



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

Issued by the Department of Transportation  
on the 21<sup>st</sup> day of July, 2004

Served: July 21, 2004

**2004 U.S.-MEXICO COMBINATION SERVICE PROCEEDING  
DOCKET-OST-2004-18692**

Applications of  
**ALLEGIANT AIR, INC.**  
**GRAND HOLDINGS, INC., d/b/a CHAMPION AIR**  
**UNITED AIR LINES, INC.**  
For an exemption pursuant to 49 U.S.C. Section 40109 (Denver-Cancun)

**Dockets OST-2004-17416**  
**OST-2004-17407**  
**OST-2004-17299**

Applications of  
**GRAND HOLDINGS, INC., d/b/a CHAMPION AIR**  
**UNITED AIR LINES, INC.**  
For an exemption pursuant to 49 U.S.C. Section 40109 (Denver-Puerto Vallarta)

**OST-2004-17408**  
**OST-2004-17491**

Applications of  
**GRAND HOLDINGS, INC., d/b/a CHAMPION AIR**  
**SPIRIT AIRLINES, INC.**  
**BRENDAN AIRWAYS, LLC, d/b/a USA 3000 AIRLINES**  
For an exemption pursuant to 49 U.S.C. Section 40109 (Detroit-Cancun)

**OST-2004-17405**  
**OST-2004-17234**  
**OST-2004-17351**

Applications of  
**GRAND HOLDINGS, INC., d/b/a CHAMPION AIR**  
**FRONTIER AIRLINES, INC.**  
**BRENDAN AIRWAYS, LLC, d/b/a USA 3000 AIRLINES**  
For an exemption pursuant to 49 U.S.C. Section 40109 (St. Louis-Cancun)

**OST-2004-17408**  
**OST-2004-17470**  
**OST-2004-17479**

**INSTITUTING ORDER**

## **Summary**

By this order we: (1) institute the *2004 U.S.-Mexico Combination Service Proceeding* to select one primary and one backup carrier, to provide foreign air transportation of persons, property, and mail over the following transborder routes: Denver-Cancun, Denver-Puerto Vallarta, Detroit-Cancun, and St. Louis-Cancun; (2) consolidate the already-filed captioned applications into this new proceeding; and (3) direct the applicants to file the requested information, as set forth below.

## **Background**

Under the U.S.-Mexico aviation agreement, the United States may designate up to two U.S. carriers to provide direct-carrier (own aircraft) combination services in a given U.S.-Mexico city-pair market.<sup>1</sup> In each of the markets listed above, one U.S. carrier already holds underlying authority and is designated under the U.S.-Mexico aviation agreement to provide direct carrier services, leaving only one designation opportunity available in each market.

## **Applications**

We have received a number of applications from carriers seeking new exemption authority to provide scheduled combination services in the subject city-pair markets in excess of what is available under the agreement. These applications have been summarized in the attached Appendix and are described briefly below. Responsive pleadings have been filed to the applications, including motions to consolidate applications and motions for leave to file otherwise unauthorized documents. We will grant all motions filed in the captioned dockets.<sup>2</sup>

### **Denver-Cancun**

Allegiant, Grand Holdings, Inc. d/b/a Champion Air (Champion), and United each have filed applications to serve the Denver-Cancun market. A number of responsive pleadings have been filed to the applications.<sup>3</sup> Currently, Frontier Airlines, Inc. (Frontier), holds a designation and economic authority from the Department to provide direct-carrier services on the Denver-Cancun route. Thus, there is only one designation opportunity available for Denver-Cancun service.

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<sup>1</sup> Pursuant to the aviation agreement, up to four U.S. carriers may provide code-share services on a given city-pair route. None of the applications at issue here involves a request to provide services on a code-share basis.

<sup>2</sup> Specifically, with regard to the Denver-Cancun route, we note that United Air Lines, Inc. (United) amended its initial application for Denver-Cancun service and accompanied its amendment with a motion for leave to file. Allegiant Air, Inc. (Allegiant) filed an answer in opposition, urging the Department to reject United's amendment as premature and to deny United's motion. As we discuss below, all parties will have a subsequent opportunity to amend and/or supplement their applications. Therefore, we do not find the fact that United chose to file an amendment at this time to be prejudicial to the other parties, and we will therefore grant United's motion for leave to file.

<sup>3</sup> On July 19, 2004, United filed a motion for *pendente lite* exemption authority to serve the Denver-Cancun market during the winter season, pending completion of a carrier selection proceeding in this matter. We will handle the motion separately.

### Denver-Puerto Vallarta

Champion and United each have filed applications to serve the Denver-Puerto Vallarta market. A number of responsive pleadings have been filed to the applications. Currently, Frontier holds a designation and economic authority from the Department to provide direct-carrier services on the Denver-Puerto Vallarta route. Thus, there is only one designation opportunity available for Denver-Puerto Vallarta service.

### Detroit-Cancun

Champion, Spirit Airlines, Inc. (Spirit), and Brendan Airways, LLC, d/b/a USA 3000 Airlines (USA 3000), each have filed applications to serve the Detroit-Cancun market. A number of responsive pleadings have been filed to the applications. Currently, Northwest Airlines, Inc. (Northwest), holds a designation and economic authority from the Department to provide direct-carrier services on the Detroit-Cancun route. Thus, there is only one designation opportunity available for Detroit-Cancun service.

### St. Louis-Cancun

Champion, Frontier, and USA 3000 each have filed applications to serve the St. Louis-Cancun market. A number of responsive pleadings have been filed to the applications. Currently, TWA Airlines LLC (TWA) holds a designation and economic authority from the Department to provide direct-carrier services on the St. Louis-Cancun route. Thus, there is only one designation opportunity available for St. Louis-Cancun service.

### **Proceeding**

In view of our ability to authorize and designate only one additional U.S. carrier to serve each of the subject city-pair markets, and in light of the competing applications filed for these limited opportunities, we have decided to institute the *2004 U.S.-Mexico Combination Service Proceeding* to select one primary and one backup carrier to provide scheduled foreign air transportation services of persons, property, and mail in the following transborder markets: Denver-Cancun, Denver-Puerto Vallarta, Detroit-Cancun, and St. Louis-Cancun. To ensure that we have a complete record in these matters, we request all applicants to amend and/or supplement their existing exemption applications, as specified below.

Whether granting the available U.S.-Mexico authority for combination services is required by the public interest will not be at issue. The rights involved constitute a valuable resource obtained in exchange for granting Mexico route opportunities for its airlines to serve the United States. The public interest clearly calls for use of these rights.

In awarding the available authority, our principal objective will be to maximize 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 traveling and 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.-Mexico market, and on any other market shown to be relevant. In addition, we will consider other factors historically used for carrier selection where they are relevant.

We intend to issue U.S.-Mexico exemption authority for a two-year period to the primary carrier, subject to a 90-day startup condition for each city-pair market, and subject also to certain dormancy notice

requirements routinely imposed on U.S.-Mexico air transportation services.<sup>4 5</sup> Services will be deemed dormant if they are not operated for 90 days, except where service in the market(s) is seasonal/intermittent. In all such instances of seasonal/intermittent services, however, we will require the applicants, as part of their applications in this proceeding, to identify such markets as seasonal/intermittent in nature; otherwise, the dormancy conditions will apply, as specified above. In light of the U.S.-Mexico dormancy conditions, and consistent with our standard policy, we will only grant U.S.-Mexico route authority where an applicant presents firms plans to start service.

In order to assure that the subject combination authority is used, we intend to issue backup exemption authority, which could be implemented if the selected primary carrier does not operate the proposed services. The backup authority awarded will expire in one year, unless that authority is activated, in which case it will continue for another year, subject to the conditions described above.

We believe that written, non-oral show-cause procedures under Part 302 of our regulations (14 CFR Part 302) are appropriate in deciding this case, 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. We intend to resolve issues on the basis of pleadings filed and to award the subject authority for the four separate U.S.-Mexico city-pair markets listed in this one proceeding. If, however, upon review of the record, we determine that additional information is required and/or modified procedures are necessary for prosecuting this case, we reserve our right to request such additional information and/or to modify our proceeding in this matter.

### **Miscellaneous**

In its consolidated answer to the applications of United, Champion, and Allegiant (for Denver-Cancun services), and Champion (for Denver-Puerto Vallarta services), Frontier states that United has filed two separate U.S.-Mexico applications that are at issue in the instant proceeding here - one in Docket OST-2004-17299, seeking exemption authority for United to serve the Denver-Cancun market, and one in Docket OST-2004-17491, seeking exemption authority for United's "Ted" product to serve the Denver-Puerto Vallarta market, along with requests to consolidate the applications for contemporaneous consideration. Frontier maintains that United has, for some time, treated "Ted" as a separate brand and entity. Frontier argues that, before the Department can consolidate the multiple cases at issue here, a finding must be made "that the carrier seeking the consolidation is identical in every respect." Under our regulations, "the Department...may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings." (14 CFR 302.13(a)) Based on that standard, we have determined that consolidation is the most efficient way to proceed on these applications, and we have seen nothing in Frontier's submissions that persuades us to the contrary.

### **Evidentiary Requirements**

In view of the immediate availability of the route rights, and in light of the carrier interest to commence services on these routes as soon as possible, we will expedite the schedule for this proceeding. As the

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<sup>4</sup> Under the dormancy conditions, if a city-pair market is not served for 90 days, the authority to serve that city-pair market becomes dormant and cannot be used.

<sup>5</sup> The exemption authority will also contain a notice provision whereby the carrier will be required to notify the Department if it fails to meet the 90-day startup condition, if it discontinues service in the market(s), or if the market(s) remain dormant for 90 days.

applications filed are already ripe and all interested parties have had an opportunity to file competing requests, we will not provide for additional applications here. We will, however, require that all of the captioned carriers in this proceeding amend and/or supplement the existing applications at the Direct Exhibit stage to provide the information outlined below. Applicants should ensure that their requests include authority both for exemption authority and for designation.

Except for procedural dates, exemption/designation applications should conform to Part 302, Subpart C of our regulations (14 CFR Part 302). All pleadings should be filed with the Department of Transportation (Room PL-401), 400 Seventh Street, SW, Washington, DC 20590, in the captioned U.S.-Mexico service case docket, and should include, at a minimum, the following information for the twelve months ending December 31, 2005:<sup>6 7</sup>

1. Firm date for instituting service in the city-pair market(s), and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the forecast year with a break down for peak and off-peak seasons. If applicants intend to offer seasonal services only, they must so specify and specify the period during which the seasonal service would be offered;

Schedules should contain flight numbers, complete routings from origin to destination (including behind gateway and beyond-gateway points and elapsed time for services), departure and arrival times, equipment types (including seat configuration by class of service), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service;

2. A brief description of the type of service the applicant currently provides, if any, between the United States and Mexico, including the type of service (state whether the service is scheduled or nonscheduled, seasonal or year-round and include frequency levels) by city-pair market;
3. A statement as to whether or not the aircraft to be used in the proposed schedules are on hand or on order. If on hand, indicate where and to the extent to which those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate whether the aircraft to be used comply with FAR-36. If not, indicate plans for achieving compliance.
4. Estimated number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed service, and indicate the availability and method of obtaining the necessary fuel; and
5. A statement as to whether or not the applicant, if selected as a backup, will accept conditions in its backup exemption authority which (1) will permit it to implement the backup authority within the first year, should the primary carrier withdraw from the market or the primary carrier's authority otherwise becomes dormant (as discussed in the text of this order); and (2) will cause the backup authority to expire at the end of one year should the backup authority not be activated.

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<sup>6</sup> Applications and responsive pleadings should contain sufficient detail, including sources, bases, assumptions and methodologies, so that, without further clarification, any party can derive the final results from the basic data.

<sup>7</sup> Filings should be on 8-1/2" X 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, filers are encouraged to use the electronic submission capability available through the Dockets DMS Internet site: <http://dms.dot.gov> by following the instructions in the web site.

Applicants are also free to submit any additional information that they believe will help us in making our decision. We will authorize service of documents by facsimile and by electronic mail. Carriers that are interested in such service, however, should state if they want service by fax or email and should provide interested parties with their fax number and/or email address.

### **Procedural Timetable**

The subject U.S.-Mexico combination authority is available now. We intend to process this case on an expedited procedural schedule to ensure that the selected carrier will be in a position to commence services as soon as possible. To this end, we will make the DOT Information Responses available immediately. We are establishing the following procedural schedule for other submissions in this case:

Petitions for Reconsideration:	<b>July 28, 2004</b>
Answers to Petitions:	<b>August 2, 2004</b>
Direct Exhibits: <sup>8</sup>	<b>August 16, 2004</b>
Rebuttal Exhibits:	<b>August 30, 2004</b>
Briefs:	<b>September 7, 2004</b>

All dates are delivery dates. An original and four copies of all submissions are to be received by the Department of Transportation, Dockets, no later than the dates indicated. Due to the expedited nature of this case, service by facsimile is authorized. Parties should include their fax numbers on their submissions and should indicate on their certificates of service the methods of service used.

### **ACCORDINGLY,**

1. We institute the *2004 U.S.-Mexico Combination Service Proceeding*, **Docket OST-2004-18692**, to be decided by non-oral, show-cause procedures under Part 302 of our regulations (14 CFR Part 302);
2. The proceeding in ordering paragraph 1, above, will consider which primary and backup carriers should be selected to provide foreign scheduled air transportation services of persons, property, and mail in the following U.S.-Mexico transborder markets: Denver-Cancun, Denver-Puerto Vallarta, Detroit-Cancun, and St. Louis-Cancun, consistent with the provisions of the U.S.-Mexico aviation agreement;
3. We consolidate into the *2004 U.S.-Mexico Combination Service Proceeding*, the application of Allegiant Air, Inc., in Docket OST-2004-17416; the application of Frontier Airlines, Inc., in Docket OST-2004-17470; the applications of Grand Holdings, Inc., d/b/a Champion Air in Dockets OST-2004-17407, OST-2004-17408, and OST-2004-17405; the applications of United Air Lines, Inc., in Dockets OST-2004-17299 and OST-2004-17491; the application of Spirit Airlines, Inc., in Docket OST-2004-17234; and the applications of Brendan Airways, LLC d/b/a USA 3000 Airlines, in Dockets OST-2004-17351 and OST-2004-17479;
4. We grant all motions for leave to file otherwise unauthorized documents in the captioned dockets; and
5. We will serve this order on the captioned applicants in this proceeding, the Lambert-St. Louis International Airport; St. Louis Airport Marriott and Renaissance St. Louis Hotel, Hilton St. Louis; St. Louis Convention and Visitors Center; Denver International Airport; the City and County of Denver;

<sup>8</sup> The Department has always maintained the position that applicants can amend their service proposals up to the Direct Exhibit stage. Although some of the applicants have already amended their original applications, we expect all applicants to set out their firm proposals at the Direct Exhibit stage.

the National Air Carrier Association; the Air Transport Association; the U.S Department of State (Office of Aviation Negotiations); the Federal Aviation Administration (AFS-200); and the Ambassador of Mexico in Washington, D.C.

By:

KARAN K. BHATIA  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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**SUMMARY OF APPLICATIONS FILED**

**DENVER-CANCUN APPLICATIONS<sup>1</sup>**

<b>CARRIER</b>	<b>DOCKET NUMBER</b>	<b>PROPOSAL</b>	<b>EQUIPMENT/SEATS</b>	<b>START-UP DATE</b>
Allegiant	OST-2004-17416	4 weekly flights (year-round)	MD-83 (162 seats)	7/1/04, or a.s.a.p.
Champion	OST-2004-17407	2 weekly flights (year-round)	B-727-200 (173 seats)	5/1/04, or a.s.a.p.
United	OST-2004-17299	1 weekly flight, 9/11/04-10/30/04 daily service (year-round), 10/31/04	A320 (156 seats)	9/11/04 – once weekly 10/31/04- daily

**DENVER-PUERTO VALLARTA APPLICATIONS<sup>2</sup>**

<b>CARRIER</b>	<b>DOCKET NUMBER</b>	<b>PROPOSAL</b>	<b>EQUIPMENT/SEATS</b>	<b>START-UP DATE</b>
Champion	OST-2004-17408	1 weekly flight (seasonal)	B-727-200 (173 seats)	1/29/04-4/9/05
United	OST-2004-17491	daily service (seasonal) 12/16/04-4/1/05	A320 (156 seats)	12/16/04

**DETROIT-CANCUN APPLICATIONS<sup>3</sup>**

<b>CARRIER</b>	<b>DOCKET NUMBER</b>	<b>PROPOSAL</b>	<b>EQUIPMENT/SEATS</b>	<b>START-UP DATE</b>
Champion	OST-2004-17405	1 weekly flight (year-round) 2 additional weekly flights (seasonal), 1/5/05	B-727-200 (173 seats)	5/1/04, or a.s.a.p.
Spirit	OST-2004-17234	4 or 5 weekly flights (year-round)	MD-80	No date specified.
USA 3000	OST-2004-17351	2 weekly flights (year-round)	A320 (168 seats)	5/1/04, or a.s.a.p.

<sup>1</sup> Frontier Airlines, Inc., is already designated to serve the Denver-Cancun market. Thus, only one designation opportunity is available at this time.

<sup>2</sup> Frontier Airlines, Inc., is already designated to serve the Denver-Puerto Vallarta market. Thus, only one designation opportunity is available at this time.

<sup>3</sup> Northwest Airlines, Inc., is already designated to serve the Detroit-Cancun market. Thus, only one designation opportunity is available at this time.

**ST. LOUIS-CANCUN APPLICATIONS<sup>4</sup>**

<b>CARRIER</b>	<b>DOCKET NUMBER</b>	<b>PROPOSAL</b>	<b>EQUIPMENT/SEATS</b>	<b>START-UP DATE</b>
Champion	OST-2004-17408	2 weekly flights (year-round) with additional seasonal service	B-727-200 (173 seats)	5/1/04
Frontier	OST-2004-17470	3 weekly flights (year-round)	A-319 (132 seats)	11/7/04
USA 3000	OST-2004-17479	4 weekly flights (year-round)	A-320 (168 seats)	11/1/04

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<sup>4</sup> TWA Airlines LLC is already designated to serve the St. Louis-Cancun market. Thus, only one designation opportunity is available at this time