



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the **14th day of February, 2005**

Served: February 14, 2005

**2005 LOS ANGELES-MEXICO CITY COMBINATION SERVICE PROCEEDING  
DOCKET-OST-2005-20406**

Applications of

**AMERICAN AIRLINES, INC.**

**CONTINENTAL AIRLINES, INC.**

**ALASKA AIRLINES, INC.**

**AMERICA WEST AIRLINES, INC.**

for an exemption pursuant to 49 U.S.C. § 40109  
(Los Angeles-Mexico City)

**Dockets OST-2005-20069**

**OST-2005-20071**

**OST-2005-20073**

**OST-2005-20096**

**INSTITUTING ORDER**

**Summary**

By this order we institute the *2005 Los Angeles-Mexico City Combination Service Proceeding* to select, on an expedited basis, one primary and one backup carrier to provide scheduled combination air service between Los Angeles, California, and Mexico City, Mexico.

**Background**

Under the U.S.-Mexico aviation agreement (“agreement”), the United States may designate two U.S. carriers to provide direct-carrier (own aircraft) combination services in the Los Angeles-Mexico City

nonstop market.<sup>1</sup> In the Los Angeles-Mexico City market, two U.S. carriers, Delta Air Lines, Inc. (Delta) and United Air Lines, Inc. (United), hold underlying authority and designation under the agreement to provide direct carrier (own aircraft) services.<sup>2</sup> However, by letter received January 21, 2005, Delta notified the Department that it would terminate service in this market on January 31, 2005.<sup>3</sup> As a result of Delta's termination of Los Angeles-Mexico City services, one designation opportunity is available on that route.

### **Applications and Responsive Pleadings**

American, Continental, Alaska Airlines, Inc. (Alaska), and America West Airlines, Inc. (America West) filed applications seeking the available Los Angeles-Mexico City authority. Each applicant filed an answer responding to the other carriers' applications.<sup>4</sup> Continental included in its answer a contingent request for *pendente lite* authority to serve the Los Angeles-Mexico City market or, in the alternative, a final decision by March 31, 2005.<sup>5</sup> Alaska, American, and Continental filed replies, with Alaska and American opposing *pendente lite* action. All of the captioned applicants urge us to make an expedited decision, saying that they wish to begin service by May 1, 2005, if not sooner.<sup>6</sup>

### **Proceeding**

In view of our ability to designate only one additional U.S. carrier to serve the Los Angeles-Mexico City market, and in light of the competing applications filed for this limited-entry route right, we have decided to institute the *2005 Los Angeles-Mexico City Combination Service Proceeding* to select one primary and one backup carrier to provide scheduled foreign air transportation services of persons, property, and mail in the Los Angeles-Mexico City market. We request that all applicants amend and/or supplement their existing exemption applications, as specified below.

As the applicants have requested, we have determined to award exemption authority for the Los Angeles-Mexico City route under expedited procedures. The authority at issue constitutes a valuable resource obtained from the Government of Mexico in exchange for granting Mexican carriers the opportunity to serve the United States. The market, moreover, is substantial, and Delta's exit has led to an appreciable reduction in U.S. carrier service. Two Mexican airlines actively serve the route. We, therefore, should restore competitive service by a second U.S. airline as quickly as possible.

---

<sup>1</sup> Pursuant to the agreement, up to four U.S. carriers may provide code-share services on a given city-pair route. Currently, American Airlines, Inc. (American) provides code-share services in the Los Angeles-Mexico City market. None of the applications at issue here involves a request to provide service on a code-share basis.

<sup>2</sup> Delta received its authority by Order 92-5-20, May 8, 1992. United received its authority by Order 2000-5-31, May 30, 2000.

<sup>3</sup> In addition to the loss of Delta's direct-carrier service, the code-share services by Continental Airlines, Inc. (Continental) and Northwest Airlines, Inc. (Northwest) on Delta's flights have also been terminated.

<sup>4</sup> America West, by motion, and Alaska, by request, seek consolidation of their applications for contemporaneous consideration. We will consolidate the applications.

<sup>5</sup> We further discuss the matter of the *pendente lite* request below.

<sup>6</sup> Continental Answer at 5; Continental Reply at 2; Consolidated Reply of Alaska at 2-3; Consolidated Reply of American at 2. Granting America West's request that it be granted exemption authority allowing it to begin service by May 1 would necessarily require an expedited proceeding.

In this proceeding, it will not be necessary to determine whether the public interest requires granting the available Los Angeles-Mexico City authority. As shown, the public interest clearly calls for use of these rights.

In awarding the available authority, our principal objective will be to maximize public benefits that will result from award of the authority in this case. In this regard, we will consider which applicant will most likely offer and maintain service that best meets the needs of the traveling and shipping public. We will also consider the effects of the applicants' service proposals on the overall competitive environment, including effects on the market structure and the level of competition in the Los Angeles-Mexico City market, the U.S.-Mexico market, and on any other markets shown to be relevant. In addition, we will consider other factors historically used for carrier selection, where they are relevant.

We intend to issue Los Angeles-Mexico City exemption authority for a two-year period to the primary carrier, subject to a 90-day startup condition, and subject also to certain dormancy notice requirements routinely imposed on U.S.-Mexico air transportation services.<sup>7</sup> Except where service in the market is seasonal/intermittent in nature, the dormancy conditions will apply as specified above. In light of the U.S.-Mexico dormancy conditions, and consistent with our standard policy, we will only grant Los Angeles-Mexico City exemption authority to an applicant presenting firm service plans.

In the interest of ensuring use of the subject limited-entry authority, we intend to issue backup exemption authority to a second carrier, which could be implemented if the selected primary carrier fails to operate the proposed services. The backup authority will expire one year from the date of issuance, unless otherwise activated. If activated, the authority will continue in effect for two years, subject to the conditions discussed above.

Since all applicants urge expedited action and quick decision, we intend to resolve issues on the basis of pleadings filed, and to award the Los Angeles-Mexico City authority in this proceeding by final order. The subject limited-entry authority is immediately available and all of the applicants have indicated the need for expedition. Under those circumstances, and in light of the need to restore quickly the full complement of U.S. carrier services on the Los Angeles-Mexico City route, thereby increasing traveler options and competition with significant foreign-flag service, we intend to proceed directly to final order once we have received and reviewed all of the supplemental and responsive material requested. Our procedures will give each applicant an adequate and fair opportunity to present its case while being consistent with its request for an expedited decision.<sup>8</sup>

---

<sup>7</sup> Under the dormancy conditions, if a city-pair market is not served for 90 consecutive days, the authority to serve that city-pair market becomes dormant and cannot be used. Furthermore, the exemption authority will contain a notice provision whereby the carrier will be required to notify the Department if it fails to meet the 90-day startup condition, if it discontinues service in the market, or if the market remains dormant for 90 days. Continental has asked that we award the subject exemption authority for five years rather than two. Historically, we have not granted exemptions for longer than two years, and we decline to change that practice here.

<sup>8</sup> Cf. *Pan American World Airways v. CAB*, 684 F.2d 31, 37-38 (D.C. Cir. 1982).

## **Procedures and Evidence**

In view of the immediate availability of the route rights, and in light of the support for expedited decision by all applicants, in renewing U.S.-flag competitive service in this important limited-entry market, we will expedite the schedule for this proceeding. As the applications filed are already ripe and all interested parties have had an opportunity to file competing requests, we will not provide for additional applications here. We will, however, give all applicants the opportunity to amend and/or supplement the existing applications, and will require certain additional information at the supplemental pleading stage, outlined below and in the appendix.<sup>9</sup> Applicants should ensure that they request both exemption authority and a designation.

Except for procedural dates, exemption/designation pleadings should conform to Part 302, Subpart C of our regulations (14 CFR Part 302). All pleadings should be filed with the Department of Transportation (Room PL-401), 400 Seventh Street, SW, Washington, DC 20590, in the captioned Los Angeles-Mexico City case docket, and should include, at a minimum, the information requested below and in Appendix A.<sup>10</sup> The parties should submit the required information in the form of exhibits. The exhibits should contain sufficient detail, including sources, bases, all assumptions, and methodology, so that, without further clarification, any party can derive the final results from the basic data.

We view adherence to these directives as critical to our consideration of the proposals in carrier selection cases. We put all applicants in this case on notice that we expect full compliance with the evidence request appended to this order. Any carrier not in full compliance in any material respect with our request will be subject to elimination from consideration for an award in this case.

Applicants may submit any additional information that they believe will help us in making our decision. We will authorize service of documents by facsimile and by electronic mail. Carriers that are interested in such service should state if they want service by fax or email and should provide interested parties with their fax number and/or email address.

Pursuant to sections 241.19-6 of the Department's regulations, it is determined that the data below are material and relevant to a final determination of the issues in this case. Thus, we have decided to release the following data, in the form of information responses, to assist the applicants in amending/supplementing their filed applications and in completing their analysis of other applications for the subject authority:

- a) Schedule T-100 and T-100(f) nonstop segment data (scheduled and nonscheduled) and on-flight market (scheduled and nonscheduled), by carrier (U.S. and foreign), by month and by

---

<sup>9</sup> The Department has always maintained the position that applicants may amend their service proposals up to the Direct Exhibits stage in a proceeding. In keeping with that policy, we expect all applicants to set out, at a minimum, their firm proposals at the supplemental pleading stage of this proceeding.

<sup>10</sup> Filers are encouraged to use the electronic submission capability available through the Dockets DMS Internet site: <http://dms.dot.gov> by following the instructions on the web site. In the alternative, all filings should be printed on 8-1/2" X 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite the use of our docket imaging system.

direction, beginning January 2001 thru December 2004, between the United States and Mexico,

- b) Origin and Destination (“O&D”) data by calendar year between 1998 and 2003, and the 12 months ended September 2004, and O&D gateway data for the 12 months ended September 2004.<sup>11</sup>

### **Procedural Timetable**

The DOT information set forth above will be available immediately. The supplemental information is to be filed no later than seven (7) calendar days from the service date of this order. The Parties’ responses to these submissions and their briefs will be due seven (7) calendar days thereafter.

In consideration of the accelerated schedule, as discussed above, we authorize service by facsimile or electronic mail. Parties should include their fax numbers on their submissions and should indicate on their certificates of service the methods of service used. Applicants not using facsimile or electronic mail must provide an original and three copies of all submissions to the Department of Transportation, Dockets, no later than the dates indicated.

### **Pendente Lite Authority Request**

In its consolidated answer and reply to the captioned applications, Continental urges the Department to establish expedited procedures to issue a final decision in this case no later than March 31, 2005. Continental further states that, should the Department determine that it cannot decide the case by that date, the Department should grant Continental *pendente lite* authority to serve the Los Angeles-Mexico City market, pending completion of the instant carrier selection proceeding.

American and Alaska oppose Continental's request for interim authority. American urges the Department to focus its resources on instituting and resolving the instant carrier selection case. Alaska states, among other things, that institution of expedited procedures here would allow for resolution of this proceeding by the end of April without necessitating grant of interim authority to any party.

After careful consideration of Continental’s position, along with all applicants’ requests for an expedited proceeding in this matter, and the need to restore competitive service quickly, we have determined that the public interest is best served by our proceeding to a full-term exemption carrier selection decision on an expedited schedule, rather than granting an interim service award. That being the case, we see no need to reach Continental’s contingent suggestion that we provide *pendente lite* authority.

---

<sup>11</sup> Due to the volume of this material, we will be unable to print and distribute copies to the parties. The Department will issue, on request, copies of the information responses electronically. Parties who wish to receive a copy of the information responses should contact Michael Lane (202) 366-2352 or Kevin Bryan (202) 493-0182 in the Competition and Policy Analysis Division of the Office of Aviation Analysis. Use of the data contained in the Departments Information Responses is restricted to applicant carriers and interested U.S. parties in this docket, and will only be released after the related affidavit of confidentiality has been submitted.

**ACCORDINGLY,**

1. We institute the *2005 Los Angeles-Mexico City Combination Service Proceeding*, Docket OST-2005-20406, to be decided by written, non-oral procedures under Part 302 of our regulations (14 C.F.R. Part 302);
2. The proceeding in ordering paragraph 1, above, will consider which primary and backup carrier should be selected to provide foreign scheduled air transportation services of persons, property, and mail in the Los Angeles-Mexico City transborder market, consistent with the provisions of the U.S.-Mexico aviation agreement;
3. We grant the requests of America West and Alaska Airlines to consolidate into the *2005 Los Angeles-Mexico City Combination Service Proceeding* the application of American Airlines, Inc., in Docket OST-2005-20069; the application of Continental Airlines, Inc., in Docket OST-2005-20071; the application of Alaska Airlines, Inc., in Docket OST-2005-20073; and the application of America West Airlines, Inc., in Docket OST-2005-20096;
4. We direct all applicants to submit the information as indicated in Appendix A, and as further described in the text of this order, to Docket OST 2005-20406
5. The requested additional information shall be submitted no later than seven (7) calendar days from the service date of this order; replies to new information filed and briefs shall be submitted no later than seven (7) calendar days thereafter;
6. Consistent with our decision in the text of this order, we dismiss the request of Continental Airlines, Inc., in Docket OST-2005-20071, for issuance of *pendente lite* exemption authority to provide foreign scheduled air transportation services of persons, property, and mail in the Los Angeles-Mexico City market;
7. We will serve this order on the captioned applicants in this proceeding; the U.S Department of State (Office of Aviation Negotiations); the Federal Aviation Administration (AFS-200); and the Ambassador of Mexico in Washington, D.C.

By:

KARAN K. BHATIA  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)

## EVIDENCE REQUEST FOR SUPPLEMENTAL PLEADINGS

- Firm date for instituting service in the Los Angeles-Mexico City market, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the forecast year with a break down for peak and off-peak seasons.<sup>1</sup> If applicants intend to offer seasonal services only, they must so specify and specify the period during which the seasonal service would be offered;
- Firm statement whether, if selected for primary authority, the applicant will accept a condition requiring institution of service by a date specified by the Department;
- Proposed schedules containing flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points and elapsed time for services), departure and arrival times, equipment types (including seat configuration by class of service), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service.
- Brief description of the carrier's facilities and stations at Los Angeles and at Mexico City that will be used for institution of the services proposed;
- Passenger traffic forecasts on an O&D market-by-market (city-pair) basis (single-plane and on-line connecting and, to the extent possible, interline connecting) for the 12 months ending March 31, 2006.<sup>2</sup> The forecasts should be based upon the applicant's proposed schedules and should be based on the O&D data supplied by the Department for the twelve (12) months ended September 30, 2004. Applicants should indicate growth rates, stimulation rates, and participation rates, and clearly outline the bases for such rates. Any adjustments (*e.g.* for foreign flag traffic) must be explained in sufficient detail, including sources, bases, all assumptions, and methodology, so that, without further clarification, any party can derive the final results from the basic data. Include any anticipated traffic changes in other markets on the applicant's existing system, including but not limited to diversion and service level/aircraft changes as a result of the proposal in this case. Indicate any anticipated seasonal fluctuations.

---

<sup>1</sup> The base year for traffic forecasting purposes should be the 12 months ended September 30, 2004, and the forecast year should be the 12 months ending March 31, 2006.

<sup>2</sup> Each applicant must also provide the Department in electronic spreadsheet format its traffic forecast(s) and all supporting data to those forecasts, prepared using Microsoft Excel®, and be filed directly with the Department's Competition and Policy Analysis Division of the Office of Aviation Analysis, X-55, Room 6401, 400 7<sup>th</sup> Street SW, Washington DC 20590. The data may be submitted via computer diskette, CDROM, or email (Michael.Lane@ost.dot.gov). Questions regarding these submissions or concerning the use of other software may be directed to Michael Lane (202) 366-2352 or Kevin Bryan (202) 493-0182.

Any party may also provide a separate, additional passenger forecast based on other source data if it wishes, but if so, that party should clearly explain the differences between its data source and the four specified (*e.g.*, differences in collection methods, or adjustments made to raw data). Furthermore, the information in such additional forecast shall be set forth in such a manner that any party could construct a passenger traffic forecast from the exhibits without the necessity of having the actual source document at hand.

- Statement as to whether the aircraft to be used in the proposed schedules are on hand or on order. If on hand, indicate where and the extent to which those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate whether the aircraft to be used comply with all FAA requirements. If not, indicate plans for achieving compliance;
- Estimated number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed service, and indicate the availability and method of obtaining the necessary fuel; and
- A description of any code-sharing agreements with U.S. or foreign carriers involving the carriage of traffic (local and/or flow) in the Los Angeles-Mexico City market.<sup>3</sup> If there is an existing code-share relationship with a carrier(s) involving the Los Angeles-Mexico City market, provide in detail a description of whether the proposed services in this proceeding will replace, supplement, or decrease operations with said code-share partner.<sup>4</sup> If both code-share and separate operations will be conducted, the applicant's exhibits should clearly reflect the full scope of the carrier's operations, including the levels of service under each operational arrangement, the cities to be served, and traffic forecasts;
- Statement as to whether the carrier, if selected for backup authority, will accept a condition that (a) permits it to implement the authority within the first year should the primary carrier withdraw from the market and (b) expires at the end of one year should the authority not be activated.

---

<sup>3</sup> Traffic forecasts required in this appendix should separately show connecting feed from the applicant's foreign-flag code-sharing partner(s)

<sup>4</sup> Any carrier operating under a code-share agreement that has not filed that agreement, or any revisions thereto, with the Department, should provide a copy of that agreement and any revisions thereto in its supplemental submission to the Department in this case.