

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Applications of)
)
ATLANTIC SOUTHEAST AIRLINES, INC. and)
DELTA AIR LINES, INC.) Docket OST-2006-24984
)
for exemptions under 49 U.S.C. § 40109)
(Los Angeles, CA – Mexico Routes))

**PETITION OF
ATLANTIC SOUTHEAST AIRLINES, INC. AND DELTA AIR LINES, INC.
FOR LIMITED REVIEW OF STAFF ACTION**

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July 14, 2006

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Pursuant to 14 C.F.R. § 385.30, Atlantic Southeast Airlines, Inc. (“ASA”) and Delta Air Lines, Inc. (“Delta”) hereby petition the Department for limited review of the Notice of Action Taken, issued July 5, 2006, (“July 5 NOAT”) in this Docket with respect to certain of the dormancy/start-up conditions therein.

ASA and Delta appreciate the Department’s timely issuance of the July 5 NOAT so that petitioners can expand their services between Los Angeles and Mexico, and dramatically improve the quality and convenience of air transportation for the traveling public. However, the July 5 NOAT reflects a significant and unannounced change in longstanding Department precedent regarding the dormancy/start-up conditions routinely used by the Department in awards of U.S.-Mexico authority. Instead of the standard 90-day dormancy calculated from the proposed start date, for flights scheduled to commence six months or later after the application was filed, the new condition requires

service to begin on the proposed start date for some of the routes included in the July 5 NOAT. As discussed below, this change could have unintended, anomalous, and adverse impacts on the petitioners and the Department. Accordingly, ASA and Delta request that the Department reconsider its July 5 NOAT in this respect and apply its standard 90-day dormancy provision to all city-pairs encompassed by this notice. To the extent DOT desires to change its longstanding policy, it should do so only after it solicits comments from the industry.

In further support of this Petition, ASA and Delta state:

1. The July 5 NOAT provides that proper parties may petition the Department for review of the staff action taken therein, and that any such Petition does not alter the July 5 NOAT's effectiveness. (July 5 NOAT, at 3.)

2. The Department has routinely granted the award or renewal of route authority in limited-entry U.S.-Mexico markets subject to the 90-day dormancy notice requirements set forth in DOT Order 88-10-2, Appx. A, para. 7. (*See, e.g.*, NOAT, October 26, 1999 (Docket OST-97-2845); NOAT, March 9, 2000 (Docket OST-95-244); NOAT, August 31, 2004 (Docket OST-04-18878).) In this case, the Department applied the standard dormancy condition for services proposed to be commenced within six months of the award.

3. However, the July 5 NOAT changed the dormancy condition with respect to service proposed to operate more than six months from the award,

and, with respect to those routes, the Department made the authority subject to an additional condition, “requir[ing] [DL and ASA] to institute the proposed service on their proposed startup dates.” (See July 5 NOAT, “Conditions” (February 1, 2007, for LAX-HMO and LAX-MZT; March 6, 2007, for LAX-TRC; March 13, 2007, for LAX-ZLO and LAX-ZCL; and March 15, 2007, for LAX-CUL) (emphasis added).) The July 5 NOAT stated that the new condition was imposed because ASA and DL “have proposed a significantly later startup date” for those services. However, the July 5 NOAT did not explain the reasons why such a change is needed.

4. Delta and ASA respectfully submit that this additional requirement represents an unwarranted and unnecessary shift in longstanding DOT precedent and policy regarding the start-up conditions for U.S.-Mexico authority, without the Department’s having provided any notice to carriers about – much less an opportunity to comment on – this significant change.

5. This change will subject the authority to unnecessary risk of loss and runs counter to the dormancy principle which was designed to provide airlines a cushion in which to commence international operations, rather than a requirement to start service on a particular date. Because it requires start-up on dates-certain for each route, the new condition leaves no room for even minimal delays and places the authority at risk of loss if unanticipated events (such as weather or mechanicals, or governmental approvals, or any other

factors) delay the start-up on the particular date on which the condition requires start-up.

6. The July 5 NOAT creates anomalous and inconsistent results. For example, with respect to Los Angeles-Loreto and Los Angeles-La Paz for which ASA/Delta proposed a December 1, 2006 start date, the standard dormancy provision allows ASA/Delta to commence service anytime between December 1, 2006, and February 28, 2007, a fair and reasonable cushion. However, with respect to Los Angeles-Hermosillo and Los Angeles-Mazatlan, merely because the start date is six months from now, ASA/Delta are required to start service “on their proposed startup date[]...February 1, 2007.” As a result, the later proposed service is required to begin prior to the earlier proposed service. This obviously cannot have been the intended result, and it makes no sense.

7. In addition, the new condition will increase the regulatory burden on applicants, other carriers, and on the Department. The carriers will now be required to closely monitor each projected start date and to distinguish among their respective Mexico authorities – those subject to the longstanding 90-day dormancy condition and those subject to a non-moveable start-up date. As for the latter, it will entail additional work to monitor and ensure compliance on a date-specific basis. In effect, the July 5 NOAT to ASA/Delta encompasses 4 separate additional conditions beyond the standard 90-day dormancy condition (4 new start-up dates-certain), rather than the single dormancy condition from DOT Order 88-10-2.

8. For the Department, it will potentially result in many more requests for waivers from the start-up requirement, most of which are likely to be filed on short notice and require immediate action by the Department to prevent loss of authority. Absent the reasonable cushion provided by the 90-day dormancy period, the chances for waiver requests and related polling would dramatically increase, with a corresponding increase in burdens on the Department staff and airlines. The condition leaves no room for even a minimal delay in service commencement. By contrast, the standard 90-day dormancy condition gives carriers a reasonable cushion in which to address such delays without burdening the Department, the carrier itself, *and* other carriers with waivers.

9. Indeed, the Department is applying this new start-up condition on proposed services commencing more than six months in the future – precisely the type of long-range forecast that is not readily susceptible to a single, hard-and-fast start-up date. Moreover, the Department’s new condition requires carriers to “institute the proposed service on their proposed startup dates.” Read literally, starting service on any date other than the start-up date, even a date before the start-up date, could be a violation of that condition.

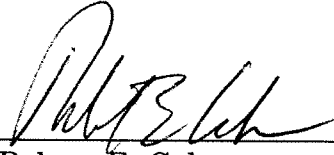
10. Carriers like Delta and ASA should not be penalized for advance planning, regardless whether that application is made 3 months, 6 months, or 9 months, before beginning service – particularly when uncontested applications (such as the one underlying the July 5 NOAT) are at issue. After all, an

application during the winter season of a particular year for seasonal service commencing at some point during the next winter season is not unreasonable.

11. The 90-day dormancy condition has served the Department and carriers well over the years, ensuring that valuable limited-entry route authorities do not go unused for extended periods of time while giving carriers an appropriate, albeit limited, grace period in which to start service in the new markets. None of the routes encompassed by the July 5 NOAT was oversubscribed in terms of designation opportunities. But even if these designations had been the subject of a contested carrier selection proceeding, it would still make sense to give the selected carrier reasonable leeway on its start-up date. There is simply no public interest reason for the Department to revise its dormancy/start-up conditions.

12. At a minimum, if the Department still believes that a new condition may be appropriate going forward, it should first issue a notice explaining the reasons why it is considering a new policy and seek comments from stakeholders before proceeding to implement and enforce it.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition of Atlantic Southeast Airlines, Inc. and Delta Air Lines, Inc. has been served this 14th of July, 2006, upon the following addressees:

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