

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

In the matter of)	
)	
U.S.-FRANCE COMBINATION)	
SERVICE FREQUENCY)	Docket OST-98-3872
ALLOCATION)	
)	
)	

**MOTION FOR LEAVE TO FILE
AND SURREPLY OF CHARLES A. STANZIALE, JR.,
CHAPTER 11 TRUSTEE FOR TOWER AIR, INC.**

MOTION FOR LEAVE TO FILE

On June 29, 2000, United Air Lines, Inc. ("United") submitted a response to the reply filed by Charles A. Stanziale, Jr., the Chapter 11 Trustee for Tower Air, Inc. ("Tower"). In order that the Department may have a complete record upon which to decide Tower's application, Tower moves for leave to file this surreply which will not unduly delay this proceeding.

SURREPLY

United can run but it can't hide from its misreading, in its June 27, 2000 answer, of the submission made by Tower on July 21, 1998. In that response to a specific request made by the Department, Tower set forth, on a market-by-market basis, the frequencies it had operated in the New York-Paris market during the period June 1997 through June 1998 and the number of frequencies it planned to operate in the New York-Paris, Miami-Paris and Los Angeles-Paris markets during the period July 1998-December 1999. This list of frequencies was, of course, prepared on the assumption that Tower was authorized to operate twelve frequencies in the U.S.-France market, not the eight frequencies that Tower was ultimately authorized to operate after

the Department withdrew four of those frequencies from Tower subsequent to the date on which Tower filed these schedules (see Order 98-10-21 and 98-11-19).

Thus, at the time the Department issued Order 98-10-21 on October 20, 1998, it was quite clear to the Department that (1) Tower would be authorized to operate only eight, not twelve, weekly frequencies, and (2) based on the July 21, 1998, Tower schedule submission, Tower intended to utilize its New York-Paris frequencies on a seasonal basis, with more flights operated during the summer than throughout the remainder of the year. With those facts clearly in mind, the Department rejected the arguments made by United and others that the Department should reduce the base-level frequencies allocated to Tower below the eight originally authorized in Order 98-6-29)), and reaffirmed its prior determination to award Tower eight frequencies, knowing full well that Tower intended to operate the eight frequencies in the manner indicated in its July 21, 1998 letter. And, as demonstrated in Tower's June 28, 2000 reply, Tower operated almost exactly what it had told the Department it would operate in the New York-Paris market during the last six months of 1999. With Tower having operated in 1999 what it had told the Department in 1998 it would operate in response to a specific request from the Department, and the Department, knowing that Tower did not plan to use all of those frequencies every month, reaffirming its decision to award Tower eight frequencies in Order 98-10-21, United has failed to establish any, much less a reasonable, basis for arguing that any portion of Tower's frequencies became dormant in the last six months of 1999.

The Department got it right in 1998 when it rejected, in Order 98-10-21, the argument that United is now attempting to resurrect, and Tower respectfully submits that the Department should reject that argument in this proceeding as well.

WHEREFORE, for the foregoing reasons, as well as those set forth in its previously-filed application, supplement and reply, Charles A. Stanziale, Jr., the Chapter 11 Trustee for Tower Air, Inc., respectfully requests that the Department of Transportation grant this motion and the waiver of the 90-day dormancy condition in the manner requested in its application and such other and different relief as may be in the public interest.

Respectfully submitted,

/s/ John E. Gillick

John E. Gillick
Winthrop, Stimson, Putnam &
Roberts
1133 Connecticut Avenue, N.W.
Washington, D.C. 20036
202-775-9870
Email: gillickj@winstim.com
Counsel for Charles A. Stanziale, Jr.,
Chapter 11 Trustee for Tower Air, Inc.

June 30, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing motion and surreply by facsimile upon those persons set forth on the attached Service List.

/s/ John E. Gillick

John E. Gillick

Washington, D.C.
June 30, 2000

Service List

Carl B. Nelson, Jr.
Associate General Counsel
American Airlines, Inc.
1101 Seventeenth Street, N.W.
Suite 600
Washington, D.C. 20036

Jeffrey A. Manley
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037
(United Air Lines)

R. Bruce Keiner, Jr.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(Continental Airlines)

Cecilia Bethke
Northwest Airlines, Inc.
901 Fifteenth Street, N.W.
Suite 310
Washington, D.C. 20005

Glenn P. Wicks
Trans World Airlines, Inc.
900 Nineteenth Street, N.W.
Suite 350
Washington, D.C. 20006

Robert E. Cohn
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037
(Delta Air Lines)

Joel Stephen Burton
O'Melveny & Myers
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(US Airways)

Federal Aviation Administration
(AFS-200) Air Transportation Division
800 Independence Avenue, S.W.
Washington, D.C. 20591

U.S. Department of State
Office of Aviation Negotiations
2201 C Street, N.W., Room, 5531
Washington, D.C. 20520

Civil Air Attache
Embassy of France
4101 Reservoir Road, N.W.
Washington, D.C. 20007

Teresa Bingham
Chief, U.S. Carrier Licensing Division
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20591