

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

Joint Application of)
)
AMERICAN AIRLINES, INC.) **OST-99-6227**
and)
AEROLINEAS ARGENTINAS, S.A.)
)
under 14 CFR Part 212 for statements)
of authorization to engage in reciprocal)
codesharing services)

Application of)
)
AEROLINEAS ARGENTINAS, SA) **OST-99-6225**
)
under 49 USC 40109 for an exemption)
(U.S.-Argentina codesharing with)
American Airlines))

**MOTION FOR LEAVE TO FILE RESPONSE OF LEGEND AIRLINES, INC.
AND MOTION TO STRIKE THE ANSWER OF THE
DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD**

On October 27, 1999, the Dallas/Fort Worth International Airport Board (“DFW”) filed an answer in support of the American/Aerolineas Argentinas Code-Share Application and the related Aerolineas Application for Exemption Authority filed on September 14, 1999. The Department of Transportation (“Department”) should deny American’s request for codesharing authority on DFW routes as both American and DFW have repeatedly alleged that DFW will be destroyed because federal law authorizes

additional operations at Dallas Love Field. Legend Airlines, Inc. (“Legend”¹) asks the Department to strike the answer filed by DFW and reject American’s request for codesharing authority.

Legend supports “Open Skies” and believes that all carriers should be able to expand both domestically and internationally. As the Department supports international growth of large carriers, however, it should refrain from supporting growth of a carrier and an airport that have provided false and misleading information to the Department and have used their market power and resources to eliminate competition.

For the past several years, in order to protect its primary tenant, DFW has stated in news articles, court filings, the Department’s Love Field Interpretation Proceeding, and most recently before the Fifth Circuit Court of Appeals, that its hub will be destroyed by any level of competition introduced at Love Field. Statements made by DFW pertaining to the collapse of DFW include the following:

...the evidence submitted by DFW Airport and others shows that allowing unfettered operations at Love Field under the Shelby Amendment would contribute to the degradation of DFW’s role as the Dallas/Fort Worth area’s dominant airport and threaten to fragment the hub operation at DFW.

...experts testified concerning the nature and extent of the irreparable injury to DFW Airport if Continental Airlines — and other airlines making a competitive response — began interstate flights from Love Field beyond the current restrictions of the Wright Amendment and without the constraints of the Bond Ordinance and the Use Agreement. The ramifications for DFW of such an increase, the evidence shows, is that DFW’s growth would be sharply reduced and the DFW hub would be dramatically reduced in size and scope.

¹ Legend seeks leave to file this response and motion in order to provide the Department with a more complete and balanced record upon which to formulate a decision in this proceeding. Receipt of Legend’s response will not prejudice any party at this time.

Mr. Ash [Managing Director of Global Aviation Associates, Ltd.] explained that once an airport loses local passengers, that airport will lack sufficient demand to sustain the hub operation and will inevitably downgrade service. As he graphically explains: a hub “starts to unravel itself” [RR 3:217]. According to this noted expert in the field of hub operations, Continental’s reinstating long-haul service from Love Field could lead to “fragmentation of the DFW hub” [RR 3:224].

[A DFW study] concluded that even with the constraints imposed by the availability of aircraft and gates at Love Field, DFW Airport could lose over 8,000 passengers and 109 flights per day. [DFW Exh. 147 at 25]. The study predicts the loss of over 4,500 jobs at DFW Airport [Id. at 11]. The study further concluded that the reopening of Love Field to operations like Continental’s flights to Cleveland would weaken DFW competitively vis-à-vis nearby hubs such as Houston Intercontinental, make DFW a less attractive international hub, reduce DFW service levels and place a great financial and overhead burden on the remaining service at DFW. [Id. at 12].

Mr. Joe Lopano, DFW’s Managing Director of Air Service Development, testified that reopening Love Field would be similar to the opening of a new airport, which would be “a very destabilizing event” in the local market [Exhibit 24, RR 3:116-117, 189-90]. He feared that such a destabilizing event might cause Delta to abandon its hub operations at DFW Airport [RR 3:127-18], and that splintering local traffic between DFW and Love Field would reduce international flights from DFW Airport [RR 3:130-134], thereby eliminating the non-stop flights that now exist to smaller markets (such as Bakersfield, California) [RR 3:134-35].

(Department Docket, OST-98-4363, *Love Field Interpretation Proceeding*, DFW Petition for Reconsideration, January 12, 1999)

* * *

Even Continental’s initially-planned three flights per day would decrease the load factor, decrease departures, and cause a reduction flights to fewer cities from DFW, with a possible breakdown of its hub operation.

Long-haul flights at Love Field would “de-stabilize” the DFW hub thereby “fragmenting” it and placing it in “jeopardy.” Once an airport loses local passengers, the airport lacks sufficient demand to sustain its hub operation and must inevitably

downgrade service. The hub starts to “unravel itself;” the damage would be immediate and irreparable.

(DFW Brief, *American Airlines v. Department of Transportation*, No. 99-60008 (Fifth Circuit Court of Appeals) July 19, 1999)

* * *

...the minute that the flights depart from Love to Cleveland, there will be a clear message of destabilization in the Dallas/Fort Worth aviation market, and that message will be known in Spain and Thailand and everywhere...

Joseph Lopano, DFW Managing Dir., *City of Fort Worth (in) Texas v. City of Dallas, Texas, et. al;* No. 48-171109-97, June 17, 1998 p. 62-63.

...virtually half of that market (Santa Ana, CA) in the year 2002 would go out of Love.... When you lose high yield locals you lose a big piece of your hub revenue, and what happens is, certain portions of your hub fall apart...

Joseph Lopano, DFW Managing Dir., *City of Fort Worth (in) Texas v. City of Dallas, Texas, et. al;* No. 48-171109-97, June 17, 1998 p. 60.

* * *

A lawsuit over Dallas Love Field’s future use has prevented progress on the airport’s multibillion-dollar expansion plans, which include the \$750 million people-mover system, under consideration by the airport board.

“These are fundamental issue that require resolution, or we will not be able to move forward,” said Kevin Cox, the airport’s first deputy executive director.

“DFW Moving Toward Adding \$1 Billion International Terminal,” *The Associated Press State & Local Wire*, May 21, 1999

Similarly, American has provided the public with misleading information:

Siphoning local traffic from DFW to Love has slowed DFW’s growth; expanding Love will slow it still further. I just don’t understand why anyone in Dallas wants to see DFW become a second tier hub.

Opening Love Field will cause the DFW hub to shrink and reduce the travel options of everyone in the Metroplex.

Dallas simply won't be able to compete with cities like Atlanta and Denver, which are supporting their major airports.

(Remarks by Robert Crandall, Chairman, American Airlines, Love Field Press Conference, December 2, 1997.)

Because more than 90% of Dallasites and more than 50% of Metroplex residents live closer to Love Field than DFW, airlines will add service at Love and reduce it at DFW. With fewer local customers, in the long term DFW will not compete with hubs like O'Hare, Atlanta, and Denver. **DFW will become a second-tier hub.** [emphasis added]

(Dear Colleague Letter from American Chairman, Don Carty, July 6, 1998)

Although the evidence clearly shows that DFW is not falling apart, DFW and American have failed to refute any of their doomsday claims. Apparently, these parties believe that it is acceptable to invent facts in order to maintain market control. Thus, it is up to the Department to insist that these parties set the record straight — is DFW on the edge of collapse or not?

In administering federal law, the Department has an obligation to ensure the integrity of its proceedings. The Department cannot permit an airline and an airport that make misleading comments to be rewarded with additional international routes. Until DFW refutes statements that DFW is falling apart, the Department should strike any DFW filing that supports additional routes and services from DFW to any domestic or international destination. The Department cannot ignore DFW's flagrant disregard for veracity in its filings. In order to maintain the integrity of its proceedings, Legend

requests that the Department strike DFW's answer and deny a grant of codesharing authorization to American for DFW operations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that Legend Airlines, Inc.'s Motion to Strike Answer of the Dallas/Fort Worth International Airport Board was served upon the parties listed on the attached service list on October 29, 1999 by first class, U. S. Mail postage prepaid.

Nancy R. Thompson