

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

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

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) **Docket OST-99-6210**
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**BRIEF OF
DELTA AIR LINES, INC.**

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March 6, 2000

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

This proceeding was instituted by Order 99-11-14 to determine which U.S. combination carriers will be authorized to use the 14 weekly U.S.-Argentina frequencies that become available during the phase-in period of the U.S.-Argentina open skies agreement. Equally important, the Department must decide which carrier will be authorized to begin service on September 1, 2000, and which carrier must wait an additional nine months to commence service on June 1, 2001.

The Department's decision will have a profound effect on the level and effectiveness of U.S.-Argentina service and competition during the critical transition period. Moreover, the success or failure of the selected new entrant carriers to establish themselves as viable competitors during the transitional phase will have a significant impact on the competitive market structure both now and once open skies are ultimately achieved.

Brief of Delta Air Lines, Inc.

Page 2

Argentina is one of the largest and most important economies in South America. It also remains one of South America's most restrictive countries in terms of aviation services. Delta is extremely hopeful that the Government of Argentina will honor its commitment to liberalize U.S.-Argentina air services. This would mean that in just over three years there will be no limitations on U.S. carrier services to Argentina. Along with the promise of future open skies, however, the changing bilateral situation with Argentina also creates certain risks to competition and the public interest. Specifically, the U.S.-Argentina agreement contemplates that American and Aerolineas will enter into and seek approval for an antitrust immunized alliance, which would result in a significant reduction in competition on U.S.-Argentina routes.

The Department's first priority in this case should be to install the strongest and most effective network competitor in Phase 1 to immediately challenge the incumbents and guard against the potential anticompetitive effects of a possible American/Aerolineas alliance. Delta is far and away the best qualified carrier to fulfill that objective from its highly successful Latin American gateway hub at Atlanta using the Phase 1 frequencies.

The two transitional opportunities are extraordinarily valuable resources, and, if the Department wants to maximize the public interest benefits of these opportunities by immediately improving service and competitive options for the

Brief of Delta Air Lines, Inc.

Page 3

greatest possible number of U.S.-Argentina passengers, then it is vital that Delta be awarded the seven Phase 1 frequencies for its Atlanta-Buenos Aires proposal. Delta's large-capacity MD-11 proposal would provide a massive dose of much-needed network competition to the U.S.-Argentina marketplace. Delta's Atlanta gateway to Latin America is a proven success story, and Delta's Atlanta hub proposal will provide more new Argentina service and competitive options, to more passengers, in more cities across the country than any other carrier/gateway combination.

Brief of Delta Air Lines, Inc.
Page 4

Before turning to a more complete analysis of the various competing proposals, the following list summarizes the numerous and compelling reasons supporting an award to Delta:

- **Atlanta is the most convenient and least circuitous hub for the greatest number of U.S.-Argentina Passengers. Delta's Atlanta hub will provide more online service benefits and create stronger network competition than any other applicant.**
- **Delta will benefit nearly 152,000 passengers – over 55,000 more passengers than Continental and over 42,000 more than United during the forecast year.**
- **Delta will provide 195,000 annual seats to Argentina – over 71,000 more seats than Continental, and about the same number as United.**
- **Delta's Atlanta hub is the only gateway at issue that will provide comprehensive and effective network coverage for the entire United States. Atlanta is the only gateway that is well positioned to challenge American's dominant Miami hub for behind-gateway traffic.**
- **Delta is the only new entrant applicant proposing Phase 1 service at a gateway that does not have daily nonstop service.**
- **Delta will carry the most behind-gateway passengers – the largest and most neglected segment of the U.S.-Argentina marketplace. Delta will carry nearly 120,000 behind-gateway passengers – 96,000 more than Continental at Newark and 97,000 more than United at Los Angeles.**
- **Delta is the only new entrant applicant with a proven track record of promptly and fully utilizing valuable South America limited entry awards.**

Brief of Delta Air Lines, Inc.

Page 5

Two other carriers have applied for awards of transitional frequencies.

Continental proposes to operate seven frequencies from Newark to Buenos Aires in Phase 1, and an additional seven frequencies from Houston to Buenos Aires in Phase 2. United would add to its existing cache of 21 frequencies by operating another seven frequencies between Los Angeles and Buenos Aires. Neither Continental nor United can match the service and market structure benefits attainable through an award to Delta.

Time and again, Continental has failed to deliver on its Newark-South America route case promises. New York already receives substantial levels of service and competition to Argentina, and Continental's Newark gateway has been unsuccessful in drawing significant traffic away from the New York area's preferred South American nonstop gateway at JFK. Furthermore, Newark is poorly geographically situated to serve as an effective connecting hub for service to Latin America. This means that not only will large underserved regions of the country fail to benefit from Continental's proposal, but also that Continental's easily foreseeable failure to meet its local market predictions will again put Continental in the position of operating flights at uneconomical load factors -- requiring the reduction or elimination of flights as was the case with Continental's Newark-Rio de Janeiro and Newark-Santiago services.

Brief of Delta Air Lines, Inc.

Page 6

Accordingly, Continental's poor historical performance on Newark-South America routes should be of significant concern to the Department. Continental's forecast in this case shows the very same type of unrealistic reliance on New York local traffic that has led to disappointment in each of Continental's last Newark-South America awards. Continental has tried to address this problem by scaling back its Argentina proposal to much smaller 767-200 aircraft – by far the smallest aircraft in this proceeding. However, even with this substantial downsizing, Delta's analysis shows Continental's proposal to be unviable, again raising the possibility of yet another Continental South America service default. DL-R-113.

The Phase 1 transitional opportunity is too valuable to place the public interest at risk with another gamble on Continental. Continental will have its chance to implement service in Phase 2. Considering that Continental has been allowed to precede Delta in the three most recent South America route case awards – all of which Continental has defaulted on -- this time the Department should give Continental the second place poll position that its track record deserves.

United is the least deserving of any applicant. United is one of the two dominant U.S.-flag incumbent carriers to Argentina. With 21 frequencies, it already operates three times the number of flights and capacity that a Phase 1 or Phase 2 new entrant carrier could hope to provide. The public interest demands

Brief of Delta Air Lines, Inc.

Page 7

that United receive more Argentina competition in this proceeding, not more Argentina authority. Furthermore, if there was remotely the demand for Los Angeles-Buenos Aires service that United claims, it would be operating nonstop service at Los Angeles today, instead of wasting frequencies at New York and Chicago, which operate at load factors nearly 40 points lower than United claims it would achieve at Los Angeles.

Under any objective analysis, Delta has submitted the strongest proposal. Only by awarding Delta seven Phase 1 frequencies to nonstop service between Delta's major hub gateway at Atlanta and Buenos Aires will the Department maximize the service and market structure benefits attainable through an award in this proceeding.

II. THE DEPARTMENT'S DECISIONAL CRITERIA

The Instituting Order established the following decisional criteria, which guide the Department's determination:

- " . . . our principal objective will be to maximize the public benefits that will result from an award of authority in this case."
- ". . . we will consider which applicants will be most likely to offer and maintain the best service for the traveling and shipping public."
- "We will also consider the effects of the applicants' service proposals on the overall market structure and the level of competition in the U.S.-Argentina market, and any other market shown to be relevant."

Brief of Delta Air Lines, Inc.
Page 8

•"In addition, we will consider other factors historically used for carrier selection where they are relevant."

Order 99-11-14 at 4.

The selection of Delta best satisfies the Department's decisional criteria by creating the greatest service and competitive benefits. An award of seven Phase 1 frequencies to Delta for service at Atlanta will inject a strong new network competitor into the U.S.-Argentina market, will provide daily U.S.-flag nonstop service at an important U.S. gateway, and will provide vastly superior online service opportunities to the most cities across the United States.

Not only will Delta offer the most extensive new service and competitive alternatives, but Delta is also the applicant most likely to "offer and maintain" those services. Whereas Continental has failed to operate and maintain the services it promised in every U.S.-South America route case over the past four years, Delta has met and exceeded its Latin America service commitments. DL-183. For its part, United has as much as admitted that the B-777 aircraft is too large for its Los Angeles service, but says that the Department can be assured that it will operate that aircraft because it is the smallest aircraft in United's fleet capable of serving Argentina from Los Angeles. Rather than being of comfort to the Department, United's inability to select more appropriately sized equipment

Brief of Delta Air Lines, Inc.

Page 9

raises the distinct possibility that it may not operate the full pattern of service it has proposed.

The Department should ensure that the traveling public actually receives the full benefits of the Phase 1 award by assigning that opportunity to Delta. Delta's Argentina service represents the next critical step in Delta's highly successful campaign to develop Atlanta into a major new gateway hub for service to Latin America -- a commitment backed by Delta's substantial resources, highly developed route network, and proven track record of developing international services at Atlanta.

III. DELTA'S ATLANTA-BUENOS AIRES PROPOSAL WILL PROVIDE OPTIMUM PUBLIC BENEFITS BY MAXIMIZING THE USE OF VALUABLE U.S.-ARGENTINA FREQUENCIES

A. Delta's Service Proposal

Delta has presented the most effective and competitively significant service proposal of any applicant. Beneficial use of limited U.S.-Argentina frequencies will be maximized by awarding Delta seven weekly frequencies to provide daily roundtrip service between its major Atlanta hub and Buenos Aires commencing September 1, 2000. DL-101.

Delta will operate its Atlanta-Buenos Aires service using large capacity MD-11 aircraft in a two-class, 269 seat configuration. DL-400. While Delta had

Brief of Delta Air Lines, Inc.
Page 10

initially planned to operate Argentina service using B-767-300ER aircraft, after evaluating the strong demand for Atlanta-Buenos Aires service from Atlanta's extensive catchment area, Delta determined that the additional capacity of the MD-11 was necessary to accommodate projected traffic on the route. The selection of this modern and efficient large-capacity aircraft will enable Delta to maximize the value of the Phase 1 award.

The use of large-capacity aircraft such as the MD-11 is critical to ensuring that the maximum public benefits will be extracted from the two limited-entry frequency opportunities. Continental's decision to scale back its original DC-10 proposal and substitute a much smaller 200 series B-767 aircraft not only underscores the lack of anticipated demand on Continental's proposed routes, but also significantly detracts from the level of capacity -- and hence competition -- that the U.S.-Argentina marketplace would receive. During the critical transition phase, Delta's MD-11 proposal will deliver over 71,000 more annual seats to Argentina -- 57 percent more seats -- than Continental's short-body B-767-200 proposal.¹

¹ Delta would deliver about the same number of seats as United. There is only a nine seat difference between Delta's 269 seat MD-11 and United's 278 seat B-777.

Brief of Delta Air Lines, Inc.
Page 11

Another attribute of Delta's service proposal is that it will introduce a competitive new premium class product to the U.S.-Argentina marketplace. 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 U.S.-Argentina routes, which are heavily populated by business travelers. This will provide an important competitive choice to the more traditional service offerings of United and American. While Continental would also offer a premium business service, the geographically limited reach of its proposal means that fewer potential U.S.-Argentina travelers would enjoy this new service class option.

B. Delta's Traffic Forecast.

Delta expects to carry over 150,000 passengers on its Atlanta-Buenos Aires service during the forecast year. DL-301. This traffic will be comprised of 26,979 local Atlanta-Buenos Aires passengers, 123,604 online connecting passengers, and 1,228 interline connecting passengers for a total of 151,810 passengers. DL-301, 302.

Behind-gateway connecting passengers account for the largest and fastest-growing share of U.S.-Argentina passengers. No carrier will benefit more such passengers than Delta. DL-103, 104.

Even taking Continental's highly exaggerated forecast at face value, Delta will benefit over 55,000 more passengers than Continental. And, with modest necessary corrections to United's wildly exaggerated 93 percent load factor Los Angeles forecast, Delta will benefit over 40,000 more passengers than United.

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

A. Delta's Atlanta-Argentina Proposal Will Best Enhance Network Service And Competition.

The Department's first and most important objective in this proceeding should be to install an effective network competitor to challenge American's dominance of U.S.-Argentina online service. Neither Continental nor United can match Delta's ability to provide such competition. United has tried and failed to compete against American at Miami, and Continental's Newark proposal does not provide effective network coverage for much of the country. Delta has the largest and most fully developed network of any U.S. carrier, and Atlanta is at the heart of this comprehensive route system.

The selection of Delta would establish the largest and most effective U.S. airline hub gateway for service to Argentina. Not only is Delta's Atlanta hub the largest airline hub in the world, but Atlanta is also uniquely positioned

Brief of Delta Air Lines, Inc.
Page 13

geographically to provide improved service and competition to more U.S. cities and more U.S.-Argentina passengers than any other carrier/gateway combination.

Atlanta's ideal location as a U.S. gateway to Latin America gives Delta's hub a tremendous advantage in competing for Argentina traffic originating in cities across the United States. Over 95 percent of U.S.-Argentina traffic lies within 30 percent circuitry of Atlanta. DL-102. Regardless of the circuitry level examined, whether ten, twenty, or thirty percent, Delta's Atlanta Hub encompasses more U.S. cities and more U.S.-Argentina passengers than Continental at Newark or Houston,² or United at Los Angeles. DL-136, 138, 139. Consequently, Delta is better positioned to benefit more U.S.-Argentina passengers and provide more effective competition against the incumbents (including United) than any other applicant.

² In its rebuttal exhibits, Continental makes the contrived argument that Newark and Houston have more passengers within five percent circuitry than Atlanta. This minimal level of circuitry is in no way reflective of actual service patterns and the demonstrated effectiveness of airline hubs to draw traffic from wide regions of the country. By seeking to draw such a narrow circuitry band, Continental has really just found another way of saying that New York and Houston are larger cities than Atlanta. This is not in dispute. However, Continental has not been able to garner enough local traffic at either New York or Houston to support its services, and, consequently, has defaulted on a host of Newark and Houston services to South America.

Brief of Delta Air Lines, Inc.
Page 14

At ten percent circuitry, Delta's Atlanta hub serves 93 cities as compared to just 27 cities for Continental at Newark -- over three times more cities. DL-136, 138. In terms of O&D passengers, Atlanta reaches more than double the number of U.S.-Argentina travelers as Newark. DL-139. United at Los Angeles reaches approximately the same number of cities as Newark, but less than a third the number of U.S.-Argentina passengers that can be served via Atlanta. DL-138, 139. Furthermore, since United is already an incumbent, serving many cities from its three existing U.S.-Argentina gateways, the value of duplicative service via its Los Angeles hub is minimal.

The size and scope of Delta's Atlanta hub operation ensure that frequent and viable Argentina connections are available to and from the scores of cities encompassed by Atlanta's broad catchment area. Delta's Atlanta hub is larger than every gateway currently receiving service to Argentina and every gateway proposed for new service in this case by every conceivable measure. DL-132, 134. For example, in terms of daily departures, Delta at Atlanta operates 131 percent more flights than Continental at Newark, 123 percent more flights than United at Los Angeles, and 72 percent more flights than Continental at Houston. DL-134.

Altogether, Delta and its connection carriers operate over 900 daily departures serving more than 160 destinations nonstop from Atlanta. Delta will

Brief of Delta Air Lines, Inc.

Page 15

offer 182 U.S. cities online service to Argentina, 44 U.S. points with first single connection service to Argentina, and 45 U.S. points with first competitive single connection service to Argentina. DL-201, 202, 203. Simply put, no other carrier applicant can match the level of online service and competitive benefits than Delta is able to offer from its Atlanta hub.

B. Atlanta and the Southeast Region Deserve Improved Service to Argentina.

Atlanta is the business and financial capital of the Southeastern United States, which contributes to Atlanta's ability to sustain the impressive array of international air services offered at Hartsfield Airport. Many international firms have interests in Atlanta, and the Atlanta business community has shown strong support for Delta's proposed Argentina service. DL-700.

Atlanta needs and deserves daily nonstop service to Argentina, and Atlanta should most certainly receive its first daily nonstop service before New York/Newark receives its fourth. Although LAPA began thrice-weekly service between Atlanta and Buenos Aires last year, that type of irregular less-than-daily service pattern is insufficient to meet the needs of a major business center such as Atlanta. Consequently, in order to have the type of schedule convenience and flexibility many travelers demand, large numbers of Atlanta-Buenos Aires passengers continue to flow over one-stop gateways, such as Miami. Furthermore,

Brief of Delta Air Lines, Inc.

Page 16

because Delta is currently prevented from offering service to Argentina, Atlanta is the only nonstop U.S. gateway that lacks competitive Argentina service by a U.S. flag carrier. DL-152.

The size of the Atlanta-Argentina market is substantial. Delta expects to carry approximately 27,000 local passengers during the forecast year. DL-301. Delta's Atlanta-Brazil service has proven to be a resounding success, and comparatively, the size of the Atlanta-Buenos Aires traffic base is roughly three times larger than the Atlanta-Sao Paulo traffic base prior to the initiation of nonstop service. DL-151. Local Atlanta-Buenos Aires traffic is growing three times faster than Newark-Buenos Aires, more than twice as fast as Houston-Buenos Aires, and over four times faster than Los Angeles-Buenos Aires. DL-150.

Traffic between Argentina and the Southeastern United States has been growing more than twice as fast as traffic between Argentina and other regions of the country. DL-153. In 1998, U.S. exports from the Southeast accounted for 26 percent of total exports to Argentina, and Southeast exports to Argentina have been on the rise, averaging ten percent annual growth since 1995. DL-154, 155.

The Atlanta Hartsfield Airport

Brief of Delta Air Lines, Inc.

Page 17

The Atlanta Hartsfield International Airport is one of the largest, most modern and best-equipped facilities in the world. Last year, Atlanta surpassed Chicago to claim the undisputed title of “World’s Busiest Airport” both in terms of flight operations and passenger enplanements. Airport development has been well planned to keep pace with the increases in passengers and flight operations. The Atlanta airport, with its system of four parallel runways allowing for simultaneous instrument approaches, has massive airside capacity. A fifth runway will be under construction soon, along with additional gates and terminal facilities. Accordingly, Delta's Argentina passengers will travel through Atlanta’s modern and convenient international concourse, which was completed in 1994.

C. An Award to Delta will Best Improve the U.S.-Argentina Competitive Market Structure.

There is not currently effective competition for behind-gateway traffic, which comprises the largest and fastest-growing segment of U.S.-Argentina O&D passengers. DL-103, 104. Miami is far and away the dominant gateway for behind-gateway passengers (DL-142), and American dominates service at its Miami hub. DL-143. Seventy-five percent of American’s traffic transiting the Miami gateway is moving to and from interior U.S. points. DL-141. United operates only a handful of domestic services from its Miami gateway, and Chicago pales in comparison to Miami in terms of behind-gateway connecting passengers to Argentina. DL-142.

Brief of Delta Air Lines, Inc.
Page 18

The Department's first priority in this case must be to install an effective network competitor to compete for behind-gateway traffic. Atlanta's proven success as a hub gateway for service to Latin America coupled with Atlanta's unique geographical advantage makes Delta the most qualified applicant to challenge American's dominance of behind-gateway services via Miami. DL-136, 137, 138, 139. It is urgent that the Department take action at the earliest possible opportunity to position Delta as a viable U.S.-Argentina network competitor from its highly effective Atlanta hub gateway.

Continental's and United's respective Newark and Los Angeles proposals are oriented primarily toward their local markets and would be comparatively ineffective in bringing much-needed network competition to the U.S.-Argentina marketplace. Thus, in considering the allocation of the critical Phase 1 award, the Department needs to determine whether that limited opportunity should be expended primarily to benefit a single city-pair, or whether the opportunity would be better used to promote U.S.-Argentina competition on a nationwide scale. New York/Newark is a predominantly local market (DL-173), and, due to Newark's far northeast location, it is poorly situated to provide effective network coverage for most of the country. DL-171. Los Angeles suffers from similar defects, but on the west coast.

Brief of Delta Air Lines, Inc.
Page 19

The Department should assign first priority to establishing a powerful new gateway for service to Argentina and thereby improve competitive service

options for the entire country,³ especially since New York is already well served and Newark has consistently failed to draw the local passengers predicted by Continental. DL-182. Delta's service from Atlanta will provide the strongest network competition to American and the other major U.S.-Argentina incumbents. In particular, Atlanta would provide the only effective competition to the behind-gateway services offered via American's Miami hub, which will be of paramount importance, should American eventually join forces with Aerolineas Argentinas and be allowed to offer joint services at the Miami gateway.

D. An Award to Delta will Enhance Delta's Ability to Be a More Significant Contender in South America.

An award of Phase 1 authority to Delta would also have the most beneficial effect on improving the overall state of U.S.-South America competition. Delta has demonstrated its ability to establish Atlanta as a major competitive gateway for service to Latin America. In just two years, Delta launched 49 weekly nonstop frequencies to eight cities in Latin America. DL-122, 123. Delta has made very effective use of the open-entry Latin America routes that are available for service

³ With 21 frequencies, United has ample flexibility to shift frequencies from one of its three gateways to service Los Angeles on a nonstop basis. Contrary to United's claims, no passengers would be "displaced" if United moved frequencies from New York to Los Angeles in Year 2, because those passengers could then travel on Continental's Phase 2 Newark flights.

Brief of Delta Air Lines, Inc.
Page 21

from Atlanta. However, due to bilateral limitations, Delta's Latin America services are concentrated in Central America and northern South America.

Delta is prevented from serving important destinations in the key Southern Cone region, where Continental, United and American enjoy a substantial advantage in terms of limited-entry authority. DL-160. In this critical region, Delta has been awarded just one limited-entry route and seven frequencies to provide Atlanta-Brazil service. In fact, Delta operates the fewest frequencies of any U.S. competitor on restricted South America routes. DL-161. However, despite Delta's small share of U.S.-Latin America service, Delta is the most profitable U.S. airline in Latin America. DL-124.

Delta cannot realize its full potential to become a major U.S.-Latin America contender unless it is afforded the opportunity to participate in critical markets such as Argentina. Argentina is the second largest economy in South America and is one of the top four U.S.-South America aviation destinations. DL-107, 108, 109. By virtue of their substantially greater limited-entry authority, American, United and Continental each have a significant lead on Delta in the critical Southern Cone region of Latin America. Delta must be permitted to offer its Latin America customers a comparable range of services if it is to grow and become a more substantial competitor.

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

Delta has provided numerous affirmative reasons why its Atlanta-Buenos proposal merits 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 first priority for the seven frequencies necessary to implement its Phase 1 service proposal.

A. Continental

Delta's Atlanta proposal is superior in every respect to Continental's Newark proposal. Even taking Continental's exaggerated forecast at face value, Delta will carry 56 percent more passengers than Continental at Newark. DL-R-101. The substantial size difference between Delta's MD-11 and Continental's 767-200 means that Delta will offer 57 percent more seats than Continental, not to mention over four and half times more cargo capacity. DL-R-102, 128. And, as a consequence of Atlanta's superior geographic location and wider array of services, Delta will carry U.S.-Argentina traffic from over 140 more behind-gateway cities than Continental (DL-R-104) and Delta will benefit over 400 percent more online connecting passengers. DL-R-103.

In light of Continental's widespread and continuing failure to use valuable limited entry South America rights, and with the Phase 1 Argentina start date just

Brief of Delta Air Lines, Inc.

Page 23

six months off, Continental should not receive a Phase 1 award. The value of this transitional opportunity and the necessity of promptly initiating service to take full advantage of the opportunity is simply too great to put the public interest at risk again, given Continental's persistent and widespread failure to honor its route case commitments.

In 1999, Continental wasted nearly half of the frequencies it had been awarded to provide Newark and Houston-Brazil services (DL-175) – frequencies that Continental was awarded at Delta's expense and that would have been used by Delta to provide important competitive New York-Brazil service. Continental's habit of over-promising and failing to deliver on its South America route case proposals is not just a recent phenomenon. In the 1997 U.S.-Brazil Case, Continental delayed start-up of its Newark-Rio de Janeiro nonstop proposal, and then substituted a one-aircraft schedule with unattractive daylight service in the northbound direction in lieu of the two-aircraft prime nighttime departure schedules Continental proposed in the route case.

The Department's Instituting Order stated that the selected carrier's ability to "operate and maintain" its proposed services would be a significant decisional factor. Again, Continental comes up short in this critical respect. Continental has failed to maintain service on important South American routes in the face of competition, and has shrunk from competition with American and its antitrust

Brief of Delta Air Lines, Inc.

Page 24

immunized partner in Chile. DL-176. In the 1997 U.S.-Chile Commutation Service Proceeding, Continental proposed and was awarded (again at Delta's expense) seven frequencies for Newark-Santiago service. However, as reported by the Aviation Daily last summer, "Continental is reducing its Newark-Santiago flight to as few as four per week, down from seven a year ago. LanChile is expected to benefit from the pullback." DL-176.

Continental's Newark-Buenos Aires proposal is characterized by similar defects and flawed assumptions that have led to disappointment in each of Continental's last three Newark-South America awards. Thus, Continental has recently decided to abandon its Newark-Santiago nonstop service altogether, has failed to operate the daily Newark-Rio de Janeiro service it proposed, has announced that it will slash capacity on that route 40 percent, and operates Newark-Sao Paulo service at a load factor of only 60 percent. DL-R-114, 116, 117. Continental's poor historical performance on Newark-South America routes, with load factors averaging just 54 percent, should be of significant concern to the Department in considering the best use of the important Argentina transitional opportunities. DL-177.

Newark's Northeast location makes it a poorly situated hub to compete for Argentina connecting traffic from most of the United States. Therefore, Continental must rely heavily on New York local traffic for the vast majority of its

Brief of Delta Air Lines, Inc.

Page 25

passengers. According to Continental's forecast, over 65,000 of its claimed 97,000 passengers (comprising two-thirds of its forecast) will come from the New York/Newark local market. Time and again, Continental has exaggerated its ability to capture New York-South America traffic, and in each of the last three route cases, Continental has fallen dramatically short of its local market forecasts, precipitating a string of service defaults and cancellations. DL-R-116, 117.

Thus, Continental has actually carried only 28,733 of the 75,631 local passengers it claimed for Newark-Sao Paulo (a 62 percent shortfall); only 28,710 of the 93,822 local passengers it claimed for Newark-Rio de Janeiro (a 69 percent shortfall); and only 28,295 of the 81,118 local passengers it claimed for Newark-Santiago (a 65 percent shortfall). DL-R-112. On average, Continental has fallen short of its local market predictions by some 66 percent. Id.

Continental's forecast in this case is a carbon copy of its previous erroneous Newark-South America forecasts, and there is no reason to expect that Continental will fare any better with its current local forecast prediction.

Making just a single correction to Continental's forecast based on its historical 66 percent overstatement of New York local passengers renders Continental's proposal unviable. Based on past experience, Continental would

Brief of Delta Air Lines, Inc.

Page 26

carry approximately 43,000 fewer passenger than claimed. DL-R-113. The loss of these passengers yields an uneconomical load factor of just 44 percent. Id.

Continental has already lowered its expectations for the Newark-Buenos Aires route, substituting a much smaller (40 percent smaller) 767-200 series aircraft for the DC-10 it originally proposed. DL-R-115. Continental admits that it does not have even a single such aircraft in its fleet, but claims that in the event the introduction of the B-767-200 is delayed, Continental would start service with DC-10-30 aircraft. DL-R-114. However, Continental has not been able to economically operate any Newark-South America route with its DC-10 aircraft. DL-R-114.

Continental manages just a 49 percent load factor on its Newark-Rio de Janeiro flight (now less than daily), a 54 percent load factor on its Newark-Santiago flight (slated for cancellation), and a 60 percent load factor on its Newark-Sao Paulo flight. DL-R-114. If Continental was forced to use a DC-10 aircraft on the Newark-Buenos Aires route, based on the necessary adjustment to Continental's local market share referenced above, it would experience a load factor of only 31 percent. DL-R-113, 114, 115. Thus, if the introduction of Continental's downsized 767-200 aircraft is delayed for any reason, Continental would have to operate the service at a severe loss or, more likely, experience yet another default on its service proposal.

Brief of Delta Air Lines, Inc.

Page 27

Given the current lack of viable service and competitive options for the large numbers of U.S.-Argentina passengers located outside the established gateway cities, it is especially important that the Department focus on installing an effective network competitor at the earliest possible opportunity. Continental's Newark proposal is critically deficient in this respect, and its Newark proposal would do little to meet the needs of behind-gateway passengers. The majority (two-thirds) of Continental's forecast passengers would be local New York passengers, who already enjoy more service and competition than any other U.S. city with the possible exception of Miami.

Continental serves just 58 U.S. cities behind Newark, as compared to 163 for Delta at Atlanta. DL-R-107, 108. Moreover, Continental's own forecast recognizes that Newark's circuitry handicap renders it a completely ineffective service option for the majority of cities it serves from Newark. Continental forecasts zero passengers for 37 of the 58 cities it serves behind Newark. DL-R-106. In other words, Continental expects that only about a third of its behind-Newark cities will generate traffic to Argentina. Id. In sharp contrast, Delta anticipates that 162 of the 163 cities it serves from Atlanta will actually benefit from the proposed service. DL-R-107. Delta's proposal will also provide the first online single connection Argentina service to 44 U.S. cities, as compared to zero for Continental. DL-R-105.

Brief of Delta Air Lines, Inc.

Page 28

Atlanta's superior geographic location will enable Delta to provide more convenient online Argentina connections to and from more U.S. cities than any other applicant. In fact, service via Atlanta is less circuitous for over 90 percent of the cities Continental serves from Newark. DL-R-108, 110, 111. For these cities, travel via Atlanta is, on average, less than half as circuitous as travel via Newark. DL-R-109.

Unlike Continental, Delta would add service at an underserved gateway city with a tremendous demonstrated potential to serve as a connecting hub for travel to South America. Atlanta needs and deserves its first daily nonstop U.S. flag service far more than New York/Newark needs a fourth daily nonstop service. DL-R-126, 127. New York/Newark has seven times the number of flights and eight times the number of seats to Argentina as Atlanta. DL-R-123, 124, 125.

Apart from a direct comparison of service benefits, the Department should also consider the broader implications of its selection here on the U.S.-Latin America competitive marketplace. Delta is rapidly growing and seeking new expansion opportunities wherever possible in Latin America. Delta is the Department's best bet to install a network competitor that will be able to challenge American's unprecedented regional dominance in Latin America. While Delta's Latin America route structure is healthy and growing, Continental is cutting routes and capacity and is attempting to retrench its position with a speculative and

Brief of Delta Air Lines, Inc.
Page 29

unproven hub strategy at Lima. This year, Delta will increase its capacity to Latin America by six percent, whereas Continental will reduce its capacity by seven percent. DL-R-118, 119, 120.

Finally, because Continental's Houston proposal is not in the running for a Phase 1 award, a comparison of Delta's superior Atlanta proposal to Houston is hardly necessary. Nevertheless, Delta will carry more passengers, offer more capacity, serve more behind-gateway passengers, and provide greater online service benefits than Continental at Houston. DL-R-129, 130, 131, 132, 133, 134.

B. United.

United devotes an inordinate amount of time in its 28 pages of rebuttal testimony to establishing the fact that more U.S.-Argentina nonstop flights will improve service options and that more U.S.-Argentina capacity will improve competition. United need not have bothered, because the Department had already made clear in the Instituting Order that "whether authorizing carriers for this service is consistent with the public convenience and necessity will not be an issue." Order 99-11-14 at 4.

Both Delta and United propose to offer service with similar large-capacity aircraft, and the 9 seat difference between Delta's 269 seat MD-11 and United's 278 seat B-777 can hardly be considered material. Both carriers will also have

Brief of Delta Air Lines, Inc.
Page 30

similar incentives to price their products competitively to fill up the entire capacity of the aircraft.

However, there is a critical and fundamental point that United fails to address: unlike Delta, an award to United will not introduce a new competitor to the marketplace, but would only serve to further entrench one of the two dominant U.S. flag incumbents. On this basis alone, Delta wins hands-down over United. Perhaps the only validity of United's argument is with respect to Continental's anemic capacity Newark and Houston proposals, which would be an admittedly poor use of seven highly valuable frequencies.

United is one of the largest U.S.-Argentina incumbents, and, in terms of the market structure and public interest benefits the Department is attempting to achieve, United ranks last in this proceeding. United already has 21 weekly Argentina frequencies, which gives it the ability to serve Buenos Aires with daily nonstop flights from three different U.S. gateways. DL-R-202.

If United wants to implement nonstop service from Los Angeles, it has the ability to do so by transferring frequencies from one of its three existing gateways, none of which measure up to United's exaggerated claims for Los Angeles. DL-R-201. Contrary to United's protests in its rebuttal exhibits (UA-R-211), no passengers would be "dislocated" at New York, if United shifted frequencies from

Brief of Delta Air Lines, Inc.
Page 31

that gateway after Continental begins service in Phase 2. In these circumstances, it would be contrary to the public interest for United to be awarded any additional frequencies at the expense of a new entrant carrier.

United currently publishes single connection service from Los Angeles to Argentina via each of its three gateways. DL-191. Furthermore, United has only sporadically operated single-plane service from Los Angeles to Buenos Aires via Miami. DL-192. Rather than establishing that “United has consistently served California,” United’s Exhibit UA-R-410 states the opposite, showing that United frequently chooses to serve Los Angeles with connecting, rather than superior single-plane services. If United was convinced that Los Angeles warranted better service, it would establish regular single-plane service.

The U.S.-Argentina marketplace urgently needs effective network competition, which United has been unable to provide. Thus, while United equals American in terms of frequencies and exceeds American in terms of capacity, the geography of United’s route system precludes United from challenging American and Aerolineas for behind-gateway traffic emanating from American’s large Miami hub. United serves only a very limited number of cities and offers only a fraction of American’s departures from Miami. Chicago is too far north and west to serve as an effective gateway for much of the country, and Chicago carries a miniscule portion of behind-gateway passengers compared to Miami. DL-142.

Brief of Delta Air Lines, Inc.
Page 32

An award of frequencies to United at Los Angeles would do nothing to improve the critically deficient state of network competition in the U.S.-Argentina marketplace. Because of its location, Los Angeles is limited to serving predominantly local and regional west coast traffic. Delta's Atlanta hub would serve over three times as many cities as United's Los Angeles hub within 20 percent circuitry. DL-194.

United has revised its forecast no less than three times since it submitted its direct exhibits, and the final result is pure fiction. Over 54,000 passengers have been added to United's original forecast, swelling its load factor to an astonishing 93 percent. DL-R-204. These claims have no basis in reality. In fact, United's best-performing U.S.-Argentina route from Miami produces a load factor of 73 percent, whereas United's Chicago and New York routes operate, respectively, at only 55 percent and 54 load factors – nearly 40 points lower than United claims for Los Angeles. DL-R-201, 203.

If United actually believes that it can achieve a 93 percent load factor at Los Angeles, then there is a serious lack of communication taking place between its route planning and operations departments. United should immediately abandon one of its two dramatically less profitable New York or Chicago routes and use those frequencies to institute nonstop service at Los Angeles. DL-R-201, 202. If the potential for Los Angeles were even remotely as great as United

Brief of Delta Air Lines, Inc.
Page 33

claims, United or another U.S. carrier would long ago have instituted nonstop service.

United's forecast is so flawed that it provides no legitimate basis for the Department to even consider an award to United. However, even a cursory examination of United's forecast shows that it will produce far fewer benefits than claimed. Assuming United was able to match its best current route from Miami – a very generous assumption – nearly 40,000 passengers would be eliminated from its Los Angeles forecast. DL-R-205. Furthermore, according to United's own forecast, over 38,000 of United's remaining passengers would be self-diverted from existing United services, nullifying any competitive benefit with respect to those passengers. DL-R-207.

Under the most optimistic scenario, with this extremely conservative forecast adjustment and net of self diversion, Delta would benefit 42,000 more net passengers than United. DL-R-208. If, more likely, United were to achieve a load factor similar to the 55 percent it experiences at New York and Chicago (which United continues to favor over Los Angeles), then United's forecast would be reduced by over 75,000 passengers to only 111,617 passengers – 40,000 fewer total passengers than Delta and over 78,000 fewer passengers net of self diversion.

Brief of Delta Air Lines, Inc.

Page 34

The latter scenario, or worse, seems more likely, particularly given United's expressed concerns about its ability to fill its large aircraft and the importance of being able to rely on fifth-freedom Asia traffic to support its Los Angeles flight. See UA-RT-1 at 19-20. In fact, United relies on over 10,000 Asia passengers to fill its flight. In the similar 1998 U.S.-Brazil Combination Service Case, the Department found that United's undue reliance on fifth-freedom traffic was a significant detractor from its proposal, and that these valuable bilateral rights were better spent benefiting U.S.-travelers and shippers. See Order 98-12-33 at 9 (“United’s proposal relies heavily on Asia-Brazil connecting passengers. . . . [which] does not enable United to improve service in the overall U.S.-Brazil market to the extent proposed by [other carriers].”). Delta submits that the Department’s observations are equally true with respect to Argentina, and that awarding United frequencies for its Los Angeles-Buenos Aires proposal would not maximize benefits for U.S. travelers and shippers.

An award to United will do little to improve online connecting opportunities for interior U.S. cities that lack competitive service options. Because Los Angeles is on the Pacific coast, it is poorly situated to serve as a gateway hub for all but a relatively small number of west coast cities. United forecasts traffic from just 30 cities behind Los Angeles, compared to 162 traffic-generating cities for Delta served behind Atlanta. DL-R-211. Delta will provide

first online single connection service to more than twice as many cities (44) than United (18). DL-R-210. The superior network coverage of Delta's Atlanta hub will enable Delta to benefit nearly 100,000 more behind-gateway passengers, over 440 percent more behind-gateway passengers, than United's Los Angeles Proposal. DL-R-209, 211, 212, 213.

VI. BACKUP AUTHORITY

In light of the pervasive history of South America service defaults by Continental, it is essential that the Department rigorously enforce startup requirements and give special consideration to the backup award in this case. There will be no default in Phase 1 if Delta is awarded the Phase 1 frequencies. However, assuming that Delta is awarded the frequencies it needs for Atlanta-Buenos Aires service in Phase 1, Delta requests Phase 2 backup authority to provide New York (JFK) – Buenos Aires and/or additional Atlanta-Buenos Aires service.⁴ Delta's first backup priority would be to commence daily nonstop JFK-Buenos Aires service. However, Delta requests that any backup award give Delta the flexibility to serve JFK and/or Atlanta. This will permit Delta to make maximum effective use of any dormant frequencies under a backup award, should,

⁴ In the unlikely event Delta is not selected as the primary carrier for the Phase 1 award, Delta would seek Phase 2 frequencies for its Atlanta-Buenos Aires proposal.

Brief of Delta Air Lines, Inc.

Page 36

for example, Continental default on only a portion of its frequencies, as it has done in the case of its Newark-Rio de Janeiro and Houston-Sao Paulo awards.

Delta has expressly applied for backup Phase 2 authority. However, recognizing that this is a case essentially about which new entrant carrier will be allowed to go first, and that it is extremely unlikely that one carrier would be awarded both opportunities, Delta determined not to burden the Department with detailed exhibits relating to JFK and/or additional Atlanta services. It is axiomatic that awarding any additional available frequencies to a vigorous new entrant competitor such as Delta would be an overwhelmingly superior use of the frequencies from a public benefits and market structure standpoint than allowing them to go to United, an entrenched incumbent with three times the number of current service opportunities. Thus, in the 1998 Brazil Case, the Department determined that an award of backup authority to Delta for New York-Sao Paulo service was superior to an award to United for Los Angeles-Sao Paulo service because it 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 same consideration apply with equal force in this case to compel an award of backup authority to Delta at New York over United at Los Angeles.

VII. CONCLUSION

Awarding Delta the seven Phase 1 frequencies for Atlanta-Buenos Aires service will best achieve the Department's objective of maximizing the public benefits attainable from the new U.S.-Argentina opportunities. Given the current lack of effective network competition and the possible formation of an American/Aerolineas antitrust immunized alliance, it is critical that the Department focus on installing a strong network competitor at the earliest possible opportunity. Delta's Atlanta-Buenos Aires route proposal will provide unmatched network coverage for the entire United States. Enabling Delta to bring powerful network competition from its Atlanta hub to bear on the U.S.-Argentina marketplace will do more to improve service and competitive options for more U.S.-Argentina travelers than any other competing proposal.

WHEREFORE, for all of the compelling reasons set forth above, Delta urges the Department to grant Delta a certificate and seven Phase 1 frequencies to commence Atlanta-Buenos Aires services beginning on September 1, 2000.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Brief of Delta Air Lines were served this 6th day of March, 2000 upon all of the persons listed on the attached Service List.

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY OF ARGUMENT.....	1
II.	THE DEPARTMENT'S DECISIONAL CRITERIA.....	7
III.	DELTA'S ATLANTA-BUENOS AIRES PROPOSAL WILL PROVIDE OPTIMUM PUBLIC BENEFITS BY MAXIMIZING THE USE OF VALUABLE U.S.-ARGENTINA FREQUENCIES.....	9
	A. Delta's Service Proposal	9
	B. Delta's Traffic Forecast.....	11
IV.	DELTA WILL PROVIDE MORE SERVICE AND COMPETITIVE BENEFITS THAN ANY OTHER APPLICANT	12
	A. Delta's Atlanta-Argentina Proposal Will Best Enhance Network Service And Competition.	12
	B. Atlanta and the Southeast Region Deserve Improved Service to Argentina.....	15
	C. An Award to Delta will Best Improve the U.S.-Argentina Competitive Market Structure.....	17
	D. An Award to Delta will Enhance Delta's Ability to Be a More Significant Contender in South America.....	20
V.	THE OTHER APPLICANTS' PROPOSALS DO NOT MATCH THE SERVICE AND COMPETITIVE BENEFITS OF DELTA'S ATLANTA SERVICE PROPOSAL.....	22
	A. Continental	22
	B. United.....	29
VI.	BACKUP AUTHORITY.....	35
VII.	CONCLUSION.....	37

