate permanent reallocation of its single U.S.-Brazil frequency for New York/Newark-Rio de Janeiro service, Continental applies for renewal of its pendente lite frequency allocation for one year or until 90 days after a final decision in the 1999 U.S.-Brazil Combination Service Case, whichever is later. Continental invokes the automatic extension provisions of 5 U.S.C. § 558(c), as implemented by Part 377 of the Department's Special Regulations, to continue this authority in

(continued...)

share of Brazil frequencies and partnerships with Brazilian airlines which already give them competitive advantages over Continental.

For the foregoing reasons, the Department should grant immediately Continental's application for permanent allocation of one weekly U.S.-Brazil frequency for New York/Newark-Rio de Janeiro service.

Respectfully submitted,

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April 18, 2000

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effect pending action on its application for renewal of Continental's pendente lite U.S.-Brazil frequency allocation.

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document on counsel for all parties to the 1999 U.S.-Brazil Combination Service Case in accordance with the Department's Rules of Practice.

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Lorraine B. Halloway

April 18, 2000  
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