



Order 2007-11-23

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

Issued by the Department of Transportation
on the 26th day of November, 2007

Served: November 26, 2007

***2007/2008 U.S.-COLOMBIA
COMBINATION FREQUENCY ALLOCATION PROCEEDING***
DOCKET-DOT-OST-2007-0006

ORDER INSTITUTING PROCEEDING AND INVITING APPLICATIONS

Summary

By this order, we institute the *2007/2008 U.S.-Colombia Combination Frequency Allocation Proceeding* and invite interested U.S. air carriers to file applications for certificate or exemption authority to serve the U.S.-Colombia market, and for allocation of combination frequencies.

Background

There is no limit on the number of U.S. carriers that the United States may designate to provide combination service to Colombia. However, only 70 weekly frequencies have been available for U.S. carrier combination services between the United States and Colombia. At this time, the United States has allocated those 70 weekly frequencies as follows: American Airlines, Inc. (American) - 42; Continental Airlines, Inc. (Continental) - 21; and Delta Air Lines, Inc. (Delta) - 7.

On September 28, 2007, the governments of the United States and the Republic of Colombia agreed, among other things, to increase the number of weekly frequencies available to carriers of each country for scheduled combination services (“the 2007 Understanding”). The 2007 Understanding also provides that scheduled combination services to the Colombian cities of Barranquilla and Cartagena de Indias are not subject to the frequency limitations.

As a result of the 2007 Understanding, the United States may allocate to U.S. carriers a total of 21 additional weekly combination frequencies in three stages, with seven frequencies available for institution of service effective on each of the following dates: December 1, 2007; April 1, 2008; and October 1, 2008. An additional seven weekly frequencies for combination services, currently held by American, will be at issue in this proceeding as discussed below.

Reexamination of Seven Frequencies Currently Held by American

On April 26, Spirit Airlines, Inc. (Spirit) applied for reallocation of 14 weekly frequencies currently held, but not being used, by American.¹ American opposed Spirit's application, citing American's firm plans to use the frequencies beginning December 13, 2007, with seven frequencies in the Miami-Barranquilla market, four in the Miami-Bogota market, and three in the Miami-Medellin market. On June 29, the Department issued a Notice of Action Taken (NOAT) dismissing Spirit's application and, based on American's firm proposal to use the frequencies, confirming the allocation of the 14 frequencies to American. However, American's retention of the 14 frequencies was subject to conditions on American to report progress on starting its proposed service by its announced date. NOAT at 3. On July 6, Spirit filed a Petition for Review of Staff Action. American, Delta and Spirit each filed responsive pleadings. On August 6, the Department issued Order 2007-8-28 dismissing Spirit's petition and affirming the action taken by the Director, Office of International Aviation, including the reporting conditions on American about its startup of the proposed service.

After the 2007 Understanding, American reported to the Department by letter submitted October 11 that, in light of American's no longer needing to use allocated frequencies for Barranquilla services, it would take the seven frequencies previously announced for Miami-Barranquilla services, and use them for Miami-Bogota (three frequencies) and Miami-Medellin (four frequencies) services, still beginning on December 13. On October 12, the Department issued a Notice inviting comments on American's stated use of these seven frequencies. Delta, JetBlue Airways Corporation (JetBlue),² and Spirit³ each filed comments objecting to American's proposed use of these frequencies, and American filed a reply. JetBlue, Delta, and Spirit also filed additional responsive pleadings.

Delta, Spirit and JetBlue suggest that, in light of the newly expanded U.S.-Colombia combination service regime, the Department should examine the allocation of frequencies in the restricted U.S.-Colombia market. In particular, they state that American's proposal to increase its current service to Medellin and Bogota does not comply with the condition imposed by the Department that these seven frequencies be used to serve the Miami-Barranquilla market (as proposed by American in earlier pleadings). Delta and Spirit assert that American is attempting to avoid a public interest review or a carrier selection proceeding for the allocation of these frequencies by unilaterally reassigning them to augment American's existing service to Bogota and Medellin. Spirit further requests that the Department advise American not to begin sale of services to Medellin and Bogota that would use these frequencies.

American asserts that these seven frequencies are not destination-specific and that its decision to reassign them is consistent with the Department's actions in Docket DOT-OST-2007-28057, as well as with the Department's policy to allow carriers to retain temporarily unused frequencies where the carrier demonstrates firm plans for their use. American states that it remains committed to

¹ See Docket DOT-OST-2007-28057.

² We note that American requested that we disregard JetBlue's late-filed comments. In the interest of developing a complete record in this matter, however, we will accept JetBlue's pleading.

³ On October 11, Spirit filed pleadings commenting on American's proposal.

commencing services to Barranquilla and that by reassigning the seven frequencies, American honors its commitment to the Department to implement service with those frequencies by December 13. American informs us that it has already begun selling additional services to Bogota and Medellin, using these seven frequencies.

We have decided to include in this carrier selection proceeding the issue of American's retention of the seven allocated frequencies that it had originally announced for Miami-Barranquilla service. American will be free to argue that its new proposed use for these frequencies would represent the best public interest outcome. Other applicants will be free to argue that their services would provide results that better serve the public interest.

When we originally announced our decision to permit American to retain the seven U.S.-Colombia frequencies at issue, American had in fact presented a firm plan for use of those frequencies and, based on our stated policy, this proved dispositive. We put American under a strict requirement to report its progress in using the frequencies as proposed. NOAT at 3. Moreover, on reconsideration, we expressly said that "[s]hould American not institute service and use its frequencies, as announced and affirmed by American in its pleadings, we would of course, reexamine this matter." Order 2007-8-28 at 4. In light of the 2007 Understanding, American no longer needs the seven frequencies for the originally announced purpose.

American's proposed alternative use of the frequencies takes on particular importance given that we have already had interest expressed in serving these very markets, including by potential new entrant carriers.⁴ We are required to weigh whether the public interest would be better served by letting American use those frequencies in the Miami-Bogota and Miami-Medellin markets or allocating them to other applicants. Therefore, we have determined to reexamine the allocation of these seven frequencies. We will do so in the context of this carrier selection proceeding. Nothing in our decision shall be construed to prevent American from competing for the allocation of these seven frequencies. American need not file a new application for these frequencies and can continue to sell based on currently holding the frequencies at issue. In the event that these frequencies are reallocated, we do not anticipate that the reallocation would become effective prior to April 1, 2008. This timeframe will provide ample opportunity for American to scale down operations to frequency-limited points and to rebook passengers, in the event that these frequencies are allocated to a different carrier. If American wishes to market and sell services using these frequencies beyond April 1, 2008, it must do so subject to government approval.

⁴ Spirit and JetBlue have each proposed new service to Bogota and/or Medellin in Dockets DOT-OST-2007-28057 and DOT-OST-2007-0017, respectively. Delta has also proposed service to Bogota and Medellin in Docket DOT-OST-2007-29367.

Proceeding

We have decided to institute the *2007/2008 U.S.-Colombia Combination Frequency Allocation Proceeding* to allocate U.S.-Colombia combination frequencies as follows:

- Seven frequencies available effective December 1, 2007
- Seven frequencies available effective April 1, 2008
- Seven frequencies available effective October 1, 2008

The proceeding will also consider whether American should retain seven of its currently allocated weekly U.S.-Colombia frequencies, and, if not, to which carrier they should be allocated. While American need not file an application for exemption or certificate authority, it nevertheless must conform to the other evidentiary requirements of the proceeding as outlined in Appendix A with respect to its proposed use of the seven frequencies. American should use the supplement, answer, and reply portions of the procedural schedule to support retaining the seven frequencies.

We have received an application from Delta, JetBlue, and Spirit⁵, in which each carrier seeks authority to provide service in the U.S.-Colombia market and for the allocation of frequencies to provide such service. We will consolidate the applications of Delta (Docket DOT-OST-2007-29367), JetBlue (Docket DOT-OST-2007-0017), and Spirit (Docket DOT-OST-2007-28057), as well as all other responsive pleadings in those Dockets, into this proceeding (Docket DOT-OST-2007-0006). Delta, JetBlue, and Spirit may supplement or amend their existing applications by the date specified in this Order for new applications. We also invite other interested U.S. carriers to file applications for certificate or exemption authority to serve the U.S.-Colombia market, and for allocation of combination frequencies.

In this proceeding, it will not be necessary to determine whether the public interest requires granting the available U.S.-Colombia authority. As shown, the public interest clearly calls for use of these rights. 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 U.S.-Colombia market. In addition, we will consider other factors historically used for carrier selection, where they are relevant.

⁵ In its application, Spirit urged the Department not to include the seven frequencies currently held by American that had been proposed for Barranquilla service in this proceeding, but rather to award those frequencies to Spirit immediately. To ensure that the concerns of all interested parties can be considered on this matter, we have determined that the public interest calls for our considering the American frequencies in the context of the broader carrier selection proceeding.

In order to facilitate prompt utilization of the frequencies at issue here in markets where demand has been historically heavy and where the high-traffic season is starting soon, we may decide to proceed directly to final order once we have received and reviewed all of the supplemental and responsive material requested. We intend to award the carrier(s) selected for allocation of frequencies exemption or certificate authority, as required, for its proposed services. We also intend to allocate the available U.S.-Colombia frequencies for an indefinite term, subject to a start-up condition and our standard 90-day dormancy condition. For any frequency not used for a period of 90 days, the allocation with respect to that frequency will expire automatically and will revert to the Department for reallocation.

Backup Authority

In the interest of ensuring timely use of the subject frequencies, we may elect to grant backup authority in this proceeding. The backup authority would be implemented if the selected primary carrier fails to operate the seven frequencies as proposed.

Evidentiary Requirements

In light of the upcoming availability of certain U.S.-Colombia frequencies for combination service, we have determined to award exemption/certificate authority and/or allocate frequencies for combination service in the U.S.-Colombia market under expedited procedures. The authority at issue constitutes a valuable right obtained from the Government of Colombia in exchange for granting Colombian carriers the opportunity to serve the United States.

We have decided to use written, non-oral procedures under Rule 210 of our regulations (14 CFR §302.210) in deciding this case. We believe that such procedures are appropriate to establish an evidentiary record and make a selection with the least possible delay and to support a decision in the public interest. We are also simplifying our procedures and evidentiary requirements to ensure that the decisional record can be created with the least possible delay and without unnecessary cost to the applicants.

Appended to this order is an evidence request for the benefit of the parties to this case. We are eliminating separate exhibit stages and request that applicants provide supporting evidence as part of their applications. We specifically are not requiring applicants to submit traffic forecasts. Further, we ask applicants to rank their proposals by priority and preference. Applicants may, of course, also submit any additional information beyond that requested if they believe it would be useful to us in reaching a decision.

All applications should be filed with the U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, D.C. 20590, in this Docket.⁶ Applications and supplements to pending applications must include, at a minimum, the information requested in Appendix A.

⁶ Filings should be on 8-1/2" X 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, filers are encouraged to use the electronic submission

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.

Procedural Timetable

As stated previously, we intend to process this case on an expedited procedural schedule. Therefore, we are establishing the following procedural schedule for submissions:

Petitions for Reconsideration:	December 3, 2007
Answers to Petitions:	December 6, 2007
New Applications/Supplements	December 6, 2007
Answers:	December 13, 2007
Replies:	December 18, 2007

In consideration of the accelerated schedule, as discussed above, we authorize service by facsimile or electronic mail. Parties should include their fax numbers and/or e-mail addresses 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 five copies of all submissions to the Department of Transportation, Dockets, no later than the dates indicated. Please also provide an electronic copy of all responsive pleadings to: Robert.Finamore@dot.gov and Esta.Rosenberg@dot.gov.

ACCORDINGLY,

1. We institute the *2007/2008 U.S.-Colombia Combination Frequency Allocation Proceeding* in Docket DOT-OST-2007-0006, to be decided by written, non-oral procedures under Part 302 of our regulations (14 CFR Part 302.210);
2. We consolidate the applications of Delta Air Lines, Inc. (Docket DOT-OST-2007-29367), JetBlue Airlines Corporation (Docket DOT-OST-2007-0017), and Spirit Airlines, Inc. (Docket DOT-OST-2007-28057), and other responsive pleadings from those dockets, into the *2007/2008 U.S.-Colombia Combination Frequency Allocation Proceeding*, Docket DOT-OST-2007-0006;
3. This proceeding will consider which carrier(s) should be awarded 21 weekly U.S.-Colombia combination frequencies available under the 2007 Understanding;
4. This proceeding will also consider whether American Airlines, Inc. should retain its seven frequencies for additional service to Bogota and Medellin as discussed in this Order and, if not,

capability available through the Federal Dockets Management System internet site (<http://www.regulations.gov>) by following the instructions on that web site.

which carrier(s) should be awarded these frequencies. With regard to the seven frequencies held by American Airlines, Inc. that are at issue in this proceeding, we condition the allocation of these frequencies to the extent that if American Airlines, Inc. wishes to market and sell services using these frequencies beyond April 1, 2008, it may do so only subject to government approval;

5. We accept all late-filed pleadings in this proceeding;

6. Applications and other responsive pleadings should be filed in accordance with the procedural schedule set forth in this order; and

7. We will serve this order on all certificated U.S. combination carriers, the National Air Carrier Association, the Air Transport Association, the U.S. Department of State (Office of Aviation Negotiations), the Federal Aviation Administration, and the Ambassador of the Republic of Colombia in Washington, D.C.

By:

ANDREW B. STEINBERG
Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at
<http://www.regulations.gov>

EVIDENCE REQUEST

I. Procedures and Ground Rules

In the interest of a complete and adequate record, the parties should provide the following information. In responding to this evidence request, all parties are advised to heed the admonitions and notice regarding compliance contained in the attached order.

II. Request for Information and Evidence

Submit, at a minimum, the following:¹

1. Proposed date for instituting service in a given U.S.-Colombia city-pair market, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated for the 12 months ending December 1, 2008, for the December 1, 2007 frequencies; April 1, 2009, for the April 1, 2008 frequencies;² and October 1, 2009, for the October 1, 2008 frequencies. If a carrier intends to offer seasonal service, it must so specify and specify the period during which the seasonal services would be offered.

Proposed schedules should contain flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points and elapsed time for services), departure and arrival times in local time (with time difference between local time and time at point of origin), equipment types (including seat configuration by class of service and the cargo capacity available), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service;

2. A brief description of the types of service the applicant currently provides, if any, between the United States and Colombia, including the types of service (state whether the services are code-share operations, seasonal or year-round, charter, and/or scheduled) and include frequency levels by city-pair market;
3. A statement describing the benefits of the carrier's proposed service to the public interest;
4. A statement as to whether or not 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

¹ The original filing should be on 8½" x 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, parties are encouraged to use the electronic submission capability available through the Dockets FDMS Internet site (<http://www.regulations.gov>) by following the instructions on the web site. Additionally, service by facsimile or electronic mail is authorized. Parties should include their fax numbers and email addresses on their submissions and should indicate the method(s) of service used on their certificates of service.

² Parties applying for the seven frequencies currently held by American may specify an April 1, 2008 start-up date or later, and should provide the additional information requested in this paragraph for the appropriate 12-month period.

the aircraft will be financed. Indicate whether the aircraft to be used comply with FAR-36. If not, indicate plans for achieving compliance;

5. 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;
6. A description of any code-sharing agreements with foreign carriers providing for the applicant's proposed service to be marketed under the foreign carrier's codes, or for U.S.-Colombia service operated by the foreign carrier to be marketed under the applicant's code, including a description of integrated connecting services to be provided by the applicant's code-sharing partner(s). If there is an existing code-share relationship with a carrier(s) involving the U.S.-Colombia 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(s). 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 in its application. If both code-share and own aircraft operations will be conducted, the application should clearly reflect the full scope of the carrier's operations, including the levels of service under each operational arrangement and the cities to be served;
7. Responses to the following interrogatories:
 - (a) If the carrier is selected for primary authority, will it accept a condition requiring institution of service by a date specified by the Department? What date should the Department specify?
 - (b) If the carrier is selected for backup authority, will it accept a condition that (i) permits it to implement the authority within the first year should the primary carrier withdraw from the market, and (ii) the authority expires at the end of one year should the authority not be activated?
 - (c) If an applicant is not awarded all of the frequencies that it has requested, would the applicant accept partial grant of its frequency allocation? How would a partial allocation be used, and what would the start-up date be, if different than above? Also, what is the minimum number of frequencies that a carrier will accept?
 - (d) Rank, in order of priority and preference, the U.S.-Colombia city-pair markets and frequency availability dates (i.e. December 1, April 1, October 1) for which the carrier seeks combination frequencies in this proceeding, and if awarded, the number of frequencies needed for each city-pair market. If requesting multiple daily services, specify the desired frequency availability dates for each city-pair. If applicable, carriers should also include ranking information with respect to the seven frequencies currently allocated to American and at issue in this proceeding.

Incumbent Carrier Data (American, Continental, and Delta)

- (a) Identify the number of currently authorized frequencies being utilized and specify the complete routing of those frequencies.
- (b) For each month of the twelve months ended October 2007, provide the number of flights and complete itinerary for all flights operated in each city-pair market where service was provided in the U.S.-Colombia market. If service was seasonal, the markets and level of service should be clearly identified. Carriers should distinguish between flights operated under code-share arrangements and those that are not operated under code-share arrangements. In addition, specify whether there was a change of gauge over any segment of the routes for each flight.

Applicants are also free to submit any additional relevant information that they believe will help us in making our decision.