

March 9, 2000

By Hand Delivery

Paul L. Gretch
Director, Office of International Aviation
U.S. Department of Transportation
400 Seventh Street, S.W., Room 6402
Washington, D.C. 20590

Re: Notice of Delta Air Lines and Air France Concerning Third-Country Codesharing to Bucharest, Cairo and Kiev

Dear Mr. Gretch:

Delta Air Lines, Inc. ("Delta") hereby responds to American's March 6, 2000 letter in further opposition to the above-referenced notice. To the extent relevant, Delta is also requesting that a copy of this letter be included in Dockets OST-00-6903 and OST-00-6982.

American attempts to draw a completely inapposite comparison between Delta's advanced and proper notification of its intent to amend the intermediate service point and operating partner for its duly-awarded codeshare designations, and American's unauthorized and unlawful unilateral transfer of city-pair specific frequencies operated by American to an entirely different U.S.-Brazil route, without seeking Department approval.

Unlike the transfer of American's frequencies from New York-Rio de Janeiro to Miami-Rio de Janeiro routes, the intermediate point via which Delta's services are conducted is of little consequence to the public benefits derived from Delta's third-country codeshare services. While American's unilateral transfer of Brazil frequencies from New York to Miami denies New York passengers the important benefit of nonstop Rio de Janeiro service upon which American's award was expressly predicated, the change in Delta's intermediate point from Zurich to Paris does not adversely affect the nature or quality of the Delta service to be provided between the United States and each of the named points. The Department's public interest determination in awarding Delta its designations was in no way predicated upon the local markets served between the intermediate point and the final destination. Indeed, Delta does not and never has held out services for local Zurich-Bucharest/Cairo/Kiev passengers.

The city-pair specific limitation the Department applied to American's New York-Rio de Janeiro services was a strict and highly unusual condition necessitated by the default nature

Paul L. Gretch
March 9, 2000
Page 2

of the Brazil frequency award to American. American, with its huge cache of existing frequencies, was awarded these Brazil rights principally because there was no other carrier willing or able to use them (due to designation limitations). At the time of the award, the Department explicitly put American on notice as to the tentative nature of this particular award, and noted that the frequencies would be subject to recall in a further proceeding to examine the longer term needs of the U.S.-Brazil market. Order 96-3-47 at 4.

Contrary to American's assertion, the Department's determination in that Brazil Order was a unique exception to the general rule, and is not "controlling precedent" with respect to routinely approved routing flexibility. In fact, the highly unusual nature of the Department's limitations on American's New York-Rio de Janeiro frequencies is underscored by the fact that American has since been permitted to move, without restriction, other of its non-conditional frequencies from Miami to fund other services, including Orlando-Sao Paulo and DFW-Sao Paulo, which are scheduled to begin next month.

There are no such highly unusual conditions attached to Delta's third-country codeshare designations, which were merely authorized, according to standard Department practice, on the basis of Delta's then current operating plans. The change in intermediate points in no way affects the public benefits that will be derived from the continuation of these longstanding existing services – some of which date back historically to direct service points flown by Delta out of its Frankfurt hub prior to the formation of the first Delta alliance. Carriers must be permitted this most basic operating flexibility to conform their intermediate service itineraries to commercial realities and the needs of the marketplace. Given that Delta is not proposing to alter the nature or quality of the service provided, or the points between which the service is actually held out to the traveling public, there is no basis for the Department to reexamine the original and fully valid public interest determinations awarding Delta the codeshare designations, or to disrupt Delta's well-established existing services.

The Department need not, as American urges, "promptly advise Delta and Air France that they cannot . . . hold out services for advance sale. . ." (AA letter at 2). Unlike American, which has twice moved unilaterally and without authorization its conditional Brazil frequencies and held them out to the public without authorization, Delta is fully aware of and compliant with the advance notice requirements applicable to its third-country codeshare designations. Accordingly, Delta initially advised the Department in October of last year and

Paul L. Gretch
March 9, 2000
Page 3

again this February that Delta was planning on changing its service pattern and requested that an appropriate conforming notice be issued.¹

American's protestations provide no legitimate basis for the Department to delay the issuance of the requested notice. Accordingly, the Department should immediately issue a notice allowing Delta to continue these existing services consistent with the request that has been submitted by Delta and Air France.

Respectfully submitted,

Robert E. Cohn
Alexander Van der Bellen
Counsel for Delta Air Lines, Inc.

CC: Docket OST-00-6903
Docket OST-00-6982
Service List

¹ Because Delta will be fully utilizing its duly awarded designations to continue to provide third-country codeshare services to Bucharest, Cairo and Kiev, there are no available designations to be awarded. As such, American's participation in this matter is inappropriate and misplaced. However, to the extent that American claims Delta has failed to submit an application to codeshare with Air France to the named points, American is incorrect. Delta already holds certificate and/or exemption authority to serve each named point, a current and fully effective designation, and has filed the appropriate notice to amend its service pattern consistent with the advance notice and approval requirements of its blanket statement of authorization with Air France.