

DEPARTMENT OF TRANSPORTATION
98 AUG 31 PM 12:32
DOCKET SECTION

Dee J. Kelly
Marshall M. Searcy, Jr.
Brian S. Stagner
KELLY, HART & HALLMAN, P.C.
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500
Telecopy: (817) 878-9280

Wade Adkins, City Attorney
City of Fort Worth, Texas
1000 Throckmorton
Fort Worth, Texas 76102

ATTORNEYS FOR
THE CITY OF FORT WORTH, TEXAS

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

42209

LOVE FIELD SERVICE
INTERPRETATION PROCEEDING

:
:
:

Docket OST-98-4363 - 3

MOTION OF THE CITY OF FORT WORTH, TEXAS, FOR ADDITIONAL TIME

Subject to its Motion to Dismiss, filed herewith, the City of Fort Worth, Texas ("Fort Worth"), respectfully moves the Department of Transportation (the "Department") to allow additional time in this Proceeding.

1. Fort Worth received notice of the institution of this Proceeding by telecopy late in the afternoon of August 25, 1998. The Department's Order Instituting Proceeding ("OIP") allows interested parties only fourteen calendar days, or until September 8, 1998, within which

to file comments. Five of those calendar days are weekends or a holiday. Thus, the Department has allowed only nine working days within which to provide comments. The department then allows seven calendar days (five working days) for reply comments.

2. The Department's current schedule, ordered without consultation as far as Fort Worth knows with any of interested parties, is unreasonable and does not allow due process of law. There is no "emergency" here. To Fort Worth's knowledge, no interested party has advised the Department of any "emergency." *Cf. Pan American World Airways, Inc. v. CAB*, 684 F.2d 31, 37-38 (D.C. Cir. 1982). If someone has represented to the Department that there is an "emergency," Fort Worth requests the Department to make that representation a part of the record. Fort Worth disagrees that there is any "emergency."

3. There is no proper justification for the shortness of the schedule ordered by the Department. The State Court Action referred to on page 2 of the OIP has been pending since October 10, 1997. The State Court has set a hearing for October 1, 1998, for Motions for Summary Judgment that are pending in that action, some of which present the federal preemption and proprietary rights issues on which the Department proposes to rule. (Motions for Summary Judgment have been filed by Fort Worth, the City of Dallas, Continental Airlines, Inc., Continental Express, Inc., and American Airlines.) If the Department's plan is to allow a very short time for comments so that the Department may collect comments and then issue an Order before the State Court rules on the pending Motions for Summary Judgment, that is wholly improper and would be an indication of agency bias.

4. Fort Worth needs additional time in this Proceeding. As shown by the City of Fort Worth's Motion to Dismiss Proceeding, filed herewith, this Proceeding creates serious

Constitutional separation of powers and federalism questions, which must be deliberately considered. Furthermore, Fort Worth needs further information about the Department's motivation and possible agency bias in this proceeding. Fort Worth is filing herewith a Request for Disclosure from the Department, and Fort Worth is considering whether it must take formal discovery of others pertaining to bias that cannot be completed by September 8, 1998.

5. In addition, Fort Worth's counsel who are knowledgeable about the issues in this dispute are fully occupied on other matters. Fort Worth's counsel are briefing and preparing to argue in the Texas Supreme Court on September 9, 1998, three mandamus proceedings pertaining to the venue of the State Court Action. Fort Worth is responding to discovery served by defendants in the State Court Action. Fort Worth is preparing its responses to the Motions for Summary Judgment filed by Dallas, Continental Airlines, Inc., and Continental Express, Inc., in the State Court Action, which are due September 18, 1998. Fort Worth is reviewing the extensive evidentiary record compiled during the hearing in the State Court Action on its and the DFW Airport Board's Applications for Temporary Injunctions against Continental Airlines, Inc. and Continental Express, Inc. The official record was filed in the Court of Appeals on Monday, August 24, 1998. The Continental Appellants' brief could be filed any day, and Fort Worth's brief will be due twenty days later. Due to the Continental Defendants' motion to increase the bond the State Court ordered as a condition to Fort Worth's temporary injunction, Fort Worth must undertake discovery of Continental's airline costing experts and retain its own expert to testify at an upcoming hearing to increase the bond.

6. Fort Worth respectfully moves the Department to order that all interested parties may have thirty (30) calendar days from the date of the OIP within which to file comments and

fifteen (15) additional calendar days within which to file reply comments. Fort Worth further requests that the Department rule on this Motion as soon as possible.

Dated: August 31, 1998

Respectfully submitted,



Dee J. Kelly

Marshall M. Searcy, Jr.

Brian S. Stagner

KELLY, HART & HALLMAN, P.C.

201 Main Street, Suite 2500

Fort Worth, Texas 76102

Telephone: (817) 332-2500

Telecopy: (817) 878-9280

**ATTORNEYS FOR THE
CITY OF FORT WORTH, TEXAS**

CERTIFICATE OF SERVICE

I hereby certify that I have on August 3 1, 1998 served the foregoing Motion of the City of Fort Worth for Additional Time on the following persons at the following addresses by United States Mail:

City of Dallas

Mr. Sam A. Lindsay
City Attorney
City of Dallas
1500 Marilla, Room 7BN
Dallas, Texas 75201

Mr. John J. Corbett
Spiegel & McDiarmid
1350 New York Avenue N.W.
Washington, D . C. 20005

Mr. James E. Coleman
Carrington, Coleman, Sloman & Blumenthal
200 Crescent Court, Suite 1500
Dallas, Texas 75201

Dallas-Fort Worth International Airport Board

Mr. Kevin E. Cox
Deputy Executive Director
DFW International Airport
P. O. Drawer DFW
Dallas/Fort Worth Airport, Texas 75261

Mr. Michael F. Goldman
Bagileo, Silverberg & Goldman
1101 30th Street, N.W., Suite 120
Washington, D. C. 20007

Mr. R. H. Wallace, Jr.
Shannon, Gracey , Ratliff & Miller, L. L. P.
500 Throckmorton Street, Suite 1600
Fort Worth, Texas 76102

American Airlines, Inc.

Ms. Anne H. **McNamara**
Senior Vice President and General Counsel
American Airlines, Inc.
P. O. Box 619616
Dallas/Fort Worth Airport, Texas 76155

Mr. Michael V. Powell
Locke Pumell Rain Harrell
2200 Ross Avenue, Suite 2200
Dallas, Texas 7520 1-6776

Continental Airlines, Inc. and Continental Express, Inc.

Ms. Rebecca G. Cox
Vice President, Government Affairs
Continental Airlines
1350 I Street, N.W.
Washington, D. C . 20005

Mr. Randall W. Wilson
SUSMAN GODFREY, L.L.P.
1000 Louisiana, Suite 5 100
Houston, Texas 77096-5096

Mr. E. Lawrence Vincent, Jr.
SUSMAN GODFREY, L.L.P.
2323 Bryan Street, Suite 1400
Dallas, Texas 7520 1-2663

Legend Airlines, Inc.

Mr. T. **Allan McArtor**
President and CEO
Legend Airlines
7701 Lemmon Avenue
Dallas, Texas 75209

Mr. Edward **Faberman**
Ungaretti & Harris
1747 Pennsylvania Avenue, N.W., Ste. 900
Washington, D . C. 20006-4604

Mr. Paul C. Watler
Jenkins & Gilchrist
1445 Ross Avenue, Suite 3200
Dallas, Texas 75201

Southwest Airlines Company

Mr. James F. Parker
Vice President-General Counsel
Southwest Airlines
2702 Love Field Drive
Dallas, Texas 75235



DEE J. KELLY