



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
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**1998 U.S.-SOUTH AFRICA THIRD-  
COUNTRY CODE-SHARE  
OPPORTUNITIES**

**Docket OST-98-4755**

Applications of

**CONTINENTAL AIRLINES, INC.  
DELTA AIR LINES, INC.**

**Dockets OST-98-4288  
OST-98-4301**

for U.S.-South Africa Third-Country Code-  
Share Opportunities

**ORDER TO SHOW CAUSE**

**SUMMARY**

By this order, we tentatively select Delta Air Lines, Inc., to serve Johannesburg, South Africa, under its code-share arrangement with Air France.

**BACKGROUND**

Under the provisions of the U.S.-South Africa Air Transport Agreement, a total of four U.S. carriers may be authorized to serve South Africa under code-share arrangements with third-country carriers. These services may be implemented on a phased in basis, with two carriers eligible for authority effective November 1, 1997, a third effective November 1, 1998, and a

fourth effective November 1, 1999.<sup>1</sup> No more than one U.S. airline may hold out third-country code-share service over the same intermediate point in Europe, South America, and/or Canada.

By Notice dated July 27, 1998, we invited interested U.S. carriers to file applications for the one designation to operate U.S.-South Africa third-country code-share services that becomes available November 1, 1998. In that notice, we stated that we will solicit applications for the additional designation available in 1999 at a later date.

## **APPLICATIONS**

Continental Airlines and Delta Air Lines filed applications to use this third-country code-share opportunity. Each of the applicants proposes to offer code-share services in the U.S.-South Africa market with the same foreign carrier, Air France, and they each would also offer seven weekly services to Johannesburg via Paris beginning November 1, 1998.<sup>2</sup> Continental would serve South Africa from two U.S. gateways (Houston and Newark) and Delta would serve from eight U.S. gateways (Atlanta, New York, Cincinnati, Chicago, Boston, Los Angeles, San Francisco and Washington). Since we may designate only one additional U.S. carrier at this time to provide services with third-country code-share partners, we must select between the applicants for the available authorization.

In support of its application, Continental states that the public will benefit from the expansion of the Continental/Air France alliance and from the enhanced competition with other global alliances, and that its proposed service is consistent with the U.S.-South Africa and U.S.-France bilateral aviation agreements.

In support of its application, Delta states that its service will provide consumers improved on-line service benefits and will maximize intragateway and intergateway competition against the U.S. and foreign flag incumbents. In this regard, Delta states that it will serve South Africa from eight gateways and, thus would enhance intragateway competition at seven U.S. gateways, served by incumbent U.S. carriers. It argues that it will provide behind-gateway service to almost every region of the country through its large hubs at Atlanta, Cincinnati and other cities, and will provide numerous U.S. cities with new on-line connecting service to South Africa.

## **RESPONSIVE PLEADINGS**

Continental, Delta, and United Air Lines filed answers. Continental, Delta, the City of Houston and the Greater Houston Partnership, and the Regional Business Partnership (Newark) filed replies.

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<sup>1</sup> Northwest Airlines and United Air Lines were selected for the first two opportunities available in 1997. See Orders 97-9-18 and 97-10-14.

<sup>2</sup> On August 6, 1998, the Department granted blanket statements of authorizations to Continental and Air France and to Delta and Air France that would cover the proposals at issue here, subject to a 30-day notice condition. Each carrier has provided notification here that it intends to code share on Air France's Paris-Johannesburg service, subject to a decision by the Department in this case.

Continental opposes Delta's application, arguing that selection of Continental would promote competition among global partnerships since Continental has limited U.S.-Africa third-country code-share authority. It also states that this is the only opportunity for Continental to obtain this U.S.-South Africa code-share authority because Air France is its only feasible code-share partner and the bilateral agreement permits only one U.S. carrier to provide service via any one European point. Continental states that Delta, however, could apply to code share with Swissair or Sabena for the designation available next year and that Delta already offers extensive code-share services between the United States and Africa with the above two carriers. Continental further states that its Newark hub will be a new hub gateway for U.S.-South Africa traffic, and its Newark network will offer service in the largest U.S.-South Africa market and will offer an important service alternative to JFK service for passengers at the New York gateway. Finally, Continental argues that the Department should award the code-share authority between the United States and South Africa to Continental because Delta's gateways of Atlanta and Cincinnati already receive on-line South Africa service from U.S. and/or foreign carriers, and that Continental's Houston hub serves more southwestern cities than Delta's Atlanta hub.

Delta argues that it will provide service from large and geographically diverse U.S. gateways and, thus, that it would offer the greatest number of nonstop-to-nonstop and total on-line connecting services to more U.S. cities. Delta also states that it will maximize competition with the existing incumbent code-share services because Delta's JFK gateway would offer strong competition to the South African Airways/American service from New York; that its Atlanta gateway would compete effectively with the South African Airways/American service to South Africa from the Miami gateway; and that its proposed service at its Cincinnati hub will provide effective intergateway competition to the United/Lufthansa service at Chicago and the Northwest/KLM service at Detroit and Minneapolis/St. Paul.

Delta further states that its plans to expand its U.S.-Africa network would be at a competitive disadvantage against the incumbent alliances if it code shared with Swissair or Sabena as suggested by Continental, since these carriers operate only five weekly services to South Africa. Delta maintains that Continental could apply for the designation available in 1999 with another foreign carrier. Finally, Delta states that an award to Continental would diminish competition since Northwest and Continental are commonly owned and Northwest already holds a designation to provide third-country code-share service to South Africa.

United takes no position on the applications of Continental and Delta but notes that Delta is requesting authority between the United States and South Africa "via intermediate points." United believes that U.S.-South Africa certificate authority for code-share service via a third country should include such broad intermediate authority and if the Department grants such authority here, then it should also grant similar authority to United for its existing South Africa code-share authority.

The City of Houston and the Greater Houston Partnership and the Regional Business Partnership (Newark) both support Continental's application and argue that this represents the last opportunity for their cities to receive third-country code-share service to South Africa.

## DECISION

We have tentatively decided to select Delta to serve South Africa under its third-country code-share arrangement with Air France.

Service in the U.S.-South Africa market is largely developmental. No U.S. carrier currently operates service with its own aircraft in the market. Rather, the three U.S. carriers conducting operations in the market serve under code-share arrangements with other carriers. American code shares on South African Airways's services from New York (JFK) and Miami. Northwest and United began service last year via Europe under code-share arrangements with their global alliance partners and offer service from 15 U.S. gateways.

The U.S.-South Africa agreement provides the right for two additional U.S. carriers to serve the market under code-share arrangements with third-country carriers on a phase-in basis over the next two years. Given the existing service in the market and the proposals before us, we believe that the public interest is best served if we use the opportunity at issue here to maximize the level of competitive services available to the public, thereby facilitating development of the market.

After careful review of both proposals, we tentatively find that an award to Delta would achieve this objective better than would an award to Continental in the circumstances of this case.

Continental and Delta have presented proposals that are similar in many respects. Both would offer a daily service to Johannesburg via Paris, France, under their code-share arrangements with Air France. Both are prepared to begin their services as soon as authorized by the Department. Furthermore, both carriers would offer service from New York, by far the largest U.S.-South Africa market, in addition to other gateways. Delta would serve from JFK; Continental would serve from Newark. In addition, both would be new entrants to the U.S.-South Africa market.

In these circumstances, we find that Delta's proposal to provide more U.S. cities with more competitive code-share services than Continental is entitled to significant weight in the context of this proceeding. In this regard, the record shows that Delta would offer new competitive service in eight U.S.-South Africa markets--Atlanta, Cincinnati, Chicago, Boston, Los Angeles, New York, San Francisco and Washington. By contrast Continental would provide competitive service in only two markets--New York (Newark) and Houston. Therefore, Delta would provide competitive service in six more markets than would Continental. Furthermore, Delta would offer the first on-line U.S. carrier service to Johannesburg from Cincinnati, whereas Continental's proposal is limited to cities that now receive U.S. carrier service.

While Continental's service at Houston and Newark offers certain positive features, we tentatively find that when we compare the totality of attributes of the Continental and Delta proposals, the combination of advantages deriving from Delta's proposal would provide more significant benefits overall. In this regard, we note that Delta, like Continental, would also provide service from its two major hubs, but unlike Continental, it would provide service as well to six other cities. In addition, while Continental cites the competitive enhancements its service would bring to Newark, the fact is that Newark currently receives on-line South Africa service from both Northwest and

United. In these circumstances, we do not see the introduction of Delta's service at JFK, which also has existing South Africa service, as less advantageous in weighing the elements of our decision, when viewed against the totality of the respective proposals. Delta would not only serve from JFK, but would also offer competitive service from its major hubs, as well as from a range of other cities. Finally, we note that Houston, the other city included in Continental's proposal, currently receives U.S. carrier on-line service in the South Africa market. It is in these circumstances that we have tentatively found that an award to Delta would provide greater public benefits here.

In reaching this conclusion we have carefully considered Continental's additional argument that it should be selected because Delta has more opportunities than Continental to provide code-sharing service in the South Africa market. While we appreciate the thrust of Continental's contention, we have tentatively concluded, based on the record of this case, that Delta's proposal offers greater public benefits. We believe that this consideration outweighs the arguments supporting Continental's application.

### **ECONOMIC AUTHORITY**

In the event we make final our selection of Delta, we would grant Delta's application for a new certificate authorizing its proposed service in the U.S.-South Africa market via Paris under its third-country code-share arrangement with Air France. As is our standard practice in limited-entry markets, we would issue Delta a five-year experimental certificate. The code-share arrangement between Delta and Air France was approved by the Department on August 7, 1998, and, thus, no additional award of authority would be necessary.<sup>3</sup>

With respect to the scope of authority to be awarded, we note that Delta has sought broad authority to operate "via intermediate points" rather than Paris, France, as proposed in this case. We have tentatively decided not to grant Delta's request for such broad authorization. Rather, we will limit its authority to service via Paris, the point included in Delta's service proposal. It has been our consistent policy to limit the authority granted in carrier selection cases to the service proposal included in the carrier's application in the case. Delta has presented no basis to deviate from the policy here.

### **ACCORDINGLY,**

1. We establish Docket OST-98-4755 for the selection of 1998 U.S.-South Africa third-country code-share services;
2. We consolidate the applications of Continental Airlines, Inc., in Docket OST-98-4288 and Delta Air Lines, Inc., in Docket OST-98-4301 into Docket OST-98-4755;

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<sup>3</sup> We note that the Delta/Air France code-share arrangement is currently the subject of a petition for review with respect to certain provisions of the code-share arrangement. See Petition for Review of Staff Action filed August 17, 1998, by United Air Lines, Inc. The issues raised by that petition are not material to our tentative decision here and will be addressed separately.

3. We tentatively select Delta Air lines, Inc., to provide scheduled foreign air transportation of persons, property, and mail in the U.S.-South Africa market via Paris, France under its code-share arrangement with Compagnie Nationale Air France;
4. We tentatively deny the application of Continental Airlines, Inc., for the necessary regulatory authorities to operate U.S.-South Africa third-country code-share services;
5. We direct all persons to show cause why we should not issue an order making final our tentative findings and conclusions;
6. We direct interested persons wishing to comment on our findings and conclusions, or objecting to the issuance of the order described above, to file 5 copies of their comments or objections with the Department, Dockets, TASC/SVC-124.1, Docket OST-98-4755, U.S. Department of Transportation, 400 Seventh Street, S.W., Room PL-401, Washington, D.C. 20590, and to serve a copy on all persons in the last ordering paragraph below, no later than November 24, 1998, answers thereto shall be filed no later than December 3, 1998;<sup>4</sup>
7. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action. If no objections are filed, we will deem all further procedural steps to have been waived, and will proceed to enter a final order subject to presidential review under 49 U.S.C. § 41307; and
8. We will serve this order on Continental Airlines, Inc.; Delta Air Lines, Inc.; United Air Lines, Inc.; the City of Houston and the Greater Houston Partnership; the Regional Business Partnership (Newark); the Ambassador of South Africa in Washington, D.C.; and the Department of State (Office of Aviation Negotiations).

By:

**PATRICK V. MURPHY**  
Deputy Assistant Secretary for  
Aviation and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at  
<http://dms.dot.gov/general/orders/aviation>*

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<sup>4</sup> The original submission is 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.