

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

-----  
NEW U.S.-ARGENTINA COMBINATION : Docket OST-99-6210  
SERVICE OPPORTUNITIES :  
: :  
-----

CONSOLIDATED ANSWER OF  
CONTINENTAL AIRLINES, INC.

Communications with respect to this document should be sent to:

Rebecca G. Cox  
Vice President, Government Affairs  
CONTINENTAL AIRLINES, INC.  
1350 I Street, N.W.  
Washington, DC 20005

Hershel I. Kamen  
Staff Vice President, International  
& Regulatory Affairs  
CONTINENTAL AIRLINES, INC.  
P.O. Box 4607 – HQSGV  
Houston, TX 77210-4607

R. Bruce Keiner, Jr.  
Thomas Newton Bolling  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2595  
(202) 624-2500

Counsel for  
Continental Airlines, Inc.

December 29, 2000

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

-----  
NEW U.S.-ARGENTINA COMBINATION : Docket OST-99-6210  
SERVICE OPPORTUNITIES :  
:-----

CONSOLIDATED ANSWER OF  
CONTINENTAL AIRLINES, INC.

For proof that Continental<sup>1</sup> will institute vigorous new competition for U.S.- Argentina passengers and shippers at New York/Newark and throughout the United States, the Department need look no further than United's vehement objection to awarding seven frequencies to Continental for service at New York/Newark. United is the only party objecting to Continental's award at New York/Newark, reflecting United's fear of effective new competition for Argentina traffic in the New York/Newark region and throughout the northeastern United States, given United's weak position at JFK. If, as United argues, New York/Newark cannot support an additional airline serving Argentina and United truly believes its own inflated forecast for Los Angeles-Argentina traffic, United can move seven frequencies to Los Angeles and offer every single benefit it claims for

---

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

nonstop Los Angeles-Buenos Aires service. Thus, Continental opposes United's objection to Continental's award of seven frequencies at New York/Newark and urges the Department to issue promptly a final decision confirming an award of route authority and seven frequencies to Continental for New York/Newark-Buenos Aires service.

Continental also supports the objections of the City of Houston and the Greater Houston Partnership to the Department's failure to award Continental primary Houston-Buenos Aires authority and frequencies and responds as follows to the comments submitted by Delta and the Atlanta Parties.

1. United's 19-page retread of its brief in this proceeding does not provide any significant new facts or arguments the Department has not already considered in deciding to award New York/Newark authority and frequencies to Continental. Ironically, United bases its effort to prevent the important injection of new competition for United between points throughout Continental's route network and Argentina on a claim that the award to Continental serves Continental's private interests rather than public interests. In contrast, the Department has frequently recognized, particularly in South America, that the most important action it can take is adding a new network to South America routes. In comparative selection proceedings involving Latin America, the Department has consistently emphasized new entry as a key criterion for selection. When dealing with a country-pair where service "has been limited to two U.S. carriers" in a proceeding that "affords us an important opportunity to increase U.S. carrier services," the Department awards

authority to new entrants, citing “our criterion of achieving more competitive service by more U.S. carriers” when it has “the opportunity for increasing the number of U.S. carriers.” (Order 97-11-27 at 4, 7 and 6, made final by Order 98-1-22) Thus, the Department frequently has concluded that “the ability to authorize an additional U.S. carrier . . . affords us an important opportunity to increase U.S. carrier services, facilitating the continued growth of [the] market and enhancing the overall U.S.-carrier competitive presence.” (Order 97-11-27 at 4, made final by Order 98-1-22) When United has argued previously that the Department gave “too much weight to the benefits of new entry,” the Department has concluded that the benefits of adding entire new route networks outweighed limited additional service by a major incumbent. (Order 99-3-26 at 5) Any decision which denied entry by Continental to Argentina in favor of United, which long held the most U.S.-Argentina frequencies, would conflict with the Department’s recent decision selecting Delta for Colombia authority because Delta’s “entry into the market would add a new competitor enhancing competition” in a country-pair where “we view these benefits as particularly significant and compelling in a market that has been artificially restricted for so many years.” (Order 2000-7-9 at 5) As the Department has recognized yet again in the case of Argentina, “the public interest is better served by using the first new service opportunity in many years . . . to promote entry in the market by an additional new carrier” (Order 2000-7-9 at 6) because “authorizing a new carrier . . . will certainly provide the opportunity to

develop the market, enhance competition and expand the service options available."

(Order 2000-9-21 at 4)

2. The only "new" allegation by United is that Continental and COPA, having submitted an application for antitrust immunity, will be able to coordinate their schedules to codeshare on COPA's one daily Panama City-Buenos Aires flight, providing online New York/Newark-Buenos Aires service via connections at Panama City. If the Department is going to consider codeshare opportunities between applicant gateways and Buenos Aires significant, however, it must look first at the Star Alliance codeshare opportunities at Los Angeles. Although United abandoned its own Los Angeles-São Paulo nonstop service, its alliance partner, Varig, operates 13 weekly nonstop Los Angeles-São Paulo flights as well as seven daily nonstop flights between São Paulo and Buenos Aires, offering multiple connecting opportunities on which United can now codeshare. Indeed, Varig is free under the U.S.-Brazil bilateral aviation agreement to offer daily nonstop Los Angeles-Buenos Aires service continuing to Brazil and to codeshare on that service with United.<sup>2</sup> By the same token, Continental will be able to offer one-stop online connecting service between both Los Angeles and Buenos Aires via Panama City, providing additional competition at Los Angeles. Finally, United offers a new claim that two more airlines may soon serve the Los Angeles-Buenos Aires route. (See

---

<sup>2</sup> Under the U.S.-Germany agreement, even Lufthansa could provide nonstop Los Angeles-Buenos Aires service and place United's code on its flights.

United's objections at 10, n. 12) Nonetheless, United complains that Los Angeles lacks sufficient service but fails to recognize that the potential addition of two more carriers to the Los Angeles-Buenos Aires route would add even more flights to the plethora of service already offered and even less justification for adding United's own operations to its codeshare opportunities with Varig.

3. United seeks to preserve United's duopoly with American on U.S.-flag service at New York/Newark indefinitely, allowing Delta to provide non-competitive Buenos Aires flights at Atlanta to consume the only other Argentina frequencies available for award to Continental in the foreseeable future.<sup>3</sup> Such an outcome would not serve the public interest, but would instead allow United to achieve its anticompetitive objectives. The Department must not allow such a perverse outcome for the passengers and shippers who will benefit from new competitive flights at the New York/Newark gateway and a new network competitor to United and American on U.S.-Argentina routes.

4. If United does not want to compete head-to-head with Continental at New York/Newark, United has an alternative which will permit it to institute Los Angeles-Buenos Aires nonstop flights without denying the public the benefits of

---

<sup>3</sup> United has not pursued its objection to Delta's Argentina flights at Atlanta which would not compete directly with United's flights at New York/Newark or elsewhere.

Continental's New York/Newark-Buenos Aires flights. United already holds 21 weekly Argentina frequencies. No U.S. airline has more. United can move seven frequencies to Los Angeles without the Department's authorization or comparative selection proceedings. If United is truly convinced of the benefits of its Los Angeles-Buenos Aires proposal<sup>4</sup> and its objective of precluding Continental from instituting New York/Newark-Buenos Aires flights in competition with United at JFK is frustrated, United can move seven frequencies to Los Angeles. United has never resolved the inherent contradiction between its claims of public benefits from its Los Angeles-Buenos Aires proposal so extraordinary and compelling the Department was "irrational"<sup>5</sup> not to choose it and United's longstanding failure to use any of its 21 frequencies for Los Angeles-Buenos Aires service before new Argentina frequencies became available. Until new frequencies became available and

---

<sup>4</sup> United's traffic claims for its proposed Los Angeles-Buenos Aires flights are seriously overstated and the Department should not rely on United's latest restatement of them. (See Continental's brief at 27-29) Not only did United increase its traffic projections three times without explanation (see CO-R-1141), United went so far that its traffic forecast results in monthly load factors above 100% when seasonally adjusted (see CO-R-1142). United's load-factor claims of 92.8% are by far the highest of any regularly scheduled U.S.-South America service by United since 1992 (see CO-R-1143) and result from applying the wrong growth rate for Los Angeles-Buenos Aires traffic (see CO-R-1147 and CO-R-1148). United's projected load factor should be at least 21% lower (see CO-R-1145), and substantially reduced further by the upcoming entry of two additional Argentine airlines on the Los Angeles-Buenos Aires route (see United's objections at 10, n. 12). If the Department really believes United's traffic forecasts are "credible," it should take another look.

<sup>5</sup> United objections at 17.

Continental had the unprecedented opportunity to compete with United on the New York/Newark-Buenos Aires route and add Continental's network to U.S.-Argentina routes, United apparently did not care about instituting Los Angeles-Buenos Aires flights. The Department must not allow United to obstruct new competition on the vital New York/Newark-Buenos Aires route and intragateway competition at New York/Newark for the sake of instituting service United is free to start on its own.

5. The case for authorizing new entrant airlines in South America has never been stronger than in Argentina, where only two U.S. airlines have ever been authorized.<sup>6</sup> The entire thrust of the International Aviation Policy Statement is opening opportunities throughout the world for additional airlines by eliminating restrictions which have precluded new entry, and the Department is required to consider "encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry" as well as placing maximum reliance on competition and "avoiding unreasonable industry concentration." (49 U.S.C. § 40101 (a)(13) and (10)) United's proposal to exclude Continental from Argentina would limit the Department's effort to eliminate fully the "unreasonable industry concentration" which has resulted from the United/American duopoly on U.S.-flag Argentina service as well as precluding Continental's entry into Argentina.

---

<sup>6</sup> See Order 2000-12-13 at 8.

6. The Houston Parties have joined Continental in demonstrating the importance of adding Houston service to U.S.-Argentina routes, and Continental's Houston-Buenos Aires flights would introduce the only nonstop or single-plane service on the route and enable Continental to compete nationwide with U.S.-Argentina service provided by other carriers, particularly for passengers and shippers throughout the western United States. Thus, Continental continues to urge the Department to grant Continental seven frequencies for New York/Newark flights and seven frequencies for Houston flights.

7. Although Continental believes it should receive the primary award for Houston service, the Department has, at the very least, properly selected Continental to provide Houston-Buenos Aires service if Delta does not commence Atlanta-Buenos Aires flights or discontinues them within one year.<sup>7</sup> Delta says it is "extremely pleased" by the Department's tentative award of the seven frequencies available April 1, 2001, but does not want the Department to select a backup airline for its frequencies.<sup>8</sup> If Delta is unable to institute or sustain its Atlanta-Buenos Aires flights, the Department should not deny Continental the opportunity to institute its proposed Houston-Buenos Aires flights without delay or further

---

<sup>7</sup> Order 2000-12-13 at 12.

<sup>8</sup> Delta's comments at 3.

proceedings.<sup>9</sup> If Delta does not begin or discontinues Atlanta-Buenos Aires service, Continental should be allowed to implement its plans to give Houston passengers and shippers the first nonstop or single-plane service between Houston and Buenos Aires and offer even more convenient service to passengers and shippers throughout the western United States.

For the foregoing reasons, Continental urges the Department to award Continental the seven frequencies available April 1, 2001, for daily nonstop New York/Newark-Buenos Aires flights and the seven frequencies available December 1, 2001, for daily nonstop Houston-Buenos Aires flights. If the Department decides to award seven weekly frequencies to another airline, however, the Department should award Continental the seven weekly frequencies for New York/Newark-Buenos Aires flights effective April 1, 2001. At the very least, the Department should confirm its decisions awarding Continental seven frequencies for New

---

<sup>9</sup> Delta explains its request that the Department not designate a backup airline for its tentatively-awarded frequencies by saying it “exercised restraint in not submitting an excessive request for all 14 frequencies available . . . Delta should be permitted the opportunity to compete for additional Argentina authority, should it become available.” (Delta's comments at 4) If Delta is awarded seven frequencies for Atlanta-Buenos Aires service and then defaults, neither Delta nor any other airline should be allowed the opportunity to compete for these frequencies since Continental has already demonstrated why the public interest is best served by using them for Houston-Buenos Aires service.

York/Newark-Buenos Aires service effective December 1, 2001, and selecting Continental as backup to Delta for Houston-Buenos Aires service.

Respectfully submitted,

CROWELL & MORING LLP

/s/ R. Bruce Keiner, Jr.

---

R. Bruce Keiner, Jr.  
rbkeiner@cromor.com

/s/ Thomas Newton Bolling

---

Thomas Newton Bolling  
tbolling@cromor.com

Counsel for  
Continental Airlines, Inc

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document on all parties to this proceeding in accordance with the Department's Rules of Practice.

/s/ Thomas Newton Bolling

---

Thomas Newton Bolling

December 29, 2000

SERVICE LIST

HollyBeth Anderson  
Metro Atlanta Chamber  
of Commerce  
handerson@macoc.com

Rachel B. Trinder  
Zuckert, Scutt & Rasenberger, L.L.P.  
rbtrinder@zsrlaw.com  
(for Houston)

Barney Parrella  
PA Consulting Group  
Barney.Parrella@paconsulting.com  
(for Los Angeles)

Chip Hallock  
Regional Business Partnership (Newark)  
Challock@rbp.org

Robert E. Cohn  
Shaw Pittman  
robert\_cohn@shawpittman.com  
(for Delta)

Jeffrey A. Manley  
Wilmer, Cutler & Pickering  
jmanley@wilmer.com  
(for United)