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beyond the confines of this particular case arise from the broadly drafted issues (particularly issue No. 1) and several comments submitted in response to the Order.

4. Some commentators have suggested that the Department's decision in this case could have broad implications on the scope of federal preemption and on the proprietary rights and powers of airport owners. See, for example, Comments of the Airports Council International, N.A. ("ACI"): "This proceeding raises serious questions as to the scope of federal preemption and the corresponding breadth of authority of proprietor municipalities to manage operations at airports they have established and maintained." (ACI Comments at 1); Comments of American Airlines, Inc. ("American"): "As posed, Issue No. 1 applies to airports and airport owners throughout the United States." (Comments of American at 3); Comments of the City of Dallas: "At the core of these disputes are questions concerning the respective roles of the Federal Government and the local airport proprietors in the regulation of commercial air traffic." (Comments of Dallas at 2). Furthermore, Issue No. 1 is drafted broadly and could be read to address issues of preemption and proprietary rights in general without specific reference to Love Field.

5. Delta respectfully disagrees with those comments that suggest that the Department's rulings in this proceeding should or would have any applicability beyond the specific factual and legal circumstances surrounding the use of Love

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Field. Although the parties may disagree on a number of the issues raised by the Department in the Instituting Order, there can be no disagreement that the issues surrounding the Love Field dispute are sui generis and involve unique factual and legal circumstances not applicable to any other airport in the nation. First, Love Field is the only airport in the country which is governed by specific Aviation Act provisions (the “Wright” and “Shelby” Amendments) relating to interstate air transportation service. The Instituting Order recognizes this unique legal status: “. . . airline operations at Love Field, an airport owned and operated by the City of Dallas, are restricted by Federal statute, Section 29 of the International Air Transportation Competition Act of 1979, as amended.” Second, the Shelby Amendment has spawned a number of disputes and lawsuits, all involving the question of whether, and to what extent, airlines may operate additional types of service at Love Field. Third, there is a unique regulatory history surrounding Love Field that is not applicable to any other airport. See, Order E-18719, Order E-21341, Order E-22028, Order 73-9-82, Order 85-12-81, and Order 98-7-6. Fourth, the underlying legal agreements and documents including the Concurrent Bond Ordinance enacted in 1968 by the Cities of Dallas and Ft. Worth, the Contract and Agreement between the two cities which established what is today the Dallas/Ft. Worth International Airport, and the Dallas/Ft. Worth Use and Lease Agreements, are unique to Love Field and D/FW International Airport and cannot be understood fully without reference to the historical context from which they arose.

6. The Instituting Order makes clear that the Department intends to address issues only as they affect use of Love Field: “We plan to address only the federal law issues raised in the current litigation, which essentially involve the questions of Dallas’ ability to allow airlines to operate the Love Field service authorized by the Shelby Amendment and the airlines’ ability under federal law to operate long-haul flights from Love Field.” See, Order 98-8-29 at 4-5.

7. Federal preemption and proprietary rights issues are highly fact-specific and turn on the particular statutory, regulatory and legal context in which the issues arise. Therefore, it is imperative for the Department to address such matters only on a case-by-case basis. Moreover, because of the special legal, factual and regulatory contexts in which the Love Field disputes have arisen, it is particularly important for the Department to not to use this highly unique case as a vehicle to make policy or legal pronouncements of general applicability with respect to any of the federal preemption/proprietary rights questions posed. For example, the Department should avoid using this case to rule on such questions as whether, in any instances outside the immediate question regarding Love Field, airport-airline contracts are immune to federal preemption when they purport to waive rights or authorities granted to airlines under federal statutes, regulations or policy, or whether airport operators can restrict by contract federal rights and authorities when they could not restrict such rights by ordinance or other governmental action. Answers to these questions are highly fact driven and are

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best resolved on a case-by-case basis. While there are a number of multi-airport owners in the country, none is subject to the same or similar statutory, regulatory, contractual and litigation framework that surrounds and permeates every question regarding the use of Love Field. Accordingly, if the Department determines that it is proper to issue a ruling on the questions posed in the Instituting Order, the ruling should be narrowly drawn to have applicability only with respect to Love Field.

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8. For the foregoing reasons, Delta respectfully urges the Department to ensure that it limits any ruling it may issue in this proceeding solely to issues involving Love Field.

Respectfully submitted,

Robert E. Cohn
SHAW PITTMAN POTTS &
TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8060

Counsel for
DELTA AIR LINES, INC.