

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

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

**OBJECTIONS OF AMERICAN AIRLINES, INC.  
TO SHOW-CAUSE ORDER 2008-3-4**

Communications with respect to this document should be sent to:

HENRY C. JOYNER  
Senior Vice President -  
Planning  
American Airlines, Inc.  
P.O. Box 619616, MD 5628  
DFW Airport, Texas 75261

DON CASEY  
Managing Director -  
International Planning  
American Airlines, Inc.  
P.O. Box 619616, MD 5635  
DFW Airport, Texas 75261  
(817) 963-2354  
don.casey@aa.com

ROBERT A. WIRICK  
Manager - International Planning  
American Airlines, Inc.  
P.O. Box 619616, MD 5635  
DFW Airport, Texas 75261  
(817) 963-0394  
robert.wirick@aa.com

WILLIAM K. RIS, JR.  
Senior Vice President -  
Government Affairs  
American Airlines, Inc.  
1101 17th Street, N.W.  
Suite 600  
Washington, D.C. 20036

CARL B. NELSON, JR.  
Associate General Counsel  
American Airlines, Inc.  
1101 17th Street, N.W.  
Suite 600  
Washington, D.C. 20036  
(202) 496-5647  
carl.nelson@aa.com

March 19, 2008

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

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

**OBJECTIONS OF AMERICAN AIRLINES, INC.  
TO SHOW-CAUSE ORDER 2008-3-4**

**American** Airlines, Inc. hereby objects to show-cause Order 2008-3-4, March 5, 2008, insofar as the Department has tentatively determined to re-allocate seven of American's duly authorized U.S.-Colombia weekly combination frequencies to another carrier, effective April 1, 2008.

American continues to dispute the legitimacy of instituting Order 2007-11-23, November 28, 2007, which improperly placed our frequencies in issue for re-allocation, and Order 2007-12-21, December 21, 2007, affirming that decision on reconsideration. On January 22, 2008, American petitioned for judicial review of these orders in the United States Court of Appeals for the District of Columbia Circuit (No. 08-1025). We are seeking a decision by the Court that the Department's confiscation of our authority for re-allocation was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

Thus, American challenges the very premise of this proceeding to place our frequencies in issue. We also object to the tentative decision that our continued use of this authority for additional service to Colombia from the Miami hub would provide fewer public benefits than the proposals of **Continental Airlines, Inc.** (Houston-Bogota), **Delta Air Lines, Inc.** (New York JFK-Bogota), **JetBlue Airways, Inc.** (Orlando-Bogota), and **Spirit Airlines, Inc.** (Fort Lauderdale-Bogota).

The show-cause order's discussion of American's service consists of a few summary paragraphs alleging that the benefits of allowing American to keep its frequencies are "outweighed" by "new competition" and "expanded service options" in the overall U.S.-Colombia market that would result from re-allocation (p. 10). The Department asserts that even with the loss of seven of its frequencies, American would "still" operate the most service to Colombia (p. 14).

In other proceedings, the Department has rejected the idea that the total number of limited-entry frequencies already held by an applicant is a decisive carrier-selection factor. For example, the Department awarded seven additional U.S.-China frequencies to United for Washington (IAD)-Beijing service, even though United would then have five times the number of frequencies as American (35 v. 7). There, the Department said "we are not persuaded" by arguments "that because of United's position

as the carrier having the largest number of frequencies in the market, United's selection is counter to the Department's pro-competition policy." See 2007 U.S.-China Combination and All-Cargo Frequency Allocation Proceeding, final Order 2007-2-10, February 8, 2007, p. 6. The Department instead "weighed the various carrier selection factors in light of the particular circumstances presented," including the fact that Washington-Beijing (like Miami-Bogota here) was "the largest O&D market" at issue (p. 7).

Conclusory statements on "new competition" and "expanded service options" do not justify seizure and re-allocation of our authority. American's additional service from Miami - by far the largest gateway to Colombia - is demonstrably more beneficial to the public interest than any of the four proposals tentatively selected by the show-cause order.

Service to Colombia from secondary U.S. gateways, with limited on-line connections, would provide fewer public benefits than American's comprehensive pattern of service via the Miami hub. Because our flights not only serve the largest local O&D market, but also offer extensive on-line connections for some 40 behind cities (Exhibit AA-117), we should retain the authority that never should have been placed at issue. These and other matters are discussed in further detail below.

**I. CONTINENTAL (HOUSTON-BOGOTA)**

The show-cause order erroneously brushes aside the fatal flaw in Continental's bid for additional U.S.-Colombia frequencies, which is the fact that Continental is not fully using seven frequencies it already holds by operating seasonal schedules between Houston and Cali. As shown in Exhibit CO-114, Continental operates less than daily service in the Houston-Cali market for nine months of the year, and in some months just 13 total trips, or three flights a week. An applicant that is not making full use of limited-entry frequencies it presently holds should not be awarded seven more.

Yet the show-cause asserts that less-than-daily use (resulting in dormancy for 136 days, more than one-third of the year) is not "determinative," and goes on to find "no public benefit" in requiring Continental to "shuffle" frequencies to another market "with the service disruption that would entail" (p. 13).

It is well-established that proposals for daily, year-round service have absolute priority over less-than-daily, seasonal service in limited-entry markets. See Chicago-Cancun Combination Service Proceeding, final Order 2006-4-22, April 15, 2006, p. 6, selecting United (offering "no less than daily service year-round") over Frontier (proposing seasonal schedules); Los Angeles-Puerto Vallarta Combination Service

Proceeding, show-cause Order 2006-6-25, June 21, 2006, p. 5, concluding that "consistent daily year-round service would offer more meaningful competition...than would a mix of peak and off-peak service"; U.S.-Ukraine Third-Country Codeshare Opportunities, final Order 2005-4-18, April 18, 2005, p. 4, selecting United over American because American "proposes no daily service" but would "offer only five flights a week," while United "would provide the advantage of year-round daily service"; Alaska Airlines, Los Angeles-Guadalajara Exemption, OST-2003-14542, Notice of Action Taken, April 9, 2003, p. 2, citing the "significant benefits" of Alaska's "year-round service" in contrast to the seasonal schedules that American had operated.

Moreover, it is manifestly arbitrary for the Department to excuse Continental's frequency misuse so as to avoid "service disruption" in the Houston-Cali market, yet in the same proceeding propose the outright confiscation of American's authority, resulting in "service disruption" in the Miami-Bogota market, by far the largest and most important U.S.-Colombia city-pair. If any carrier's frequencies should be taken for re-allocation, those frequencies should be Continental's. The Department's failure to do so while seizing American's authority is arbitrary, capricious, and an abuse of discretion.

In addition, the show-cause order errs in finding "no basis" to conclude that Continental's Houston-Bogota proposal would not effectively serve the public (p. 13), despite mid-night departures and dawn arrivals in both directions, and with limited on-line connections. Continental failed to estimate just how many customers would want to make a day trip between Houston and Bogota, a city-pair with nearly the same stage length (about 2,250 miles each way) as Washington, D.C. to Los Angeles. American's use of Colombia frequencies at the Miami hub offers much stronger public benefits than Continental's day trip proposal for Houston, which seems aimed at deploying aircraft that would otherwise be idle overnight rather than conveniencing passengers in either the local or behind markets.

Continental has exaggerated its on-line connecting opportunities to Bogota via Houston. In Exhibit CO-108, Continental claims southbound connections to Flight 834 (departing for BOG at 23:55) from flights arriving in Houston as early as 17:55, which would require six hours on the ground. Indeed, the first two-and-a-half pages of this four-page exhibit array flights requiring ground times in excess of four hours. In Exhibit CO-109, Continental claims northbound connections from Flight 835 (arriving in IAH at 05:10) to flights departing as late as 11:10, requiring a six-hour layover in Houston.

Accordingly, the show-cause order's tentative conclusion that Continental's midnight flights to Bogota from Houston would offer more public benefits than American's additional service from Miami should be set aside.

## **II. DELTA (JFK-BOGOTA)**

In tentatively selecting Delta for New York JFK-Bogota service, the Department found that Delta's codeshare arrangement with Avianca, Colombia's leading carrier, should not weigh against Delta's selection (p. 11). That determination is at odds with Department precedent that considers overlap code-sharing with a foreign homeland carrier in the limited-entry city-pair market at issue to be disqualifying. See 2005 Los Angeles-Mexico City Combination Service Proceeding, final Order 2005-5-1, May 4, 2005, p. 6 (selecting Alaska Airlines over American in light of existing AA\* codeshare service operated by Mexicana in the LAX-MEX market); Los Angeles-San Jose del Cabo Exemption Proceeding, show-cause Order 2000-11-23, November 21, 2000, p. 6 and final Order 2001-1-11, January 12, 2001, p. 7 (selecting American over United in light of existing UA\* code-share service operated by Mexicana in the LAX-SJD market).

On January 8, 2008, Delta and Avianca notified the Department of suspension of their codeshare arrangement as of May 31, 2008 due to technology interface issues (DOT-OST-2002-14057). They stated, however, that the codeshare agreement and

the codeshare authority will remain in effect. In these circumstances, Delta's application here should not be granted, as there remains the potential that display of DL\* on Avianca's JFK-Bogota flights will be restored, making an award to Delta to serve the same city-pair inconsistent with the precedents cited above.

Moreover, in assessing the needs of the New York-Colombia market for additional service, the show-cause order implies that Newark - where Continental presently operates daily nonstop flights to Bogota - is not part of the New York service area: "Of these 21 weekly [nonstop] fights, seven are operated by Continental to Bogota from Newark, rather than New York (JFK)" (p. 10). The suggestion that Newark and New York are separate markets is contrary to precedent that the two airports both serve New York. See 2005/2006 U.S.-China Air Services Case and Designations, show-cause Order 2005-2-14, February 22, 2005, p. 26, citing Continental's Newark-Beijing proposal as meeting "the public need for New York-China service."

Continental already offers far greater nonstop-to-nonstop on-line connectivity to Bogota via Newark than Delta could provide via JFK. Delta's southbound connections at JFK (Exhibit DL-223) are largely confined to medium and small U.S. cities. Only two of the connecting cities listed - Washington and Chicago - rank in even the top 15 O&D markets to Bogota

(Exhibit DL-208). Moreover, of the 21 southbound cities claimed, only Cincinnati has service to JFK operated by Delta. The other 20 are served by Delta Connection.

Delta's northbound connections at JFK (Exhibit DL-224) are similarly concentrated on medium and small U.S. cities. Only three of the connecting cities listed - Washington, Chicago, and Boston - rank in the top 15 O&D markets to Bogota (Exhibit DL-208). And of the 21 northbound cities claimed, only four - Boston, Cincinnati, Portland, and Seattle - have service to JFK operated by Delta. The other 17 are served by Delta Connection. Moreover, these four cities already have connections on Delta to Bogota via Atlanta.

Despite the assertion that there is a "major service disparity" in the New York-Bogota market (show-cause order, p. 10), American's retention of the seven frequencies the decision has wrongfully placed in issue would best serve the public interest by matching Miami, the gateway having the greatest demand, with American's ability to operate a comprehensive pattern of multiple daily flights to Bogota. As Delta itself shows, for YE March 2007, the Miami-Colombia O&D market totaled more than 190,000 passengers, twice the number for New York, 90,280 (Exhibit DL-208).

The disparity in Miami-Bogota and New York-Bogota service levels is the result of market demand. There is no compelling basis to favor Delta's proposal to serve Bogota from New York, with limited network benefits for behind cities, over American's service from the Miami hub.

### **III. JETBLUE (ORLANDO-BOGOTA)**

JetBlue's application should be dismissed because of its material violations of the evidence request with respect to on-line connection details. In instituting Order 2007-11-23, the Department gave fair warning that "we expect full compliance" or the applicant "will be subject to elimination from consideration" (p. 6).

The show-cause order acknowledges JetBlue's (and Spirit's) "lack of conformity" to the evidence request (p. 13), but in effect finds these violations to be irrelevant because "the connecting service information did not prove material to our tentative decision" (p. 13). Putting aside whether the Orlando-Bogota market has sufficient local traffic to sustain daily nonstop service without on-line connecting support, it is unfair to accept JetBlue's deficient application when others spent the time and resources to comply with the instituting order. JetBlue should be dismissed from consideration.

In tentatively selecting JetBlue for Orlando-Bogota. the Department said that "the substantial local market base of Colombia traffic" at Orlando, "the seventh-largest U.S.-Bogota O&D market overall," makes JetBlue's proposal "viable and sustainable," even with its "lesser connecting services" compared to other applicants (p. 12).

In fact, Orlando accounts for just 15,275 annual O&D passengers to Bogota, less than 13% of Miami's 126,436 annual O&D passengers to the Colombian capital (Exhibit DL-208). Orlando's total translates into about 21 local passengers per day each way. The Department provides no support for concluding that JetBlue's proposal, with 150-seat A320 aircraft, and for decisional purposes without on-line connecting feed, would be "viable" and "sustainable."

Moreover, while Orlando may be the "seventh-largest" O&D market to Bogota, Orlando is a fraction the size of Miami, and smaller than both the number three market (Washington) and the number six (Chicago), neither of which has scheduled nonstop service to Bogota by any carrier (Exhibit DL-208), notwithstanding their status as hubs with connections that dwarf Orlando's.

We also note the absence of daily nonstop scheduled service between Orlando and any destination in South America by any carrier, U.S. or foreign (OAG, May to September 2008).

Based on MIDT data for YE February 2008, the Orlando-Bogota O&D

market (21,105 annual bookings) ranks fourth among all Orlando-South America city-pairs, well below Sao Paulo (127,288), Rio de Janeiro (46,002), and Caracas (26,610), none of which has daily nonstop scheduled service to Orlando.

The show-cause order's statements that JetBlue would offer "lesser" connections than other applicants, and that "some of [JetBlue's] behind-gateway points do in fact overlap with existing on-line connections" by incumbents and "could provide effective intergateway competition" (p. 12), are plainly erroneous. In view of JetBlue's evidence violations, its connections should be described as "none" rather than "lesser," making American's connectivity at Miami a decisive selection factor (Exhibit AA-117).

See Chicago-Cancun, Order 2006-4-22, supra, p. 6, selecting United for its ability to offer "numerous" behind-gateway "on-line single connecting services" and rejecting USA 3000 (despite its status as a new entrant) since its proposal "is strictly point-to-point" and lacks "structural or behind advantages"; U.S.-Turkey Third-Country Codeshare Opportunities, show-cause Order 2002-4-9, April 12, 2002, p. 5, deciding against Continental (despite its status as a new entrant) because "we are not persuaded that this benefit outweighs the broader service and competitive benefits" offered by other applicants already in the market.

JetBlue proposes single-plane service from New York (JFK) (Exhibit 1), but allows only an hour for the 18:05 south-bound arrival from JFK to depart Orlando for Bogota at 19:05. Given the notorious delays at JFK, the day-to-day reliability of such a schedule - dependent on consistent on-time arrival of equipment from JFK - is subject to significant doubt, yet the show-cause order fails to address this issue.

Finally, the Department does not discuss the fact that JetBlue's proposed one-stop service to Bogota from JFK would be competing against Continental's existing nonstop service from Newark, Avianca's existing nonstop service from JFK, and Delta's tentatively-awarded nonstop service from JFK, not to mention a host of nonstop-to-nonstop connecting opportunities via Miami, Atlanta, and Houston from all three major New York airports (LaGuardia, JFK, and Newark). The public benefits of one-stop service in a market that already has 21 weekly nonstop flights and myriad on-line connections would be insignificant.

American's additional service to Colombia from Miami will serve the public interest both in the local and in more than three dozen behind-gateway markets. JetBlue should not be favored over American.

#### **IV. SPIRIT (FORT LAUDERDALE-BOGOTA)**

Spirit's application, like JetBlue's, should be dismissed for material omissions in responding to the Department's instituting order, as we detailed in our answer on December 13, 2007 (pp. 12-13), which we incorporate herein by reference.

If the Department does not eliminate Spirit from consideration, its frequency request should not be granted at American's expense. American should retain its ability to operate a comprehensive pattern of service to Colombia from Miami, South Florida's largest hub and the Nation's largest gateway to Colombia and to all of South America.

There is no compelling need for flights to Colombia from Fort Lauderdale. South Florida is well served via American's Miami hub, and Spirit has made no credible showing that Colombia passengers would prefer to arrive or depart at FLL, located approximately 25 miles north of the Miami gateway.

Based on its published schedules for April 1, 2008, Spirit would offer only a handful of nonstop-to-nonstop connections for behind cities with reasonable ground times in FLL (Exhibit AA-R-101), in contrast to the far larger number of on-line connections to Colombia that American provides via the Miami hub (Exhibits AA-117 and AA-118).

In Exhibit AA-R-101, we filled in the blanks in Spirit's behind-gateway connecting schedules with the key information of arrival times in FLL (southbound) and departure times from FLL (northbound) which Spirit omitted. With this data, the limited scope of Spirit's behind-Fort Lauderdale nonstop-to-nonstop connections becomes apparent.

Spirit's proposed Fort Lauderdale-Bogota flights would provide on-line connections with ground times of four hours or less in FLL for just 12 behind cities in each direction. American offers such connections for 40 behind cities via Miami (Exhibit AA-117). In the 2005 U.S.-Argentina Combination Frequency Proceeding, show-cause Order 2005-10-2, October 5, 2005, p. 5, the Department found Delta's application to lack "a broad range of public benefits outside of the New York-Buenos Aires market because Delta would provide on-line connecting service through New York to only 23 U.S. cities." The same can be said about Spirit's proposal here, which offers limited network benefits with connections to just 12 cities behind FLL compared to 40 on American behind MIA.

Finally, we note that in the southbound direction, seven of Spirit's on-line cities would have ground times in FLL of less than one hour. While that is within FLL's minimum connecting time from domestic to international, the risk of missed connections due to late-arriving flights, particularly from the Northeast, would be significant.

For these reasons, Spirit should not receive a Colombia frequency award at Fort Lauderdale that would require confiscation of American's Colombia authority used to serve the Miami hub.

**CONCLUSION**

None of the proposals by the other applicants should have priority over retention by American of its seven weekly U.S.-Colombia frequencies improperly placed in issue by the instituting order. American's full pattern of nonstop service between Miami and Colombia should be preserved, and the show-cause order's proposed confiscation of American's authority should be vacated.

Respectfully submitted,



---

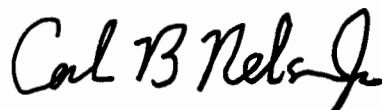
CARL B. NELSON, JR.  
Associate General Counsel  
American Airlines, Inc.

March 19, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document by email on the following persons:

sametta.c.barnett@delta.com  
recohn@hhlaw.com  
prrizzi@hhlaw.com  
bkeiner@crowell.com  
sascha.vanderbellen@nwa.com  
bruce.rabinovitz@wilmerhale.com  
jonathan.moss@wilmerhale.com  
jeffrey.manley@united.com  
bob.kneisley@wnco.com  
robert.land@jetblue.com  
msinick@ssd.com  
cdonley@ssd.com  
anbird@fedex.com  
dvaughan@kelleydrye.com  
kevin.montgomery@polaraircargo.com  
jrichardson@johnlrichardson.com  
lhalloway@crowell.com  
efaberman@wileyrein.com  
mroller@rollerbauer.com  
howard\_kass@usairways.com  
benjamin.slocum@usairways.com  
jhill@dlalaw.com  
bill@mietuslaw.com  
mgoldman@sbgdc.com  
rsilverberg@sbgdc.com  
dhainbach@ggh-airlaw.com  
mcmillin@woa.com  
mchopra@jamhoff.com  
russell.bailey@alpa.org  
dkirstein@yklaw.com  
jyoung@yklaw.com  
donna.kooperstein@usdoj.gov  
dwight.moore@ustranscom.mil  
jim.ballough@faa.gov  
byerlyjr@state.gov



---

CARL B. NELSON, JR.

March 19, 2008