



Order 2004-3-3

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC

Issued by the Department of Transportation  
on the 9th day of March, 2004

Served: March 9, 2004

2004 Hong Kong Fifth-Freedom All-Cargo  
Frequency Proceeding

Docket OST-2004-17279

In the Matter of Interim Frequencies from  
the 2002/2003 Hong Kong Fifth-Freedom  
All-Cargo Frequency Proceeding

Docket OST-2002-14049

**ORDER INSTITUTING PROCEEDING**

**Summary**

By this Order, we institute the *2004 Hong Kong Fifth-Freedom All-Cargo Frequency Proceeding* to select carriers to operate the fifth-freedom frequencies available for U.S. carrier services in the Hong Kong fifth-freedom market. We also make an interim award for the two frequencies returned by Evergreen International Airlines (Evergreen) from last year's proceeding.

**Background**

Under the October 19, 2002, Memorandum of Understanding (MOU) between the United States and the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong), U.S. carriers may operate additional all-cargo fifth-freedom frequencies on a three-year phased-in basis. By Order 2003-9-9, the Department allocated the 40 new frequencies that became available during the first two years, 2002 and 2003. Under the MOU, 16 additional frequencies, representing the final portion of the phase-in, become available October 26, 2004. In anticipation that we will need to allocate those frequencies among interested U.S. carriers we are setting forth procedures for a selection proceeding.

While the MOU places no limitations on the number of U.S. carriers that may operate the available fifth-freedom services, it does contain specific limitations as to the number of countries that may be served and the number of frequencies that may be used in various city-pairs.<sup>1</sup>

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<sup>1</sup> The Philippines, France, and Germany are specifically named in the MOU as intermediate/beyond points, and the U.S. Government may select ten other countries. As a result of last year's proceeding, the U.S. Government also selected Korea, India, Malaysia, and the United Arab Emirates, thus leaving six additional (Footnote continued)

Under the MOU, in addition to the overall frequency limit, specific frequency limitations apply for each fifth-freedom point served in intermediate/beyond countries.<sup>2</sup> Under the specific arrangements agreed between the United States and Hong Kong, each flight segment on which fifth-freedom rights are to be exercised—whether intermediate to, or beyond Hong Kong, and whether on a one-way or round-trip basis—requires the allocation of a round-trip frequency, *e.g.*, a flight that includes the exercise of fifth-freedom rights both intermediate to and beyond Hong Kong requires two round-trip frequencies and a flight that exercises fifth-freedom traffic rights in only one direction also requires a round-trip frequency.<sup>3</sup>

## Decision

We have decided to institute the *2004 Hong Kong Fifth-Freedom All-Cargo Frequency Proceeding* to select carriers to operate the available frequencies for weekly Hong Kong fifth-freedom service. As noted above 16 frequencies become available for U.S.-carrier fifth-freedom services on October 26, 2004. In addition, on February 20, 2004, Evergreen returned the two frequencies awarded to it by the Department in Order 2003-9-9. We have decided that the public interest would best be served by including long-term consideration for these two returned frequencies in the proceeding we are instituting in this order. Thus, in this proceeding, there will be 18 frequencies available for allocation on a long-term basis.

Whether authorizing carriers for this service is consistent with the public convenience and necessity will not be at issue. The subject fifth-freedom all-cargo traffic rights constitute valuable resources obtained in exchange for granting Hong Kong opportunities for its airlines. The introduction of additional U.S. carrier service will provide new service options to the shipping public and will enhance competition in the U.S.-Hong Kong and Hong Kong-third-country markets. In these circumstances, we find that the public interest calls for the use of these rights.

In allocating the available frequencies, our principal objective will be to maximize the public benefits that will result from award of the authority in this case. In this regard, we will consider which applicants will be most likely to offer and maintain the best service for the shipping public. We will also consider the effects of the applicants' service proposals on the overall competitive environment, including the market structure and the level of competition in the U.S.-Asia market, and on any other market shown to be relevant, and, where relevant, the positive effect on each applicant's operations. In addition, we will consider other factors historically used for carrier selection where they are relevant.

We will consider whether in this case the public interest warrants consideration of awarding backup authority. Carriers are free to address the issue of whether there should be backup

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(Continued Footnote) countries that may be served as intermediate/beyond points. We note that Polar filed a request on February 24 to adjust its service for the three Delhi/Penang frequencies awarded in last year's proceeding so as to provide service to Jakarta, Indonesia, instead. We have reached no determination on this request as of this time, and it remains pending. City-pairs already having met the caps for service include Paris, France; Cologne, Germany; Subic Bay, the Philippines; Mumbai, India; and Dubai, United Arab Emirates. There are frequencies allocated for Manila, Seoul, and Delhi, but those cities are not yet capped.

<sup>2</sup> For the convenience of interested participants in the proceeding instituted here, we are attaching to this order relevant portions of the MOU's specific limitations applicable to fifth-freedom all-cargo operations.

<sup>3</sup> See Order 2003-3-27.

awards in this proceeding. If carriers are interested in backup awards, they should so note in their applications.

We caution carriers, however, that frequencies may not be held indefinitely if not used. Consistent with our current practice, the frequencies allocated in this proceeding will be for an indefinite term, provided that the carrier continues to hold the underlying economic authority for specific markets authorized and that the frequencies are used. The frequencies to be awarded will also be subject to our standard startup condition and to our standard 90-day dormancy condition, except where service is seasonal. In all such instances of seasonal service, however, a carrier must notify the Department that its operations are of a seasonal nature; otherwise, the dormancy condition will apply. Under the dormancy condition if any of the flights allocated are not used for 90 days (once inaugurated), the frequency allocation with respect to each unused frequency would expire automatically and the frequency would revert to the Department for reallocation.<sup>4</sup>

## **Applications**

In order to ensure that U.S. carriers are given the opportunity to use these valuable route rights, we invite interested carriers to file exemption applications and frequency applications, as well as, where applicable,<sup>5</sup> code-share authorization applications and requests for statements of authorization.<sup>6</sup> If carriers do not hold underlying authority to perform scheduled all-cargo services, they should seek such authority. Carriers must hold underlying authority to conduct scheduled service to all points requested in their proposals.

Except for the procedural dates, exemption/frequency applications should conform to Part 302, Subpart C of our regulations (14 CFR Part 302). All applications and other related requests should be filed with the Department of Transportation (Room PL-401, 400 Seventh Street, SW, Washington, DC 20590), and should include, at a minimum and as applicable, the proposed startup date(s); routings from origin to destination of all proposed flights; days scheduled; frequencies requested per market, and the duration of service in each market, if not provided on a year-round basis; route integration authority, if desired; equipment types; and existing authority held to conduct the operations. Carriers should identify specific cities for their proposed services since the MOU has provisions for frequencies for specific cities within countries and has additional provisions for cities not named in the MOU (see footnotes in the Attachment to this order). In cases where the U.S. carrier proposes to conduct code-share operations involving fifth-freedom traffic rights, applications should include, at a minimum, the code-share partner(s) involved; which carrier(s) would be operating the flights; and the country and specific intermediate point(s) over which the services would be provided. In addition, unless previously filed and approved by the Department, the carriers must provide as part of their applications, copies of any relevant cooperative service arrangements. Should carriers already hold fifth-freedom frequencies and seek additional allocation from the 18 available frequencies, those carriers should also provide evidence on the use of their existing allocations, specifically noting

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<sup>4</sup> We remind applicants that frequencies to be awarded are for weekly operations. A scheduled carrier may not bank frequencies from one week to another. Failure to use the frequencies on a weekly basis will result in the forfeiture of unused frequencies.

<sup>5</sup> “Where applicable” refers to situations in which the U.S. carrier is proposing to exercise fifth-freedom traffic rights on a code-share operation.

<sup>6</sup> Should a carrier be awarded new authority to a country and need a designation to operate to or via such country, the selected carrier would need to request that it be designated for such services after its selection.

the intermediate/beyond points used so that other applicants will be able to determine the number of frequencies available for service at such points. Applicants are also free to submit any additional information that they believe will help us in making our decisions here.

### **Procedures and Evidence**

We intend to award the available opportunities based on the applications filed in response to this order. We believe that written, non-oral show-cause procedures under Rules 207 and 210 of our regulations are appropriate and that by using these procedures we can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. We find no material issues of fact that would warrant an oral evidentiary hearing in this case. We are confident that the issues in this case can be addressed adequately on a written record.

We have appended to this order an evidence request for the benefits of the parties to this case.<sup>7</sup> This evidence request generally follows the evidence request used in the last Hong Kong fifth-freedom cargo case.<sup>8</sup> Those evidentiary submissions proved useful in developing a complete record in the last proceeding, and we believe that the comparable evidence we are now requesting similarly will help generate an adequate decisional record in the present proceeding. As before, we will require all applicants to provide detailed schedules of their transpacific and intra-Asian services. Those applicants that are proposing service to other areas (*e.g.*, Middle East, Europe, or trans-Atlantic routings) should also provide detailed schedules for those areas.

We emphasize that the evidence request includes specific instructions regarding the type and format of the information to be submitted, and, in some instances, the sources of information to be used. We view adherence to these directives as critical to our consideration of the proposals in carrier selection cases. We put all applicants in this case on notice that we expect full compliance with the evidence request appended to this order. Any carrier not complying in any material respect with our request will be subject to elimination from consideration for an award in this case.

In addition to the material requested, applicants and any other parties may submit any additional information that they believe useful to us in reaching a decision.

### **Procedural Timetable**

In view of our desire for a timely decision in this case, we intend to conduct this proceeding instituted here according to the following timetable:

Petitions for Reconsideration:	March 16, 2004
Applications:	March 23, 2004
Direct Exhibits:	April 13, 2004
Rebuttal Exhibits:	April 27, 2004
Briefs:	May 11, 2004

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<sup>7</sup> Carriers' evidentiary materials are not expected until the Direct Exhibit stage of this proceeding.

<sup>8</sup> Order 2002-12-11 as amended by Order 2003-2-27, *2002/2003 Hong Kong Fifth-Freedom All-Cargo Frequency Proceeding*, Docket OST-2002-14049.

We believe that the schedule provided affords all applicants ample opportunity to prosecute their applications, properly balances the interests of all parties to the case, and will enable the Department to make a timely decision awarding the frequencies.

All dates are delivery dates and all submissions must be filed in the docket assigned to this proceeding. An original and five copies of all submissions are to be received by the Department of Transportation Dockets no later than the dates indicated.<sup>9</sup> In the alternative, filers are encouraged to use the electronic submission capability through the Dockets DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site. For the convenience of the parties, service by facsimile or email is authorized. Parties should include their fax numbers and email addresses on their submissions and should indicate on their certificates of service the methods of service used.

### **Allocation of Two Interim Frequencies**

Two of the carriers awarded frequencies in the 2002/2003 long-term proceeding, Evergreen International Airlines (Evergreen) and Kalitta Air Cargo (Kalitta)—each of which had been awarded two frequencies for Hong Kong-Seoul service—received 90-day waivers of the startup requirement attached to their frequency awards. We awarded Federal Express (FedEx) (two frequencies), Northwest Airlines (Northwest)(one frequency), and Polar Air Cargo (Polar) (one frequency) interim authority to provide service while awaiting startup by Evergreen and Kalitta. (See Notices of Action Taken, dated December 10, 2003, and January 9, 2004 in Docket OST-2002-14049.) We did not, in making our interim frequency allocations, associate the frequencies awarded with a specific carrier that had requested a delay.

Evergreen, by letter dated February 20, notified the Department that it would not be using its frequencies and surrendered them to the Department.<sup>10</sup> Kalitta, by letter dated February 25, made clear its intention to begin services in the Seoul-Hong Kong market on the requested startup date of March 10, 2004, using its two frequencies. Thus, the two frequencies that we intended to be used by Evergreen remain available. As stated above, we have determined that the long-term allocation of those two frequencies should be considered as part of the proceeding we are instituting by this order.

As to the interim period pending completion of this proceeding, we have decided to allocate the two available frequencies to Polar and Northwest. We find that those two carriers' operations most closely correspond to the type of cargo service—*i.e.*, general all-cargo services—that Evergreen would have provided. We believe that this result will best serve the public interest.<sup>11</sup> This interim allocation of the two frequencies will permit Polar and Northwest to operate nine and five Hong Kong fifth-freedom frequencies, respectively. FedEx and UPS will each retain the 18 and 12 Hong Kong fifth-freedom frequencies, respectively, previously awarded to them. We emphasize that our determination in the previous proceeding that Seoul-Hong Kong

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<sup>9</sup> The original filing is to be unbound and without tabs on 8-1/2" X 11" white paper, using dark ink (not green) to facilitate use of the Department's docket imaging system.

<sup>10</sup> We solicited comments on Evergreen's return of its frequencies. FedEx, Northwest, Polar, and United Parcel Service (UPS) submitted comments and/or applications for the two frequencies, some seeking permanent award of the frequencies and some suggesting that the permanent allocation for the two frequencies be rolled into the proceeding for frequencies available October 26, 2004, under the MOU.

<sup>11</sup> In light of this determination, it will be necessary for FedEx to discontinue its exercise of fifth-freedom rights in the Seoul-Hong Kong market, effective March 9, 2004.

frequencies would be awarded to general all-cargo carriers is subject to reexamination in the new proceeding based upon the record that is developed in that docket.

Consistent with our standard practice, the frequency allocations granted are subject to the condition that if a frequency is not used for a period of 90 days, the frequency will expire automatically and the unused frequency will revert to the Department for reallocation. The 90-day dormancy period will begin March 10, 2004.

We emphasize that, consistent with our standard practice in the award of *pendente lite* authority, our *pendente lite* decisions will be without prejudice in our decisions in the long-term authority to be awarded in the proceeding instituted by this order.

**Accordingly,**

1. We institute the *2004 Hong Kong Fifth-Freedom All-Cargo Frequency Proceeding*, Docket OST-2004-17279 to be decided by non-oral, show-cause procedures under Rules 207 and 210 of our regulations (14 CFR 302.207 and 302.210);
2. The proceeding instituted in ordering paragraph 1 will consider which carrier(s) should be granted the available Hong Kong fifth-freedom cargo frequencies and (as necessary) underlying exemption authority, and what terms, conditions, and limitations (if any), should be imposed on any authority awarded in this proceeding;
3. We grant Polar Air Cargo, Inc. and Northwest Airlines, Inc. each one interim frequency for Seoul-Hong Kong fifth-freedom service;
4. The interim frequency allocations granted in ordering paragraph 3 above will be effective March 10, 2004 and shall remain in effect until further order of the Department;
5. To the extent not granted, we deny all other requests in Docket OST-2002-14049; and

6. We will serve this order on all U.S. certificated all-cargo carriers operating large aircraft; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

**Karan K. Bhatia**  
**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/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*

EVIDENCE REQUEST

In responding to this evidence request, all parties are advised to heed the admonitions and notice regarding compliance contained in the attached order. The base year for developing forecast data should be the 12-month period ended **June 30, 2003**. Submission of the following evidentiary information should be for the forecast year ending **December 31, 2005**:<sup>1</sup>

- Proposed schedules showing startup dates, complete routings (including all intermediate points from origin to destination of all single-plane and change-of-gauge service that would operate in the fifth-freedom Hong Kong markets), days scheduled, equipment types, available capacity for the through routing, and variation of frequencies/routings by traffic season, if applicable.
- Historical schedules for “scheduled authority”<sup>2</sup>--not for charter or ACMI operations—with complete routings from origin to destination for all U.S.-Asia and intra-Asian services (applicants proposing services to other areas, *e.g.*, Middle East, Europe, or trans-Atlantic routings, should also provide detailed schedules for those areas)<sup>3</sup> for the period winter 2002-2003 and Summer 2003 IATA traffic seasons, or the equivalent thereof (*i.e.*, November 2002-October 2003) for carriers not participating in IATA conferences, including days scheduled, equipment types, available capacity for the through routing, and variation of frequencies/routings by traffic season, if applicable. Carriers should indicate whether services were on a round-trip basis.
- A cargo traffic forecast for each fifth-freedom Hong Kong market proposed to be served based on the intended schedules. Such forecast should also specify the amount of traffic originating in or destined for the United States that will also be transported on the proposed single-plane flights, permitting the Department to determine by direction the amount of cargo forecasted for each single-plane market, including U.S.-Hong Kong, U.S.-third country, third-country to third-country, and Hong Kong fifth-freedom traffic on all proposed flights. The traffic forecasts must clearly provide the source and basis for the traffic projections. **Carriers already in the market should distinguish between traffic generated under current allocations and incremental traffic anticipated under additional frequency allocations.** <sup>4</sup>

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<sup>1</sup> Any financial data provided must be given in U.S. dollars, and all weights **must be** in U.S. pounds.

<sup>2</sup> Such historical schedules are those for which the carriers have published schedules, *e.g.*, web site, *Official Airline Guide*, trade publications, and other official publications. Carriers should exclude flights on which individually waybilled traffic could not be tendered. To the extent carriers operate part charters, those flights should be identified separately as flights on which less than full capacity is available for individually waybilled traffic and should indicate the percentage of space allocated for such cargo on scheduled flights. We will require historical schedules for all scheduled services whether they were operated single-plane or change-of-gauge services. Carriers should clearly identify which services are all single-plane and which services are operated as change-of-gauge.

<sup>3</sup> As we permitted in last year’s proceeding, carriers may provide “snapshots” of their schedules. Carriers not proposing services to the Middle East, Europe, or via trans-Atlantic routings are not expected to provide schedules for those areas.

<sup>4</sup> Carriers that have existing services in the market should be certain that their presentation of their schedules clearly distinguishes those flights encompassed by existing permanent frequencies from those flights for which they are seeking new frequencies. Similarly, if a flight operates, *e.g.*, seven days a week and only four of those flights carry fifth-freedom traffic and the other three are “blind-sector,” the schedules should clearly identify such operations.

- A statement specifying whether the carrier would accept partial grant of its frequency allocation application, how such allocation would be used, and the startup for such services if different than above. Also state whether there is a minimum number of frequencies the carrier will accept. Carriers should also rank in terms of priority points they would service should not all points be granted.
- A description of cooperative arrangements currently undertaken and anticipated by the applicants in each of the third/fourth and fifth-freedom markets at issue.
- If cooperative arrangements are involved, state the percentage of total capacity currently sold in each such market by the applicant for existing arrangements; and state the percentage of total capacity to be sold in each such market by the applicant upon receipt of the frequencies at issue in this case.
- Indicate whether the applicant would accept a backup allocation, should the Department ultimately determine to award backup frequencies.

United States Route 2: All-Cargo Air Services

(A)	(B)	(C)
A Point or Points in the United States	<u>Intermediate and Beyond Points</u> <sup>1,2</sup>	Hong Kong
	Philippines <sup>3</sup> France <sup>4</sup> Germany <sup>5</sup> Ten other countries to be selected <sup>6,7</sup>	

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- 1 Effective immediately, U.S. airlines taken together may operate no more than 32 weekly round trip frequencies with full traffic rights between Hong Kong and points in these countries taken together. From the beginning of the IATA Winter 2003 traffic season, U.S. airlines taken together may operate no more than 48 weekly round trip frequencies with full traffic rights between Hong Kong and points in these countries taken together. From the beginning of the IATA Winter 2004 traffic season, U.S. airlines taken together may operate no more than 64 weekly round trip frequencies with full traffic rights between Hong Kong and points in these countries taken together. Subject to the per point and per carrier frequency limits in footnotes 3 and 7 below, one of these frequencies may be converted into two weekly flights to be operated by aircraft with a capacity of less than 50 tonnes operated to and from points in the United States not in the continental United States. The converted frequencies can only be used to exercise full traffic rights between Hong Kong and Korea, Thailand or the Philippines. Such conversion shall apply for the remainder of the traffic season in which it is made.
  - 2 Taiwan may not be a point in Column B.
  - 3 U.S. airlines taken together may operate no more than 12 weekly round trip frequencies with full traffic rights between Hong Kong and Clark and no more than 12 such frequencies between Hong Kong and Subic. In the event that U.S. airlines cease all services to Subic, the Government of the United States may with 90 days notice to the Government of the HKSAR in writing transfer irrevocably the whole of its frequency entitlement in relation to Subic to Clark. In such case, U.S. airlines taken together may operate up to 24 weekly round trip frequencies with full traffic rights to Clark, with a maximum of 12 such frequencies per U.S. airline. U.S. airlines taken together may operate no more than 7 weekly round trip frequencies with full traffic rights between Hong Kong and any point in the Philippines other than Subic or Clark.
  - 4 Available from the beginning of the IATA Winter 2003 traffic season. U.S. airlines taken together may operate to one point in France. Full traffic rights may be exercised on no more than 6 weekly round trip frequencies with full traffic rights between Hong Kong and this point. The Government of the United States will notify the Government of HKSAR of its selection with not less than 30 days notice in writing. The Government of the United States may, at its discretion, change the point selected with not less than 30 days notice to the Government of the HKSAR in writing. In addition to the rights available in footnote 5 below, the Government of the United States may, with at least 90 days notice in writing to the Government of the HKSAR, convert this point into a point in Germany

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excluding Frankfurt. Once converted, such point may not be changed to another point in Germany or be reconverted into a point in France. U.S. airlines may operate no more than 6 weekly round trip frequencies with full traffic rights between Hong Kong and the point chosen, except that, if the same point is chosen under footnote 5, U.S. airlines taken together may operate no more than 12 weekly round trip frequencies with full traffic rights between Hong Kong and such point, with a maximum of 6 such frequencies per U.S. airline.

- 5 Available from the beginning of the IATA Winter 2003 traffic season. U.S. airlines taken together may operate to one point in Germany excluding Frankfurt. Full traffic rights may be exercised on no more than 6 weekly round trip frequencies between Hong Kong and this point, except as provided in footnote 4. The Government of the United States will notify the Government of the HKSAR of its selection with not less than 30 days notice in writing. The Government of the United States may, at its discretion, change this point with not less than 30 days notice to the Government of the HKSAR in writing.
- 6 Selections may not include Switzerland, Bangladesh, Sri Lanka, Pakistan, Japan, Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. Thailand, India, Malaysia, and Singapore may not be served before the beginning of the IATA Winter 2003 traffic season. The Government of the United States will notify the Government of the HKSAR of its selections with not less than 30 days notice in writing. The Government of the United States may, at its discretion, change the countries selected with not less than 30 days notice to the Government of the HKSAR in writing.
- 7 U.S. airlines taken together may operate no more than 7 weekly round trip frequencies with full traffic rights between Hong Kong and each point in the countries selected. Notwithstanding the previous sentence, effective from the beginning of the IATA Winter 2003 traffic season, U.S. airlines taken together may operate no more than 12 weekly round trip frequencies with full traffic rights between Hong Kong and points in Korea taken together. The Government of the United States may, at its discretion, change these points with not less than 30 days notice to the Government of the HKSAR in writing.

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## Appendix 2

1. In addition to the right to carry transit, connecting and local traffic between points in column B and points in column C, designated airlines may carry transit and on-line connecting traffic between points in column C and points in other destinations, including points not listed in column B. Such on-line connecting traffic may be connected at any points in columns A, B or C or at points in countries not listed in such columns.

3. Except as may be otherwise specifically provided, a designated airline may, on any or all flights, and at its option, serve points on a route and operate via points not listed in columns A, B or C in any order, operate flights in either or both directions, and omit stops at any point or points, without loss of any right to uplift or discharge traffic otherwise permissible under the relevant routes or notes applicable thereto, provided that the service begins or terminates in the area of the Contracting Party designating the airline.

4. A designated airline may carry traffic between points in column A and points in column C, on the same flight or otherwise, via any points including points not listed in column B but excluding points in the areas of the Contracting Parties.

### **Change of Gauge for Combination Services**

6. A designated airline of one Contracting Party operating on Hong Kong Route 1 or U.S. Route 1 may make changes of gauge at points in column B or at other points outside of the area of the other Contracting Party without any limit on size or number of aircraft. Such an airline may also make a change of gauge in the area of the other Contracting Party without any limit on size or number of aircraft. The above changes of gauge are subject to the following conditions:

- (a) aircraft for such operations shall be scheduled in coincidence with corresponding flight(s) to/from the area of the Party designating the airline;
- (b) the onward flight(s) is scheduled to depart within 3 hours of the scheduled arrival of the corresponding incoming flight(s), unless airport curfews, airport slots, or other operational

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- constraints, at the point where the change of gauge occurs or at the next point or points of destination of the flight(s), prevent such scheduling;
- (c) if the incoming flight(s) is delayed by unforeseen operational or mechanical problems, the onward flight(s) may operate without regard to the conditions in paragraphs (a) and (b) above;
  - (d) fifth freedom traffic rights, if available, may be exercised on one starburst flight beyond a point of change of gauge made in the area of the other Contracting Party;
  - (e) where fifth freedom traffic rights are exercised on any flight, including a starburst flight, operations beyond the point of change of gauge shall be performed by an aircraft having capacity less, for outbound services, or more, for inbound services, than that of the arriving aircraft;
  - (f) for the purpose of counting fifth freedom frequencies available under this MOU, the operation or marketing by each designated airline of each starburst flight to one or more fifth freedom points with the exercise of fifth freedom rights shall be counted as one fifth freedom frequency. Irrespective of the routing, each flight to each fifth freedom point shall be counted as one frequency against the applicable per point frequency entitlement and per carrier frequency entitlement; and
  - (g) starburst flights of an airline beyond the point of change of gauge may have flight numbers different from that of the corresponding flight to or from the area of the Party designating the airline.

### **Change of Gauge for All-Cargo Services**

6A. A designated airline of one Contracting Party operating on Hong Kong Route 2 or U.S. Route 2 may make changes of gauge at points in column B or at other points outside of the area of the other Contracting Party without any limit on size or number of aircraft. Such an airline may also make a change of gauge in the area of the other Contracting Party without any limit on size or number of aircraft. The above changes of gauge are subject to the following conditions:

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- (a) aircraft for such operations shall be scheduled in coincidence with corresponding flight(s) to/from the area of the Party designating the airline;
- (b) if the incoming flight(s) is delayed by unforeseen operational or mechanical problems, the onward flight(s) may operate without regard to the conditions in paragraph (a) above;
- (c) fifth freedom traffic rights, if available, may be exercised on up to two starburst flights beyond a point of change of gauge made in the area of the other Contracting Party;
- (d) for the purpose of counting fifth freedom frequencies available under this MOU, the operation or marketing by each designated airline of each starburst flight to one or more fifth freedom points with the exercise of fifth freedom rights shall be counted as one fifth freedom frequency. Irrespective of the routing, each flight to each fifth freedom point shall be counted as one frequency against the applicable per point frequency entitlement and per carrier frequency entitlement; and
- (e) starburst flights of an airline beyond the point of change of gauge may have flight numbers different from that of the corresponding flight to or from the area of the Party designating the airline.

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