

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKET SECTION

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U.S.-LIMA COMBINATION SERVICE
PROCEEDING

100A-3213
OST-95-370-15

Docket 50286

CONSOLIDATED ANSWER OF CARNIVAL AIR LINES, INC.

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August 2, 1995

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Carnival Air Lines, Inc. hereby files its consolidated answer to the U.S. -Lima applications of American Airlines, Inc., Continental Airlines, Inc., and United Air Lines, Inc. as filed, supplemented, and consolidated in Docket 50286. This answer is submitted pursuant to the procedural timetable established by Order 95-7-23.

While Carnival would very much like to serve the U.S.-Peru market at the earliest possible time, it has decided against filing a new or amended certificate application in this proceeding. Carnival is however filing this answer to make its views known.

1. Carnival acknowledges that the Department, in reactivating and expanding this proceeding, has emphasized that

no determination has been made regarding the long-term needs of the market, and that the Department's *pendente lite* exemption decisions will not affect the outcome of this proceeding.^{1/}

While Carnival does not doubt that the Department will conduct a *de novo* review of competing applications, the recent exemption decisions do not give Carnival any basis for assuming that the Department will change course in this proceeding.

Carnival is persuaded to this view by several factors. Chief among them is that through bilateral negotiations and exemption decisions, the Department appears to have fashioned an allocation formula whereby American operates two daily Miami-Lima round-trips and United one. In Carnival's view it is very unlikely the Department can be persuaded to take back a portion of United's *pendente lite* frequencies, thereby altering the above Miami-Lima symmetry.

Carnival's above conclusion is reinforced by the Department's most recent exemption decision. There the Department reasoned that "[d]aily service by United will enhance its competitive position *vis-a-vis* American...."^{2/} At the same time DOT ignored its own very recent conclusion that "our international aviation strategy should provide opportunities for

^{1/} Order 95-7-23 at 9.

^{2/} Order 95-7-23 at 9.

all of these forms of service so that we realize the benefits from maximum competition among **them**."^{3/}

Thus it appears that in the context of the Miami/Fort Lauderdale frequencies presently at issue, DOT considers enhancement of United's competitive position in the market of overriding significance. That view would be fatal to Carnival's present efforts to obtain certificate authority, and there is no reason to believe the Department's conviction in this regard will change. Thus in the final analysis, Carnival cannot justify further participation in this proceeding from the standpoint of cost-benefit or otherwise.

2. The above is not to say that Carnival will decline to seek authority when the additional U.S.-Lima frequencies that become available November 1, 1996, are allocated. On the contrary, given Carnival's keen interest in the South **Florida**-Lima market, it fully intends to apply at that time for most or all of the 3.5 Miami/Fort Lauderdale frequencies that will then be **available**.^{4/}

^{3/} **U.S. International Air** Transportation **Policy** Statement, April 1995, at 6. "All of these forms of service" specifically included "regional niche **carriers**" (such as Carnival). **Ibid.** The policy statement was emphasized repeatedly in Carnival's pleadings.

^{4/} The Department has determined that it "will institute a separate proceeding at a later date to authorize services using the 10.5 additional frequencies that will be available in late 1996." Order 95-7-23 at 4. Of those 10.5 frequencies, 3.5 are designated for Miami/Fort Lauderdale service.

3. In view of the above, Carnival takes no position on the merits of the other applications in this proceeding. It does however request that the Department treat Carnival's pending Miami-Lima certificate application dated February 16, 1995, as an application for backup Miami/Fort Lauderdale-Lima authority.²

4. Finally, Carnival urges the Department, consistent with standard practice, to make clear that the outcome of this proceeding will have no bearing on the separate proceeding to be instituted at a later date to allocate the frequencies that become available November 1, 1996. American and United will no doubt apply for the additional Miami/Fort Lauderdale frequencies for defensive purposes, *i.e.* to prevent the introduction of innovative, low-fare service by a viable competitor such as Carnival. It would disserve the public interest were American or United to receive any preference in regard to those frequencies.

Respectfully submitted,



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^{5/} Carnival's February 16 application (Docket 50136) was consolidated into this proceeding by Order 95-4-21. Included among the exhibits to that application was five-days-per-week data for proposed **widebody (A300)** operations. Carnival requests all eight Miami/Fort Lauderdale backup frequencies so as to accommodate that service pattern, which would require 7.5 frequencies.

CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing answer on the following persons by first class mail, postage pre-paid.

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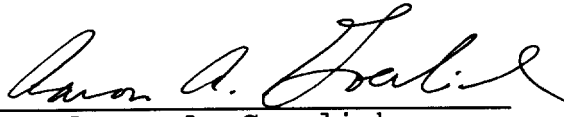
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