



U.S. Department of
Transportation

General Counsel

March 20, 1992

400 Seventh St., S.W.
Washington, D.C. 20590

Mr. John Gunyou
Commissioner
Department of Finance
Fourth Floor Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

Dear Mr. Gunyou:

We have been asked for our opinion as to the consistency of proposed transactions between Northwest Airlines (NWA) and the State of Minnesota (State) with the Federal Aviation Act of 1958, as amended ("the Act"), and with this Department's policy. We have been told that the transaction would require the State to provide long-term financing for NWA and that NWA has offered certain international air service route rights as collateral in connection with such financing.

We take no position on the validity of an attempt to create a security interest in the international route rights currently held by NWA. That question is for the courts to determine. However, no provision of the Act expressly precludes the creation of such an interest.

As we have previously indicated to Mr. Thomas W. Anderson, General Counsel of the Minneapolis/St. Paul Airports Commission, the creation of such a security interest would not affect this Department's obligation to carry out its rights and responsibilities under section 401 of the Act. Among its rights with regard to existing route authority is the right to review and approve or disapprove all proposed transfers of international route authority;¹ to alter, amend, or revoke authority if the public convenience and necessity so require²; to alter, amend, suspend or revoke a temporary experimental certificate if a carrier is not performing as promised³; and to attach such reasonable terms, conditions and limitations to operations under a certificate as the public interest may require.⁴ These matters are spelled out in somewhat greater detail in a September 18, 1990 letter from the

¹ Act, section 401(h).

² Act, section 401(g)(1).

³ Act, section 401(d)(8).

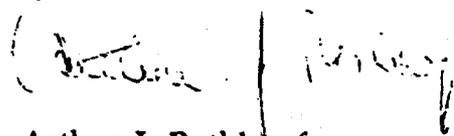
⁴ Act, section 401(e).

Department to the Pension Benefit Guarantee Corporation, a copy of which is enclosed.

We have also been asked for some indication of the Department's reaction to a situation in which the State were to foreclose on its security interest. You will, of course, understand that I cannot bind the Department with regard to any future regulatory decision. I can, however, tell you that section 401(h) of the Act calls upon the Department to determine whether transfer of any certificate would be in the public interest. The Department's policy in carrying out its responsibilities under section 401(h) has been to presume that marketplace transactions are an efficient means of allocating international routes. The Department reviews these transactions to determine if their grant would conflict with some international aviation policy objective or would otherwise not be in the public interest. Under the Act, the Department must also examine each proposed transfer to determine its likely effects on the viability of the carriers involved, domestic competition and the trade position of the United States in the international air transportation market.

If we can be of any further assistance in answering any questions you may have about international route authority, please call Mr. Donald Horn, our Assistant General Counsel for International Law, at (202)-366-2972.

Sincerely,



Arthur J. Rothkopf

Enclosure



September 18, 1990

Ms. Carol C. Flowe
General Counsel
Pension Benefit Guarantee Corp.
Suite 7200
2020 K Street, N.W.
Washington, D.C. 20006-1860

Dear Ms. Flowe:

We understand that the Pension Benefit Guarantee Corporation (PBGC) and Continental Airlines may reach an agreement which purports to grant to PBGC a security interest in the international route authority held by Continental. In this regard, as we had previously discussed, it is our position that such an agreement would not affect the Department's rights to deal with the international authority held by Continental or any U.S. air carrier. These rights include, but are not limited to, the following:

1. An air carrier cannot transfer any international route authority without DOT approval under section 401 (h) of the Federal Aviation Act of 1958, as amended (Act). Furthermore, such a transfer is subject to Presidential review under section 801 of the Act.
2. The Department retains the right under section 401 (g)(1) to alter, amend, or revoke an air carrier's authority in whole or in part if the public convenience and necessity so require.
3. The Department retains the right under section 401(g)(3) to revoke route authority if the carrier fails to serve the route.
4. The Department retains the right under section 401(d)(8) to suspend or revoke a certificate granting experimental route authority if the carrier is not performing as promised.

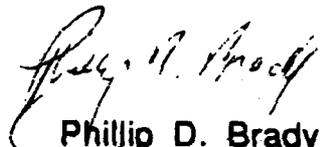
5. Any authority that is taken from Continental for any of these reasons can be awarded to another carrier without compensation to Continental.

6. The Department retains the right to make additional awards of authority in markets where Continental has authority. It is the policy of the Department under section 102 (10) to maximize the number of U.S. carriers that can serve in international markets and, consistent with our bilateral aviation agreements, we continually try to do this.

7. Much of the route authority held by Continental is time limited (most certificates have a duration of five years). The Department has no obligation to renew these certificates.

If we can be of any assistance in answering any questions you may have about international route authority, please call Mr. Donald Horn, our Assistant General Counsel for International Law, at 366-2972.

Sincerely,



Phillip D. Brady
General Counsel