

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

# 1999 U.S.-BRAZIL COMBINATION SERVICE CASE

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Docket OST-99-6284

## Application of

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CONTINENTAL AIRLINES, INC.

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Docket OST-00-6759

for exemptions pursuant to 49 U.S.C. § 40109

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(Houston-Lima-São Paulo and Houston-Brazil)

:

Dormancy) and a Peru-Brazil frequency allocation :

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**CONSOLIDATED REPLY OF  
CONTINENTAL AIRLINES, INC.  
AND MOTION FOR LEAVE TO FILE  
AN UNAUTHORIZED DOCUMENT**

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May 8, 2000

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Although Continental's<sup>1</sup> motion for immediate action offered the other applicants yet another opportunity to propose service using the one weekly U.S.-Brazil frequency Continental seeks for nonstop New York/Newark-Rio de Janeiro service, not one of the other applicants included such a proposal in its answer. In sharp contrast, Continental will resume daily nonstop New York/Newark-Rio de Janeiro service on June 28, as planned, and extend the service to Belo Horizonte in September. Immediate approval (or immediate renewal of Continental's pendente

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

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lite exemption) will provide Continental and passengers at the important New York/Newark gateway the certainty they deserve that the daily nonstop Rio de Janeiro service starting next month will continue uninterrupted.

Continental states as follows in reply to the answers of American, Delta and United:

1. Contrary to the assertions of American and Delta, Continental's motion bears no resemblance to a petition for reconsideration since the motion does not contest the Department's decision in Order 99-12-27 to include Continental's unused New York/Newark frequency in this proceeding.<sup>2</sup> This proceeding has provided American, Delta and United four opportunities – in their direct exhibits, rebuttal exhibits, briefs and answers to the pending motion – to propose use of the single frequency which Continental seeks for New York/Newark-Rio de Janeiro service. Yet Continental remains the only applicant which will use this frequency, and there is no reason to postpone award of that single frequency to Continental. Immediate action would not be burdensome (as Delta claims), since awarding the single frequency to Continental would simplify the remaining allocation process. Nor would an immediate award violate the rule in Ashbacker Radio Corp. v. FCC (as United argues), since the award will not affect selection from among the

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<sup>2</sup> For similar reasons, there is no basis for Delta's assertion that the motion is inconsistent with Continental's earlier position that the Department should hold only one proceeding to decide the less-than-daily frequency requests of Continental and Delta. (See Answer of Delta at 2)

competing three- and seven-frequency proposals submitted by Continental and the other applicants for the remaining 10 frequencies.<sup>3</sup>

2. Although Continental's motion seeks immediate award of one frequency for nonstop New York/Newark-Rio de Janeiro service, United devotes less than two pages of its seven-page answer to that subject. Most of United's response attempts unsuccessfully and improperly to discredit Continental's U.S.-Latin America service record. United's effort to discredit Continental is disingenuous at best. United provided nonstop service between Los Angeles and São Paulo for only five months and then dropped the service entirely due to "deteriorating economic conditions in Brazil and poor traffic demands for the nonstop flights" on April 3, 1993.<sup>4</sup> In contrast, Continental offered daily nonstop New York/Newark-Rio de Janeiro service for two years before reducing service on the route by a single frequency, and Continental still provided seasonal daily service on the route and continues to provide four weekly nonstop Houston-São Paulo flights, although

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<sup>3</sup> In Ashbacker, the Court "only h[e]ld that where two bona fide applications are mutually exclusive the grant to one without a hearing to both deprives the loser of an opportunity which Congress gave him." 366 U.S. 327, 333 (1945). Here, granting Continental's one-frequency proposal does not preclude the Department from granting United's seven-frequency proposal and, in any event, there has been a hearing on both proposals.

<sup>4</sup> Application of United for Renewal of a Frequency Allocation in Docket 48267, June 10, 1993, at 2.

Brazil's economy forced Continental to limit daily nonstop service on that route to the peak holiday season.<sup>5</sup>

3. United's unwarranted attack on Continental's overall U.S.-South America service record is as inaccurate as it is irrelevant to Continental's request for immediate award of one frequency for New York/Newark-Rio de Janeiro service. Continental began serving South America in 1991, with one-stop Houston-Quito/Guayaquil service, and since then has added Colombia, Peru, Venezuela and Brazil service at its Houston hub as well as Peru, Colombia, Brazil, Chile and Venezuela service at its New York/Newark hub. Continental has also announced plans to serve Bolivia this summer, and it is seeking the right to serve Argentina. In contrast, United has reduced South America service at Miami (terminating Lima service) and JFK (terminating Venezuela service).<sup>6</sup> Over the past year, United has reduced Latin America seats by 2%, while Continental has increased its U.S.-Latin America seats by 7%.<sup>7</sup>

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<sup>5</sup> Only in United's version of history would its Los Angeles-São Paulo proposal have been selected over Continental's Houston-São Paulo proposal in the 1998 U.S.-Brazil Combination Service Case, where United was not even selected as backup carrier. The Department selected Continental over United in the previous Brazil case because, among other reasons, "there is no question that an award to Continental would enhance competition in the U.S.-Brazil market to a far greater degree than an award to United since United is a major incumbent in that market [and] next to American, United has more access than any other U.S. airline" (Order 98-12-33 at 9) In addition to operating with its own frequencies, United code-shares on U.S.-Brazil flights operated by its STAR Alliance partner, Varig, the dominant Brazilian carrier.

<sup>6</sup> CO-RT-1 in Docket OST-99-6210, at 2.

<sup>7</sup> CO-503 in Docket OST-99-6284.

4. United admits that it abandoned the New York/Newark-Rio de Janeiro route after operating on it for a brief time but complains erroneously that Continental claimed it drove United off the route, where Continental provided nonstop service after United and American had discontinued their service. United faults Continental for modifying its Chile service pattern, although United itself dropped its second Miami-Santiago nonstop flight in favor of one-stop Lima service and then dropped both its one-stop Chile service and all of its Peru service in February 1999. In contrast to United, Continental will soon be offering daily New York/Newark-Lima-Santiago through service with connections at Lima for Houston-Santiago and New York/Newark-Santa Cruz traffic. Although Continental has applied for authority to offer Houston-Cali service, United has apparently abandoned its longstanding quest to serve U.S.-Colombia routes.

5. Since the other applicants do not want the single Brazil frequency sought by Continental, they should not be allowed to block the award. Continental needs an immediate permanent allocation or renewal of its pendente lite exemption so it can sell its year-round daily New York/Newark-Rio de Janeiro-Belo Horizonte after December 28, when the authority expires, and to provide certainty for continuation of Continental's seventh weekly New York/Newark-Rio de Janeiro flight. Without that ability, travel between the New York/Newark region and Brazil could be disrupted during the peak holiday season. American claimed in its answer that Continental can continue selling New York/Newark-Rio de Janeiro service

after expiration of the pendente lite authority, yet American applied the next day to renew its own pendente lite authority pending completion of this proceeding.<sup>8</sup>

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. Alternatively, the Department should renew Continental's pendente lite exemption immediately.<sup>9</sup>

Respectfully submitted,

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<sup>8</sup> See Application of American for Renewal of Pendente Lite Authority, filed April 28, 2000 in Docket OST-96-1065.

<sup>9</sup> Continental moves for leave to file this otherwise unauthorized consolidated reply. The reply addresses legally incorrect and factually inaccurate statements in the answers and will provide the Department a more complete record on which to base its decision on Continental's motion for immediate action. Acceptance will not prejudice any party.

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

May 8, 2000

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