



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

Served: July 31, 1998

Issued by the Department of Transportation
on the 31st day of July, 1998

Joint Application of

AMERICAN AIRLINES, INC.

and

BRITISH AIRWAYS PLC

under 49 U.S.C. Sections 41308 and 41309 for
approval of and antitrust immunity for alliance
agreement

Docket OST-97-2058

**ORDER ON RECONSIDERATION
CONCERNING ORAL HEARING AND PROCEDURES**

I. SUMMARY

By this order, we grant the Petitions for Reconsideration of Order 97-9-4 filed by Continental Airlines, Inc. ("Continental"), Delta Air Lines, Inc. ("Delta"), Laker Airways, Inc. ("Laker"), Tower Air, Inc. ("Tower"), Trans World Airlines, Inc. ("TWA"), US Airways, Inc. ("US Airways"), United Air Lines, Inc. ("United"), and Virgin Atlantic Airways Limited ("Virgin Atlantic") on September 19, 1997, in Docket OST-97-2058. Upon reconsideration, we affirm our determinations in that order to provide for an oral hearing before the Decisionmaker. We also update our procedures for the completion of the evidentiary record in this proceeding.

II. BACKGROUND

A. Status of Proceeding

On March 21, 1997, the Department found it appropriate to commence processing the alliance application and related authority requests concurrently with the ongoing bilateral open-skies negotiations with the United Kingdom.¹ The Department reaffirmed its policy and practice of requiring an open-skies agreement as one predicate to approving and granting antitrust immunity to an alliance application. However, given the importance of the markets and the complexity of the issues raised by this application, the Department found that undue delay could be avoided by allowing the development of an evidentiary record on the assumption that an open-skies

¹ Order 97-3-4.

agreement would be reached. Although there was a temporary suspension of negotiations last year, the Department has proceeded with an orderly development of the record, including the production of many documents and the receipt of several rounds of comments on the application itself.

B. U.S.-U.K. Negotiations

Negotiations to complete a U.S.-U.K. open-skies aviation regime are expected to resume in early October 1998. As noted in our previous orders, agreement to establish an open-skies regime is necessary before even a tentative decision on the merits of the American Airlines-British Airways alliance agreement can be reached. In order for the Department to be in a position to move forward on the application, given our expectation that the renewed talks will yield the prerequisite open-skies agreement, we find it appropriate to issue an order at this time setting out the further procedures that the Department intends to follow in considering the Joint Application.

C. Summary of Order 97-9-4

(1) Procedural Dates and Request for Responsive Material

The Department required that answers to the application, as well as any direct exhibits and testimony by the parties, be filed no later than 30 business days from the date that American Airlines, Inc. and British Airways PLC (together the "Joint Applicants") filed certain supplementary documents and information in the docket. The Department also directed that replies, together with any rebuttal exhibits and testimony, be filed no later than 21 business days after the last day for filing answers.

At that time, the Department asked that parties, in preparing their answers and replies, together with any accompanying exhibits, delineate the public interest factors that the Department should consider in approving or disapproving the application. The Department recognized that parties might wish to provide exhibits that contain economic analysis supporting their position on these issues. The Department's decision also allowed for the submission of written testimony prepared by economic experts, senior airline or other executives, or any other person who would contribute to the development of the record in this case, or that would support the party's position or evidentiary exhibits.

Finally, the Department noted that it had earlier found that an open-skies agreement with the United Kingdom and *de facto* Heathrow access remained among the necessary prerequisites to a possible grant of antitrust immunity, and that such access must include adequate provision for new and expanded U.S. carrier service through London-Heathrow Airport.² While the Department recognized that the Governments of the United States and the United Kingdom would discuss open-skies issues in their negotiations, the question of what constituted *de facto* access to Heathrow Airport was an issue that would be considered in the context of the joint

² Order 97-3-34 at 8-9.

application before us in this proceeding. Therefore, the Department asked that parties focus on this particular issue in their answers and replies and provide support for their position in their accompanying exhibits and written testimony. The Department also found that parties could address any other issues they believed to be relevant to a decision on this application.

(2) Provision for Hearing Procedures

The Department concluded that some type of oral hearing was warranted. This determination was based on the recognition of the exceptional character of this case combined with the scope of the factual issues presented by it. In particular, the Department stated that in weighing the diverse competitive and policy issues involved, it would need to take into account the fundamental and unprecedented issue of U.S. carriers' expanded access into Heathrow Airport.

Accordingly, the Department found that it would be productive and useful for the Decisionmaker to hear interested parties express in person their particular opinions and views on the issues in this proceeding. We determined that the Decisionmaker would conduct an oral hearing on the record, after the parties had submitted answers and replies together with any direct and rebuttal exhibits and written testimony.³ The Department noted that its oral hearing would use procedures similar in some respects to those employed by the International Trade Commission. Parties would have the opportunity to challenge exhibits and arguments in the course of the hearing procedures, so that the evidence would be thoroughly examined in a hearing context. The Department found that this proposed procedure would allow it the valuable benefits of an oral hearing, while avoiding unnecessary delay.

The proposed hearing would be conducted using three panels to present evidence and argument: applicants, carrier opponents, and civic/consumer representatives. The panel presentations, at the parties' discretion, might include direct and rebuttal testimony based on previously filed direct and rebuttal exhibits, in addition to argument. The DOT Decisionmaker and staff would ask questions of each panel. In advance of the hearing, parties would be given an opportunity to submit proposed questions to the Decisionmaker for use in the questioning of other parties. The submitted questions, as deemed appropriate, could be used by the Decisionmaker and staff, in addition to their own questions, to present to the panels for response.

The hearing was to be held before the Assistant Secretary for Aviation and International Affairs. At the appropriate time, the Department would announce the location, date, time, and procedures for interested parties to participate in the hearing phase of this proceeding.

³ By Order 98-3-31, issued March 30, 1998, the Department determined that the record of this case was substantially complete. By Order 98-5-7, issued May 6, 1998, the Department directed British Airways to file in this docket supplemental documents, information, and data. At that time, the Department also directed interested parties to file answers to the Joint Application on May 22, 1998, and replies on June 23, 1998.

The Department found that these oral hearing procedures would fully satisfy our regulatory needs for resolving the complex issues in this proceeding and would provide all parties with sufficient opportunity to present their views. We carefully considered the arguments of Delta, TWA, United, and Virgin Atlantic, raised in earlier pleadings, that had urged us to institute an oral evidentiary hearing before an Administrative Law Judge (“ALJ”) to investigate the competitive issues raised by this case.⁴ The Department decided that these parties had not presented convincing arguments as to why full oral evidentiary procedures were required. The Department found that there was no statutory requirement to hold an oral evidentiary hearing before an ALJ on this application. The Department concluded that the material facts could be resolved using the proposed oral hearing procedures. The Department also found that the issues in this proceeding were essentially economic and policy issues for whose resolution an oral evidentiary hearing was unnecessary. Finally, the Department concluded that such procedures were not necessary to resolve issues involving the veracity of evidence or the integrity of witnesses.

III. RESPONSES TO ORDER 97-9-4

A. Petitions For Reconsideration

On September 19, 1997, Continental, Delta, Laker Airways, Tower Air, TWA, US Airways, and United (together the “Joint Petitioners”), and Virgin Atlantic filed petitions for reconsideration of Order 97-9-4 with regard to the nature of the hearing established by the Department.

The Joint Petitioners

The Joint Petitioners request that the Department, upon reconsideration, (1) provide for an oral evidentiary hearing before an ALJ with a recommended decision, or with the record certified directly to the Decisionmaker,⁵ and (2) at a minimum provide for the filing of surreplies and surrebuttal exhibits and testimony, with all testimony submitted under oath and subject to cross-examination.

The Joint Petitioners argue that once the Department has determined that an oral hearing is “required,” it is bound by its rules to use its own hearing procedures, not those of another agency as proposed in its decision. They assert that the Department’s rules require it to appoint an ALJ to conduct the hearing in accordance with section 7 of the Administrative Procedure Act, which provides for cross-examination. The Joint Petitioners also maintain that the proposed panel format will not function to develop a complete and accurate record on the key issues of this case or distinguish adequately among differing views of the parties. They contend that the record will be unwieldy and will not assist in determining the probative value of the evidence. They also

⁴ United and Virgin Atlantic filed their requests on January 27 and 31, 1997, respectively. TWA and Delta filed their requests on July 24 and July 29, 1997, respectively.

⁵ The Joint Petitioners also recommend an oral argument before the Decisionmaker, in accordance with 14 C.F.R. § 302.32.

contend that to the extent that there is no procedure for calling “critical” witnesses to address such matters as slot allocation procedures, it may be incomplete.

The Joint Petitioners maintain that full adjudicatory procedures will not “unduly delay” this proceeding, and they contend that the Department itself recognized that there are substantial controversies over material issues of fact when it described the Heathrow Airport access issue as “fundamental and unprecedented.” They state that whether Heathrow Airport slots are easily obtainable or not is a highly controverted question, not a matter that is “essentially economic and policy in nature” as suggested by the Department’s order.

Consistent with 14 C.F.R. § 303.45, the Joint Petitioners urge the Department to invite the Department of Justice to participate in the hearings. They also maintain that the Department should retain an independent expert or convene an expert panel to provide evidence relating to critical, controversial factual issues regarding access to Heathrow Airport, including the availability of slots and facilities at Heathrow Airport.

Finally, they also note that the widely reported statements attributed to the U.S. Undersecretary of State for Economics, Business and Agricultural Affairs give the “impression that the U.S. Government has already determined that the AA/BA application should be approved.” The Joint Petitioners contend that it is important that the record of this case be fully developed under the eye of an independent ALJ if the Administration is to avoid any appearance of impropriety.⁶

Virgin Atlantic

Virgin Atlantic argues that the Department’s decision not to order a full adjudicatory evidentiary hearing before an ALJ constitutes legal error in two respects: (1) it is premature because it has been made before interested parties have submitted comments on a complete joint application; and (2) a nonadjudicatory hearing is both inappropriate, given the controverted issues of fact that must be resolved in this proceeding before the Department may rule on the application, and contrary to the Department’s rules.

As an initial matter, Virgin Atlantic states that the Department’s rules and precedent require that any determination as to whether to conduct an oral evidentiary hearing may only be made after receiving comments on the complete application from interested parties.⁷ Otherwise, the Department “improperly prejudices” the comments that it may receive on a complete application.

⁶ On September 26, 1997, the Under Secretary of State for Economic, Business, and Agricultural Affairs notified the Secretary of Transportation that he recused himself from advising the Department of State, Department of Transportation (“DOT”), or any other members of the Executive Branch on the merits of this application until such time as DOT had issued a final decision in this matter. *See* document identified as OST-97-2058-129.

⁷ Virgin Atlantic states that until comments on the merits of the application have been filed and considered, the Department cannot know what relevant issues of fact are disputed and whether those disputes merit an oral evidentiary hearing, consistent with 14 C.F.R. §§ 303.42(c) and 303.43.

Virgin Atlantic states that the Department's decision to conduct a "hybrid" hearing is both inappropriate and inconsistent with the Department's regulations. Virgin Atlantic characterizes the Department's procedures as essentially "legislative," and argues that there is no basis for such procedures in the Department's regulations governing antitrust immunity applications, particularly 14 C.F.R. §§ 303.43(b) and 303.45. While recognizing that § 303.45 contemplates that the Department may specify some types of hybrid formats when instituting a full evidentiary hearing, Virgin Atlantic maintains that these formats must satisfy the minimum requirements for a "full evidentiary hearing" set forth in § 303.45. Virgin Atlantic states that the proposed hearing procedure does not meet the Department's own regulatory requirements.

Virgin Atlantic argues that any legislative hearing procedure is inadequate to adjudicate controversial issues of fact.⁸ Virgin argues that interested parties will be unable to compel documentary evidence or testimony, will be unable to cross-examine witnesses or sponsors of evidence, and will not have the benefit of an ALJ's findings and conclusions based on the record.

The Joint Applicants

On September 29, 1997, the Joint Applicants filed a joint answer urging the Department to deny the petitions for reconsideration by Virgin Atlantic and the Joint Petitioners. While the Joint Applicants maintain that no oral hearing "of any kind" is necessary and that requiring one is discriminatory in view of the processing of other alliance applications, they state that the rejection of the Joint Petitioners' request for a full evidentiary hearing was clearly within the Department's discretionary authority.

Contrary to Virgin Atlantic's assertion that the Assistant Secretary's rejection of the requests for a formal oral evidentiary hearing was premature, the Joint Applicants maintain that nothing in the Department's rules prevents the Assistant Secretary from ruling on procedural motions as they arise, and that requests for an adjudicatory hearing had been made. Moreover, they argue that 14 C.F.R. § 303.04(1) grants broad discretionary authority to the Assistant Secretary to "waive or alter the procedural requirements of this part to permit a transaction to proceed on an expedited basis."

The Joint Applicants maintain that the arguments offered by Virgin Atlantic and the Joint Petitioners that a "panel-format" oral hearing is impermissible under the Department's rules are baseless. The Joint Applicants argue that the Department has broad discretion to fashion procedures for the processing of applications under 14 C.F.R. Part 303, rather than being limited, as the carriers claim, to a choice between a full adjudicatory hearing and a show-cause order. They state that § 303.43(b) is clearly permissive, illustrating a full range of options rather than

⁸ Virgin cites as "complex factual issues" requiring a full hearing in this case (1) whether the agreement substantially reduces or eliminates competition, (2) whether new entry in U.S.-U.K. markets would be timely, likely and sufficient to counteract the market power of the alliance, (3) to what extent are the Joint Applicants direct competitors in U.S.-U.K. markets, (4) what is the motivation of the Joint Applicants in forging this alliance, (5) how will the alliance behave once immunized, and (6) to what extent will the alliance result in efficiencies that will benefit consumers.

limited choices. They emphasize that § 303.45(a) explicitly provides for “any hybrid format set out in the instituting order.” The Joint Applicants state that the Department’s rules provide it with ample discretionary authority to proceed in the most efficient manner possible, consistent with the public interest.

B. Further Responsive Pleadings on Hearing

United addressed the hearing issue in its comments to the application filed May 22, 1998, and in its reply comments filed June 23, 1998. Delta, Continental, Virgin Atlantic and the Joint Applicants also addressed the issue in their reply comments. All parties reaffirmed their previous positions on this issue.

United, Delta, Continental and Virgin Atlantic contend in these pleadings that a full evidentiary hearing before an ALJ is necessary for two principal reasons: (1) to produce a record adequate for the Department to make the requisite statutory findings on the competitive implications of the application, and (2) to resolve a host of practical issues raised by slot and facility constraints at Heathrow Airport in the event that the Department decides to grant conditional approval to the alliance.

According to these carriers, the issues discussed below require complex factual determinations and judgments about the credibility of data and testimony from individual parties, calling for a full opportunity for direct cross-examination. Virgin Atlantic alleges that certain factual controversies need resolution to insure an adequate evaluation of the competitive effects of the alliance; among these are: (1) the appropriate markets in which to analyze its impacts, (2) whether indirect services substantially constrain fares for direct services, (3) whether airports within a metropolitan area substantially constrain fares to/from each other, (4) the likelihood that new entry will constrain the market power of the alliance, and (5) the effects of an American-US Airways alliance. Delta would include in such issues whether the Joint Applicants have less anticompetitive alternatives to the proposed alliance. United asserts these factual controversies: (1) how much service U.S. carriers would provide if Heathrow were an “open market,” (2) how much new service is required at Heathrow Airport to assure that competition in the U.S.-London market will not be diminished, and (3) whether market carve-outs or transitional conditions will be necessary. United, Delta and Continental would include how many commercially viable slots and related facilities will become available at Heathrow Airport over time. Continental also asserts these factual controversies: (1) the effects of competition among global alliances and between such alliances and individual competitors, especially with barriers such as hubs and facility constraints, and (2) the constraints on nonstop prices by one-stop service.

The parties supporting reconsideration also contend that without a full hearing the record will be inadequate to permit the Department to develop meaningful conditions to guarantee U.S. carrier access to Heathrow Airport, should it decide to approve the application. They argue that detailed exhibits and expert testimony, subject to cross-examination, would be required from each potential new entrant carrier, as well as from BAA plc (the owner and operator of Heathrow Airport) and the Joint Applicants. They state that these interested parties would have to answer such critical questions as (1) how many slots and related facilities can be made available over time

for new competitive service, from what sources, at what times, and at which London airports; (2) in the likely event that demand will exceed supply, which carriers interested in transatlantic service to London should get slots and facilities, for which routes, at which times, and for how many frequencies; and (3) if transition measures are necessary, which services should get preference. United argues that these issues are in essence like those in a complex carrier selection case, which requires detailed service proposals from each potential competitor. United maintains that the Department has not sought such information “in any formalized way,” and that the record is therefore inadequate.

The Joint Applicants respond by stating that requiring a full evidentiary hearing for their application would be completely unprecedented, and cannot be justified by any distinctions between it and other alliances that have already been approved and immunized by non-hearing show-cause procedures. The Joint Applicants note, for example, that the Department was able to decide whether to impose slot conditions at Frankfurt International Airport in granting immunity to the United-Lufthansa German Airlines alliance without any oral evidentiary hearing. They also note that in rejecting requests for such a hearing in the Northwest Airlines-KLM Royal Dutch Airlines alliance, the Department emphasized that the applicable statutory provisions do not require an oral hearing for the consideration of applications for approval of and antitrust immunity for carrier agreements, and that it has “customarily resolved such applications without such a hearing.”⁹

IV. DECISION

Upon careful consideration of the petitions for reconsideration and all other pleadings, we are not persuaded by the arguments of the petitioners that a full oral evidentiary hearing before an administrative law judge is either required or necessary for the further processing of the application in this proceeding. Rather, we remain of the view that the oral hearing procedures before the DOT Decisionmaker outlined in Order 97-9-4, in conjunction with the other evidentiary procedures established for this case, will meet our regulatory needs, contribute to the development of a full record, and provide the parties with an adequate opportunity to present their case on the merits of the application directly to the Decisionmaker, without unnecessary delay in the proceeding.

A. Hearing Requirements

The petitioners argue that once the Department has found an oral hearing “appropriate” in a case, it is required to appoint an ALJ to conduct a “full” hearing in accordance with section 7 of the Administrative Procedure Act and the Department’s rules for formal hearings in 14 C.F.R. Part 302. Such a restrictive interpretation of Part 303 is inaccurate. The rule requires that there be notice and the opportunity to respond, which, as 14 C.F.R. Part 303 of our regulations makes clear, may include show-cause procedures, so it does not require an oral evidentiary hearing. Its provisions were instead designed to permit the Department broad discretion to fashion evidentiary procedures to meet the needs and facts of each case. Moreover, 14 C.F.R. § 303.45, relied upon

⁹ Order 93-1-11, January 11, 1993, at 18.

by petitioners, is expressly permissive. It only applies “[i]f the Assistant Secretary determines that an application ... should be the subject of a full evidentiary hearing...”. Order 97-9-4 did not, as most petitioners allege, make such a finding. Rather, we only found that “some type of oral hearing is warranted” to assist the Decisionmaker in understanding the voluminous record presented by the application. In rejecting the requests of certain parties to provide for an ALJ hearing and decision, the Department specifically found that such procedures were not required to resolve the policy and/or factual issues in this case.

In their recent comments and replies to the application, as well as in their petitions for reconsideration, the petitioners list many “disputed” issues that they claim are essential to the Department’s decision on the merits of the application. In our judgment, however, the petitioners still have not met their burden of showing that there are material issues of fact in dispute that cannot be resolved without a formal oral evidentiary hearing before an ALJ. Most of the issues cited involve economic and policy judgments for which a full ALJ hearing was deemed unnecessary by Order 97-9-4. We have carefully examined the pleadings and evidence provided to date and we find no reason to change that determination here. The petitioners have provided no persuasive reasons why the evidentiary procedures we have established, including the oral hearing before the DOT Decisionmaker, are not fully adequate to provide the basis for a reasoned decision on the record. As noted, parties not only have the benefit of responsive pleadings, but will also have the opportunity to challenge one another’s exhibits and arguments in the course of the hearing procedures, and the Decisionmaker and staff will be able to ask questions of the participants. If necessary to complete the record, further information may be requested from any party. Since most of the petitioners have stated that the ALJ’s recommended decision could be omitted in favor of a certified record to the Decisionmaker in the interest of efficiency, the only additional benefit of an ALJ cited by the petitioners would be to referee cross-examination among the parties. Given the nature of the issues presented and the procedures we have established to examine them, we do not find that cross-examination is needed to develop the record necessary to support a sound decision.

We note that certain evidentiary issues cited by the petitioners may be beyond the scope of this proceeding. This includes the issues related to how the Department would allocate slots and related facilities at Heathrow Airport among potential U.S. carrier services if it should decide to approve the alliance subject to an appropriate availability of such opportunities. Among such issues raised are which carriers interested in transatlantic service to London should get slots and facilities, for which routes, at which airports and times, and for how many frequencies, as well as which services should get precedence if transitional measures are necessary. Such issues are in essence like those found in carrier selection cases for limited-entry markets, which require detailed service proposals from each potential competitor that may be tested against each other and against applicable selection criteria. The resolution of such issues may require a separate proceeding, but such carrier selection cases are routinely decided through show-cause procedures.

B. Sufficiency of Evidentiary Record

United argues that even if the Department concludes that a full oral evidentiary hearing before an ALJ is not necessary to ensure the development of an adequate record for reaching a final

decision in this proceeding, the present record is inadequate to resolve key questions relating to the maintenance of competition at Heathrow Airport. Among the record's most serious limitations, United asserts, "is the fact that the Department has taken no steps to secure in any formalized way detailed information as to the services U.S. carriers would operate to Heathrow in an open market." Without such information, United claims, the Department will have no evidentiary baseline for determining what slots and facilities will need to be made available to new entrants at Heathrow to preserve competition on U.S.-Heathrow routes. United asserts that while the Department of Justice and several of the carrier parties have made general estimates of the total number of slots that would be required for such purposes, the carriers have not provided the level of detail about their service plans to enable the Department to make findings as to the total amount of new service that would result from "open skies."

We do not agree, as United claims, that the record is insufficient in this respect. In Order 97-9-4, the Department noted that the question of what would constitute *de facto* access at Heathrow Airport is an issue in this proceeding, and the Department asked the parties to focus on this issue in their answers, replies, exhibits and written testimony. In response, many carriers and DOJ provided both overall estimates of minimum market-based slot requirements at Heathrow Airport and more detailed analyses of the minimum number of slots necessary to maintain "competitive" service with an immunized American-British Airways alliance from their U.S. gateways.¹⁰ However, more information of both kinds would be helpful to the Department in analyzing the *de facto* access question. While we will not request that each carrier participant provide complete U.S.-U.K. service proposals for the record in this proceeding, we do encourage them to focus at the hearing on the timing and level of service which would be necessary to provide effective competing services in the U.S.-U.K market.

V. SUMMARY OF PROCEDURES

A. Discussion

The Department has determined that a hybrid oral hearing is warranted in this proceeding. In making its determinations in this matter, the Department will have to weigh the competitive and policy issues involved, and the Department will have to take into account the central issue of U.S. carriers' expanded access into Heathrow Airport. Therefore, interested parties should devote attention to the issue of how much service is required to ensure that competition is maintained in the U.S.-U.K. market, and specifically in the U.S.-London market. Moreover, interested parties have identified in their responsive pleadings a broad array of competitive issues that require consideration by the Department in this case; we encourage these parties to present their opinions and views on these specific concerns.

B. Scheduling Notice

¹⁰ See, for example, Continental's June 23, 1998, reply at 15-21; Delta's June 23, 1998, reply at 2 and Exhibits DL-R-100/101/102; TWA's May 22, 1998, answer at 20-24; US Airways June 23, 1998, reply at 2.

This application was filed on January 10, 1997 and included extensive unrestricted exhibits and documents, plus several boxes of confidential materials filed under Rule 39. As previously discussed, the Department on March 21, 1997, found it appropriate to commence processing the alliance application and related authority requests concurrently with the ongoing bilateral open-skies negotiations with the United Kingdom. Interested parties have had limited access to certain evidentiary materials since March 28, 1997. Additional documents and evidence have been placed in the record since then and have been made available to interested parties. By Order 98-3-31, issued March 30, 1998, the Department found the record of this case substantially complete and established procedural dates for the filing of answers and replies. By Order 98-5-7, issued May 6, 1998, the Department extended its procedural schedule for the filing of answers from May 11 to May 22, 1998, and replies from June 10 to June 23, 1998. Interested parties have now filed answers and replies to the application. Therefore, consistent with our findings in this order providing for oral hearing procedures in this case, the Department hereby gives notice to the parties in this proceeding and all other interested persons of the following procedural dates that will govern filings for the oral hearing. In order to process the application in an orderly and timely manner we are also directing all parties that are interested in participating or intervening in this proceeding to file such a petition or request with the Department as soon as possible.

Finally, while commenters have requested that the Department employ various procedures that they view appropriate for administering an oral hearing in this case, the Department finds that the following procedural schedule fully provides interested parties sufficient opportunity to express their views and to respond to other parties testimony and exhibits.

Written Testimony and Direct Exhibits, if not already filed:	August 31, 1998
Written Rebuttal Testimony and Rebuttal Exhibits:	September 21, 1998
Notice of intent to participate in oral hearing and Proposed Questions about the Direct and/or Rebuttal Testimony and Exhibits of other parties:	September 28, 1998
Written Hearing Argument Summaries (three page limit) together with Charts and/or Tables; the summaries shall focus on parties' oral presentation:	October 9, 1998
Oral Hearing:	October 26-28, 1998
Briefs:	November 18, 1998

The location of the oral hearing (in Washington, D.C.), the makeup of the panels, and the time allocation will be set in a subsequent notice.

C. Public Disclosure of O&D Survey Data

On May 22, 1998, TWA filed a motion requesting that it be allowed to release to British Airways, Virgin Atlantic, and civic parties its confidentially filed data in Exhibits TW-10 and TW-11. TWA states that these exhibits contain analyses of the U.S.-London market based on confidential fare data extracted from the Origin-Destination Survey of Airline Passenger Traffic ("O&D Survey") that is available only to U.S. carriers. TWA states that it intends to discuss these materials at the oral hearing and answer questions about them, if necessary. TWA's motion is unopposed.

Pursuant to § 241.19-7 of the Department's regulations, it is determined that the information based on the Department's O&D Survey data (Data Bank 2-A) for operations between the United States and London, contained in TW-10 and TW-11, are material and relevant to a final determination of the issues in this case. In the interest of a complete and adequate record, TWA may release Exhibits TW-10 and TW-11 to British Airways, Virgin Atlantic, and civic parties.¹¹

¹¹ Release of these materials is restricted to representatives of British Airways, Virgin Atlantic and civic parties who have filed responsive pleadings in this proceeding and have complied with the Department's confidentiality procedures in this case. These materials may only be used for purposes of participation in this case.

Accordingly:

1. We grant, to the extent indicated in this order, the petitions of Continental Airlines, Inc., Delta Air Lines, Inc., Laker Airways, Inc., Tower Air, Inc., Trans World Airlines, Inc., US Airways, Inc., United Air Lines, Inc., and Virgin Atlantic Airways Limited for reconsideration of Order 97-9-4;
2. We affirm, in part, the actions taken by the Department in Order 97-9-4;
3. Except as provided in ordering paragraphs 1 and 2, we deny the Petitions for Reconsideration;
4. To the extent indicated in this order, we grant Trans World Airlines, Inc.'s motion to release to the public its Exhibits TW-10 and TW-11;
5. We direct interested parties to file their responsive documents/submissions detailed in this order by the dates indicated. These materials shall be filed in the Docket Section at the U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, D.C. 20590;¹² and
6. We shall serve a copy of this order on all persons on the service list in this docket.

By:

CHARLES A. HUNNICUTT
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/general/orders/aviation.html>*

¹² The original submissions are to be unbound and without tabs on 8½" x 11" white paper, using dark ink (not green) to facilitate use of the Department's document imaging system.