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Order 2003-4-18



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

Issued by the Department of Transportation
on the 23rd day of April, 2003

Served: April 25, 2003

In the matter of

U.S. PASSENGER AIR CARRIERS

Waiver of the dormancy conditions on limited-
entry route authority

Docket OST-2003-15021

Application of

CONTINENTAL AIRLINES, INC.

for a temporary blanket waiver of dormancy
conditions

Docket OST-2003-14777

ORDER GRANTING TEMPORARY WAIVERS

Summary

By this order, we grant all U.S. passenger carriers holding limited-entry international route authority a waiver of the dormancy conditions applicable to their authorities until April 1, 2004, subject to the conditions set forth in this order.

Application/Responsive Pleadings

On March 21, 2003, Continental Airlines filed an application for a temporary blanket dormancy waiver. Specifically, Continental seeks a waiver of all dormancy conditions applicable to its frequency allocations and other operating authority, including code-share and overflight authority. Continental urges the Department to grant comparable relief to all U.S. carriers through December 31, 2003, with a 90-day dormancy period to commence January 1, 2004. In support of its application, Continental notes that the war in Iraq and the resulting precipitous decline in air traffic have caused the airlines to reduce their flight operations

substantially to ensure their survival. Granting the relief sought, Continental states, would enable airlines to evaluate the global economic and traffic situation in light of further developments related to the Iraq war and to plan ahead to re-institute operations at the appropriate time rather than feeling constrained to re-institute flights during the weak winter traffic season.

American Airlines, Northwest Airlines, and United Air Lines responded in support of Continental's application.¹ American, however, suggested a longer waiver period, namely, one through March 31, 2004, followed by a 90-day dormancy period. United urged the Department to follow the procedure it used when the Department granted a blanket waiver to U.S. carriers after the events of September 11, 2001 (*i.e.*, the waiver period ended March 31, 2002, so that the effective restart date was April 1, 2002, the usual date for the beginning of the summer traffic period). Northwest urged the Department to grant the relief sought by Continental, American and United to all carriers.

Decision

We have decided to grant U.S. passenger air carriers holding limited-entry international route authority temporary blanket relief from the dormancy conditions on those authorities, subject to certain conditions, described below.²

As the carriers have noted in their pleadings in connection with the requested waiver, U.S. airlines have found it necessary to reduce various international flight operations because of significant declines in traffic, and particularly international traffic, in the wake of the Iraq war. The carriers assert, and we agree, that in the current environment, they should not be obligated to reach decisions on restoring such services based on the "use-it-or-lose-it" constraints associated with a dormancy condition. Given these circumstances, we find that temporary blanket relief from the dormancy conditions is warranted and in the public interest, and will serve to afford the carriers needed flexibility to resume their international services on a phased-in basis, without risk that they will lose their route awards for nonuse. All of the parties filing comments support the award of temporary relief.

At the same time, we recognize the value of limited-entry route awards and the importance of ensuring that services in restricted markets are available to consumers to the full extent possible. Taking these factors into consideration, we have decided to grant carriers a waiver of the dormancy conditions through March 31, 2004, *i.e.*, through the 2003/2004-winter traffic season.³ Under the terms of this waiver, any limited-entry authorities that have not

¹ The Air Carrier Association of America also filed a comment. Although Continental served its request on a number of cargo carriers, none responded. Northwest filed a motion for leave to file its response. We will grant the motion.

² With regard to Continental's request as to the specific scope of the waiver, we intend that the temporary blanket relief would extend to all international route authorities as to which a 90-day dormancy condition would otherwise apply.

³ The Department has previously adopted similar procedures. (See Order 2001-11-15, November 29, 2001.) We note that in granting the blanket waiver in 2001, the Department granted a waiver to all

been used for the applicable dormancy period prior to April 1, 2004, will be deemed dormant as of that date. We will also require all U.S. carriers to notify the Department, in writing, no later than February 15, 2004, of the limited-entry route rights that they will not be using beginning April 1.⁴

We have decided that any dormant limited-entry route authorities not resumed by the April 1, 2004 start of the summer traffic season will revert automatically to the Department.⁵ While the applicants in this case have offered a somewhat different proposal for the duration of the dormancy relief and attendant conditions, we believe that our decision here best balances our objective to provide the carriers needed flexibility in resuming their international airline services, especially in regard to eliminating the requirement to restore operations during the winter season or face the loss of authority, with our obligation to encourage the use of valuable route rights to the benefit of the traveling and shipping public.⁶ The February 15 notice requirement will provide all interested carriers notice of any authorities that will be dormant after expiration of the blanket waiver, and sufficient time to plan for services during the summer traffic season, including receipt of the necessary regulatory authorities.

Moreover, we recognize that specific cases may call for relief going beyond that which we have deemed justified on a blanket basis. In this regard, carriers are free to seek extension of the dormancy waiver beyond March 31, 2004, for specific city-pair limited-entry services where they can demonstrate that circumstances warrant. However, carriers should file such requests in sufficient time for other interested carriers to comment and for the Department to make a decision in a timely manner with respect to disposition of the authority at issue.

Finally, we will entertain applications from other carriers for temporary reallocation of limited-entry route authorities that are not being used during the blanket waiver period. This will facilitate greater use of the rights available and the potential for more services to the public in important international markets during the blanket waiver period.

ACCORDINGLY,

1. We grant all U.S. passenger air carriers a waiver of the dormancy conditions applicable to their limited-entry international route authorities for passenger operations;

U.S. carriers. Here we are granting the waiver only to passenger carriers. In the situation presented here, no cargo carrier has sought a waiver or otherwise elected to participate in this proceeding.

⁴ The notice should be filed in the new docket established by this order and served on all other U.S. carriers. To the extent that a carrier may institute less than its fully authorized service in a particular market, the market involved and limited-entry route rights not being used should be included in the notification.

⁵ In other words, no additional 90-day period of permissible dormancy will attach to the April 1 date.

⁶ We, of course, are basing this determination on the circumstances before us now. We would not rule out the possibility for a limited extension of the blanket waiver should future circumstances warrant. However, any consideration of such a matter at this time would be premature.

2. We consolidate the application of Continental Airlines, Inc. in Docket OST-2003-14777 into Docket OST-2003-15021 established by this order;
3. The waivers granted by this order are effective from the date of service of this order and shall expire March 31, 2004;
4. We require all carriers granted waivers by this order to file a notice no later than February 15, 2004, in Docket OST-2003-15021 listing each limited-entry market as set forth in the text of this order in which it will not resume service beginning April 1, 2004;
5. We grant the motion of Northwest Airlines for leave to file an otherwise unauthorized document;
6. To the extent not granted by this order, we deny all requests in the captioned dockets; and
7. We will serve this order on all U.S. certificated air carriers; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-200).

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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