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

DEPT OF TRANSPORTATION

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1999 U.S.-ARGENTINA COMBINATION SERVICE)
CASE)
_____)

Docket OST-99-6210 -334

CONSOLIDATED ANSWER OF UNITED AIR LINES, INC.

Communications with respect to this document should be sent to:

SHELLEY A. LONGMUIR
Senior Vice President-
International, Regulatory
and Governmental Affairs

JEFFREY A. MANLEY
BRUCE H. RABINOVITZ
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
(202) 663-6670 (Phone)
(202) 663-6363 (Fax)
jmanley@wilmer.com(e-mail)

MICHAEL G. WHITAKER
Vice President-International
and Regulatory Affairs

Counsel for
UNITED AIR LINES, INC.

JONATHAN MOSS
Director-Regulatory Affairs
UNITED AIR LINES, INC.
P.O. Box 66100, WHQIZ
Chicago, Illinois 60666

MARK ANDERSON
Senior Director-Governmental Affairs
UNITED AIR LINES, INC.
1025 Connecticut Avenue, N.W.
Suite 1210
Washington, D.C. 20036

DATED: December 29, 2000

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1999 U.S.-ARGENTINA COMBINATION SERVICE)
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DATED: December 29, 2000

CONSOLIDATED ANSWER OF UNITED AIR LINES, INC.

United Air Lines, Inc. ("United") submits the following consolidated answer to the Objections of Continental Airlines, Inc. ("Continental") and the Houston Parties and the Comments of Delta Air Lines, Inc. ("Delta") relating to the Department's tentative findings and conclusions in Order 00-12-13:

1. Continental and the Houston Parties object to the Department's tentative award of seven frequencies to Delta for Atlanta-Buenos Aires service and urge that Continental be awarded all 14 available frequencies. Under such an award, Continental says that it would operate daily service to Buenos Aires from Houston as well as Newark, with Newark service to begin in April and Houston service in December.

Continental and Houston argue that Continental's Houston-Buenos Aires service would offer more benefits than Delta's Atlanta service. In fact, the Department spent little effort in reviewing Continental's Houston proposal, rejecting it for reasons similar to those applied to its rejection of United's Los Angeles proposal:

"[G]iven the presence of another new entrant applicant, one carrier should not be awarded all 14 frequencies. To do so would not fully use the valuable opportunity available to increase the number of competitors in the market and

would not maximize the public benefits that result from the availability of multiple carrier/service options to consumers.

Order 00-12-13 at 10 (footnote omitted).

Continental and Houston continue to urge Continental's selection at Houston on the basis of its identity as a "new entrant." This ignores the rather obvious fact that Continental has chosen to operate to New York/Newark as its first choice and would prefer to do so on April 1, 2001. If Continental (instead of Delta) were allocated the seven frequencies available for service on April 1, 2001, however, it would, under the Department's analysis, no longer be a "new entrant" in December 2001 when Continental proposes to start service at Houston and would for that reason have ceased to be eligible for consideration of an award of service at that gateway.^{1/}

The Department's approach to the Houston proposal mirrors that which it took to United's Los Angeles proposal. Allowing itself to be mesmerized by its perception that "new entry" should be the sole carrier selection factor in this proceeding, the Department fails to consider the public benefits of service to consumers at Houston,

^{1/} Assuming for the sake of argument that the Department were to grant Continental the relief it has requested, Continental would replace Delta as the carrier receiving April 2001 frequencies and would use them at New York/Newark. In that event, both Continental and United would be incumbents when the December 2001 frequencies were available. Even under the Department's own erroneous reasoning granting a pre-emptive preference to new entrants, Continental would be entitled to no such preference for the December 2001 frequencies. As set forth in the text, on the basis of consumer benefits, United should, under these assumptions, be selected at Los Angeles where its services clearly offer superior consumer benefits compared to Continental at Houston.

just as it did at Los Angeles, because the applicants seeking to provide those services do not meet the Department's definition of "new entrant" as applied in this proceeding.^{2/}

United has urged that the Department rely consistently on benefits to consumers, not to carriers that happen to be new entrants. New entry is obviously a factor that should be considered, but it should not be allowed to trump all other benefits. Where, for example, two carriers offer roughly equivalent benefits to consumers but one is a new entrant and the other an incumbent, it may be appropriate to make the selection based on the structural benefits of new entry as well as the benefits of the new entrant carrier's service to consumers. Where, however, as here, the benefits to consumers resulting from United's service are overwhelmingly superior to those offered by Continental at either New York/Newark or Houston, the benefits of allowing Continental to add Buenos Aires to its network should not be allowed to deprive Los Angeles consumers of the much greater benefits United's service would offer.

United has previously summarized the greater consumer benefits that its Los Angeles service offers compared to Continental's service at New York/Newark. *See* United Objections, dated December 26, 2000, at 2. Applying the same analysis here, there is no question that Los Angeles is also a better choice than Houston as a new U.S. carrier gateway to Buenos Aires:

^{2/} The Houston Parties (Objections at 4) claim that Continental's choice as a "new entrant" is dictated by the fact that United and American are the "historically dominant carriers across Latin America." By that standard, however, it would be Continental, not United, that would be disqualified at both New York/Newark and Houston. Continental has a far better claim to "dominance" of U.S.-Latin America markets than does United. *See* Objections of United, dated December 26, 2000, in this docket, at 10, n.13.

- By any measure, Los Angeles is a much larger local market to Buenos Aires than Houston. *Exhibits UA-101 and LAX-R-401/402/403/404.*
- United at Los Angeles would use a larger aircraft than Continental at Houston and would introduce more competitive seats in the U.S.-Argentina market than would Continental (203,000 vs 124,000). Order 00-12-13, Appendix A.
- United's service at Los Angeles would benefit nearly four times as many nonstop passengers as would Continental's service in the much smaller Houston market. *Exhibit UA-R-331* and Order 00-12-13, Appendix A.
- United's nonstop service at Los Angeles would offer a greater service improvement for passengers than would Continental's at Houston. *Exhibit LAX-R-412.*
- Houston is poorly located to offer connecting service to many of the Western U.S. points that United would serve over Los Angeles. *Exhibit UA-R-330.*
- Most of Continental's Houston connecting passengers (94 percent) have existing online connections via other gateways. *Exhibit UA-R-332.*
- The two largest Houston connecting markets are Los Angeles and San Francisco, both of which are far larger than the Houston market itself and both of which would be much better served by United than by Continental. *Exhibit CO-302.*
- With Delta operating at Atlanta, all of Continental's Houston connections would be duplicative; and with Continental operating at New York/Newark, many of its Houston connections would be duplicative. *Exhibits UA-R-323/333.*

If the Department had followed its own policy of deciding carrier selection cases based on a comparison of consumer benefits rather than benefits to new entrants, it would have included a discussion of the above factors as applied to Houston and would have concluded that United's service at Los Angeles should take precedence over Continental's at both Houston and New York/Newark. No doubt, Continental itself applied a similar traffic-oriented analysis, as well as a review of its own experience in

South America, in deciding to give a lesser priority to Houston. Continental decided that it would carry more passengers operating as the fourth nonstop carrier at the New York/Newark gateway than it would as a monopoly nonstop carrier at Houston, the smallest gateway at issue. (*Exhibits CO-301/302 and UA-101*).

When Continental was chosen to operate Houston-Sao Paulo service in the 1998 U.S.-Brazil proceeding (over United at LAX), it was unable to fulfill its service promises and lost some of its frequency allocation by default. It has taken Continental over two years to implement its Houston-Sao Paulo service proposal, and to do so, it has had to reduce service to Brazil from its Newark hub where it now seeks entry to Argentina. Now, Continental asks the Department to believe that it could mount a daily nonstop service in the even smaller Houston-Buenos Aires market (*See Exhibit LAX-R-402*) within a few months of when it proposes to start service at New York/Newark. Past experience as well as current traffic statistics demonstrate that Continental would be no more successful to Argentina than it was to Brazil.

The Department was correct in rejecting Continental's Houston proposal, but for the wrong reason. Houston is too small to support nonstop service in competition with larger surrounding gateways such as Los Angeles, Atlanta, and Miami.^{3/} The consumer

^{3/} Although Los Angeles has recently received nonstop service by a foreign carrier (Aerolineas Argentinas) there still remains more unmet demand for nonstop service at the Los Angeles gateway than there is at the much smaller Houston gateway. Based on historic traffic, there are seven times more Buenos Aires passengers at Los Angeles than at Houston and the three weekly nonstops offered by Aerolineas will not meet this demand. (*Exhibits LAX-R-402 and United Objections, supra*, at 6.) Moreover, the Department would be unwise to rely on such newly implemented foreign carrier operations in deciding gateway selection issues. The new Aerolineas service was started only shortly before the U.S. and Argentina concluded an interim arrangement in cont'd.

benefits of Houston service are simply outweighed by service at a larger local gateway market such as Los Angeles or a larger gateway hub such as Atlanta. Houston's connecting passengers already have competitive choices at other gateways (just as do those at Newark), giving Houston a relatively low priority as a new gateway compared to cities such as Los Angeles and Atlanta.^{4/}

2. Delta does not formally object to the Department's show cause order but "disagrees" with the Department's decision to award any backup authority to any carrier in this proceeding. This is inconsistent with Delta's own request for such authority in its application. Delta, however, unlike United, sought backup authority at a gateway (New York/Newark) for which it did not offer a service proposal. Having failed to secure its own backup award, Delta now urges that no such awards be made, even though the Department specifically announced its intention to make such awards and invited applications for such authority. Order 99-11-14 at 4.

Delta's position is based on the Department's decision in the 1999 U.S.-Brazil case. In that case, however, the Department decided not to make backup awards

November to allow expansion of services that resulted in a reopening of this case. It is in the interest of Aerolineas Argentinas to have the Department award frequencies at a U.S. gateway that is weaker than Los Angeles (such as Houston). Aerolineas' belated decision to start operations at Los Angeles may have been motivated at least partially by its desire to influence the Department's decision in this proceeding and thereby avoid competition with United at its Los Angeles hub.

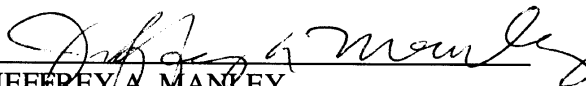
^{4/} The Houston Parties suggest that Houston would be a better gateway selection than "a city-pair market already served by foreign carriers." Houston Objections at 2. By that standard, Houston would be a much better choice than the New York/Newark gateway that is already served nonstop by two U.S. carriers as well as one foreign carrier. That even Continental (let alone the Department) did not choose Houston puts this rather hypocritical suggestion to rest.

because the authority awarded there all involved frequency allocations to incumbent carriers. Indeed, at least two of those carriers were already operating the services for which they were allocated frequencies under *pendente lite* allocations. In this case, on the other hand, at least one award will be made to a new entrant not operating any services to Buenos Aires today. The struggles experienced by both Delta and Continental in implementing such authority as new entrants in long-haul U.S.-South America markets demonstrate the need for backup authority here. Moreover, the procedural problems faced by the Department in the 1999 U.S.-Brazil case refute Delta's argument that dormancy conditions are sufficient to assure that limited-entry authority will not go to waste. The 1999 U.S.-Brazil case, which was started in response to improper utilization and dormancy of existing frequencies, required over 1 1/2 years to complete. Backup authorizations, on the other hand, become available automatically when a carrier defaults, without the need to resort to further procedures.

In this case, the Department is able to make backup awards based upon actual service proposals. Delta chose not to make such a proposal, and its failure to secure a backup award is of its own choosing. Delta's attempt to overturn the

Department's decision to make backup awards to other carriers who complied with the
Department's requirements should be rejected.

Respectfully submitted,



JEFEREY A. MANLEY
WILMER, CUTLER & PICKERING
2445 M Street, NW
Washington, D.C. 20037
(202) 663-6670

Counsel for
UNITED AIR LINES, INC.

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