

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

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**Application of** )  
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 )  
 **DELTA AIR LINES, INC.** ) **Docket OST-00-7104**  
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 **for a Colombia frequency allocation** )  
 **(Atlanta-Bogota)** )  
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**Application of** )  
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 **CONTINENTAL AIRLINES, INC.** ) **Docket OST-00-7186**  
 )  
 **for a Colombia frequency allocation** )  
 **(Houston-Cali)** )  
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**MOTION FOR LEAVE TO FILE AND  
SURREPLY OF DELTA AIR LINES, INC.**

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**April 25, 2000**

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Continental has a selective memory when it comes to the Department's policy of issuing limited-entry authority using expedited procedures in clear-cut cases such as this. Apparently, when the Department uses expedited Show Cause procedures to select Continental's proposals, such as for Cleveland-London authority over American, "the objectors' procedural arguments clearly lack merit."<sup>2</sup>

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<sup>1</sup> To the extent necessary, Delta requests leave to file this Surreply, which will contribute to a more accurate and compete record for a decision in this case.

<sup>2</sup> Consolidated Answer of Continental, Docket OST-96-1642, August 17, 1998. ("London Case")

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However, when Delta, the only new entrant applicant in this proceeding, now stands to gain access to Colombia, Continental complains that “the Department must not bypass a [full] comparative selection proceeding . . .” Consolidated Reply of Continental (April 20, 2000).

There is no merit to Continental’s present position, which is inconsistent both with Continental’s own arguments in directly analogous cases and with the Department’s express policies on expedited procedures, as articulated in Order 98-10-19 and Order 98-11-19.

The Department has all the information it needs to render an informed decision in this case, and it should immediately proceed with allocating Delta the seven frequencies it needs to establish daily nonstop service between Atlanta and Bogota. As in the London Case, “Both carriers have presented full descriptions of their proposed services and arguments in support of their proposals.” Order 98-7-25 at 5. Furthermore, following the issuance of the Show Cause Order, as proposed by Delta, interested parties will “have had still another opportunity to present their comments on each applicant’s proposal.” Order 98-10-19 at 3.

Thus, expedited process is warranted here for all the sound reasons articulated by the Department in the London Case:

we are all the more persuaded that we have before us an adequate record for final decision and that no meaningful public purpose would be served by adopting further evidentiary procedures. We reach this conclusion mindful that the procedures we follow here are effectively the same as we have used before in other comparable proceedings. [Citations omitted] Furthermore, they reflect our commitment to achieving sound regulatory results with a maximum of efficiency and a minimum of procedural burden. In view of these circumstances, we conclude that all parties have been afforded an adequate opportunity to present their case and arguments and that there is no procedural bar to issuing a final decision in this case. Order 98-10-19 at 4.

The same “sound regulatory results with a maximum of efficiency and a minimum of procedural burden” will be achieved by immediately awarding Delta seven U.S.-Colombia frequencies by Show Cause Order. In light of the fact that Continental was itself the beneficiary of the Department’s expressly articulated expedited route case policy, it is disingenuous for Continental to ignore this guiding precedent and claim that the Department is “required by Ashbacker principles and the Department’s precedents” to conduct a full comparative selection proceeding to evaluate the merits of Continental’s Houston-Cali proposal. Continental Reply at 2.

In order to muddy the waters, Continental resorts to the misleading tactic of citing Delta Ashbacker pleadings that are several years old, and which substantially predate the Department’s express articulation of expedited route case policies. However, the Department’s current policy and Continental’s own recent arguments

clearly indicate that this case should be resolved using expedited Show Cause process.<sup>3</sup>

At bottom, the Department is faced with the simple choice of whether Continental should be permitted to offer three daily nonstop Colombia services as compared to zero for Delta, or whether the first of the newly-available Colombia

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<sup>3</sup> See Consolidated Answer of Continental, Docket OST-96-1642 (August 17, 1998) at Paragraph 1:

American and the San Jose Parties complain mightily that the Department's procedure in this case is contrary to precedent and deprived the parties' [sic] of due process. This claim is disingenuous coming from American and San Jose since both were proponents of a similar but more expedited procedure in the 1998 U.S.-Japan Combination Service Proceeding, where the Department awarded 78 new U.S.-Japan frequencies, the only two new U.S.-Japan designations and significant new route authority based only on the pleadings and over objections by Continental and Continental Micronesia. (See Orders 98-5-17 and 98-3-15.) When Continental objected to the Department's selection of 1998 proposals over others without "full comparative consideration," American said "Continental's position was wholly without merit." [Citations omitted.] The procedure followed by the Department in that case, supported by both American and San Jose, is the procedure that the San Jose Parties now claim would "totally short-circuit" the Department's carrier selection procedures and violate "San Jose's (and American's) due process rights." (San Jose Objection at 3.) This case and the U.S.-Japan case are not isolated instances, however. American and other carriers have received designations and authority in other limited-entry markets without the exhibits and briefs the objectors are calling for here. For example, the Department selected American over USAir for Boston-Paris service by final order, without exhibits and briefs. (See Order 96-4-31.) Similarly, the Department selected American for Miami-Paris service and United for Los Angeles-Paris service (See Order 91-10-29) and Emery Worldwide Airlines for the fifth U.S.-Mexico cargo designation without exhibits or briefs. (See Orders 95-4-34 and 95-5-6.) Indeed, the Department recently acted on TWA's request for the fourth and final U.S.-India third-country code-share opportunity without even inviting competing applications. (See Order 98-3-1.) The objectors procedural arguments clearly lack merit. (emphasis added.)

frequencies should go to Delta, so that it may offer its first and only service in the restricted Colombia marketplace. The choice is not even close.

Contrary to Continental's claims, its proposal to offer service to Cali, a secondary destination in Colombia, does not raise complex issues requiring the submission of additional evidence. In the similar 1999 U.S.-France Combination Frequency Allocation Proceeding, the Department dismissed Delta's suggestion that Delta should be permitted to offer additional evidence on the benefits of its unique New York-Lyon proposal, where the other applicants were all proposing service to the predominant Paris gateway. The Department found that "restrictions on airline operations in the U.S.-France market that preceded our new agreement with France prevented us from responding to pent-up demand for additional services, particularly for services to Paris, the preferred destination for the vast majority of U.S. travelers." Order 98-11-19 at 4. Likewise, in this proceeding, restrictions on U.S.-Colombia services have prevented the Department from authorizing new competitive services to Bogota, which is "the preferred destination for the vast majority of U.S.-[Colombia] travelers."

Finally, while Delta should be awarded the seven available frequencies based on its new entrant status and market structure considerations alone, Delta notes that it will be providing its U.S.-Colombia services using 183 seat 757-200 aircraft, offering *48 percent more capacity* that Continental's 124 seat 737-700 proposal.

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Accordingly, Delta will better maximize the effective use of these valuable new bilateral rights.

WHEREFORE, Delta Air Lines, Inc. urges the Department to immediately issue a Show Cause Order Awarding Delta seven frequencies for Atlanta-Bogota service and a certificate of public convenience and necessity authorizing Delta to provide U.S.-Colombia service.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that I have, this 25th day of April, 2000, served the foregoing Surreply of Delta Air Lines, Inc., upon those persons listed on the attached service list by depositing copies thereof in the United States mail, first class, postage prepaid.

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