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Order 2004-9-5



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

Issued by the Department of Transportation
on the 3rd day of September, 2004

Served: September 3, 2004

In the Matter of

**2005/2006 U.S.-CHINA AIR SERVICES
CASE AND DESIGNATIONS**

Docket OST-2004-19077 — /

ORDER INSTITUTING PROCEEDING AND INVITING APPLICATIONS

SUMMARY

By this order we (1) institute the *2005/2006 U.S.-China Air Services Case* and (2) invite interested U.S. carriers to file applications for authority to serve the U.S.-China market and for allocation of frequencies effective March 25, 2005, and March 25, 2006.

BACKGROUND

On June 18, 2004, representatives of the United States and the People's Republic of China (PRC) initialed a protocol amending the US-PRC aviation agreement.¹ The amended agreement greatly expands the opportunities for air carriers of both countries. These opportunities increase progressively through 2010. Under the new agreement, the United States may, for services that begin as of March 25, 2005, designate one additional carrier for combination services between the United States and China². Effective March 25, 2005, U.S. carrier combination frequencies will increase by 7 frequencies. The new agreement also provides for an additional designation for combination or cargo services effective March 25, 2006, and for an additional 7 weekly combination and 12 weekly cargo frequencies.³

¹ On July 24, 2004, the Protocol was signed.

² The designation is available for U.S. Route A under the U.S.-PRC agreement. Northwest Airlines, Inc. and United Air Lines, Inc. are the two U.S. carriers currently designated for Route A.

³ The next subsequent designation opportunity is effective March 25, 2008.

DECISION

Given the phase-in schedule of the agreement, we feel that the traveling and shipping public, as well as the applicants, would be best served by our considering now, at the same time and in a single proceeding, the opportunities that will become available in the next two years. We, therefore, have decided to institute the *2005/2006 U.S.-China Services Case* to (1) select a U.S. carrier to provide combination services between the U.S. and China that may begin as of March 25, 2005; (2) allocate 7 U.S.-China combination frequencies that become available March 25, 2005; (3) select an additional U.S. carrier to provide combination or all-cargo services between the U.S. and China to begin March 25, 2006; and (4) allocate an additional 7 combination frequencies and 12 all-cargo frequencies that become available March 25, 2006.

Accordingly, we invite all U.S. carriers interested in providing scheduled combination and/or all-cargo service between the U.S. and China to submit applications for certificate authority as well as for frequencies to perform such scheduled service.⁴ To the extent that carriers require new certificate authority to implement their proposed service, we will award the U.S.-China route authority at issue in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41102(c). The duration of the authority will be five years for the primary carrier and one year for the backup carrier (should one be selected), unless the latter authority is activated during that time, in which case it will continue in effect for five years.⁵

We expect all applicants to provide specific service proposals at the direct exhibit stage. It is not our intention to award certificates authorizing U.S.-China and beyond route authority broader than that specifically described in the proposals. Nevertheless, the parties are free to argue in their submissions that we should adopt a different approach. We will weigh the relative merits of any positions presented in the record before reaching a final determination on this issue.

Whether granting the available authority for U.S.-China service is required by the public interest will not be at issue. The rights involved constitute a valuable resource obtained in exchange for granting China route opportunities for its airlines to serve the United States. The introduction of additional U.S. carrier services will provide

⁴ We note that United has filed an application in Docket OST-2004-19026 for seven available frequencies in 2005 or 2006. Continental and Hawaiian filed answers to United's application. We will consolidate United's application and the responsive pleadings into the proceeding established by this Order. United is free to supplement or amend its application by the date specified in this Order for new applications.

⁵ See 14 CFR 399.120.

new service options to travelers and/or shippers and will enhance competition in the U.S.-China market. In these circumstances, we find that the public interest calls for use of the rights.

In determining which carrier(s)/gateways(s) will be authorized, 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 traveling and/or shipping public. We will consider the effects of the applicants' service proposals on the overall market structure and level of competition in the U.S.-China market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where relevant. Based on the material in the record, we will consider whether it is in the public interest to award backup authority for the certificate award in this case.

The Agreement provides for combination services from any point or points in the United States, via Tokyo or another point in Japan, to any point or points in the People's Republic of China, and for all-cargo services from any point or points in the United States via any intermediate points to any point or points in China and beyond to any points. We are prepared to consider in this proceeding the award of intermediate and beyond authority as set forth in the amended agreement, provided that such proposals are consistent with, and may be implemented under, the relevant bilateral aviation agreement(s).

Procedures and Evidence

We have decided to use written, non-oral, show-cause procedures under Rule 210 of our regulations (14 CFR 302.210) in deciding this case. We believe that such procedures 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.

Appended to this order is an evidence request for the benefit of the parties to this case.^{6 7} 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

⁶ Carriers' evidentiary materials are not expected until the Direct Exhibit stage of this proceeding.

⁷ Any applicant not previously found fit by the Department to provide scheduled transoceanic foreign air transportation will be expected to comply with the evidentiary requirements of Section 204.3 of the Department's regulations (14 CFR Part 204), in addition to the evidentiary requirements set forth in this order.

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 in full compliance 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 they believe will be useful to us in reaching a decision. To the extent that carriers wish to offer alternative traffic forecasts, based on fully documented sources, they are free to do so. It will be considered additional information for our consideration and will be available for comment by other parties to this case. At a minimum, however, applicant carriers must provide a forecast using the format and sources set forth in the appended evidence request.

Consistent with our current practice, the frequencies allocated in this proceeding will be for an indefinite term, provided the carriers continue to hold the underlying economic authority to serve the market. The awarded frequencies will also be subject to our standard 90-day dormancy condition for any frequency not used for a period of 90 days, the allocation with respect to that frequency will expire automatically and will revert to the Department for reallocation.

Procedural Timetable

The Agreement provides valuable new rights for U.S. carriers to serve China effective March 25, 2005, and March 25, 2006. We believe that it is in the public interest to select carriers on a timetable that will allow the selected carriers to enjoy the maximum benefit of these rights as soon as they become available. To this end, we are establishing the following procedural schedule for submissions in this case:

DOT Information Responses:	September 10, 2004
Petitions for Reconsideration:	September 10, 2004
Answers to Petitions:	September 14, 2004
Certificate Applications: ⁸	September 22, 2004
Direct Exhibits:	October 13, 2004
Rebuttal Exhibits:	November 3, 2004
Briefs:	November 15, 2004

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 at the Department of Transportation, Dockets, no later than the dates indicated.⁹

⁸ All applications are to be filed in Docket OST-2004-19077.

⁹ The original filing should be on 8½" x 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system.

Because of security screening procedures of all incoming mail to the Department, parties are encouraged to electronically submit documents to Dockets via the Docket Management System website in order to guarantee receipt of the pleadings in the necessary time limits. Electronic submissions can be completed by following the instructions at the website (<http://dms.dot.gov>). Additionally, service by facsimile or electronic mail is authorized. Parties should include their fax numbers and email addresses on their submissions and should indicate the method(s) of service used on their certificates of service.

ACCORDINGLY,

1. We institute the *2005/2006 U.S.-China Air Services Case* in Docket OST-2004-19077, to be decided by non-oral, show-cause procedures under Rule 210 of our regulations (14 CFR 302.210);
2. We consolidate the application of United Air Lines, Inc. in Docket OST-2004-19026 into the *2005/2006 U.S.-China Air Services Case*, Docket OST-2004-19077.
3. The proceeding instituted in ordering paragraph 1 will consider the following issues:
 - (a) Which carriers should be selected for designation to provide scheduled combination and/or all-cargo service in the U.S.-China market as set forth in the U.S.-China aviation agreement and as discussed in this order;
 - (b) How many frequencies should be allocated to the carriers selected under subparagraph (a);
 - (c) What additional authority, including route integration authority, should be awarded in conjunction with the U.S.-China authority in this proceeding;
 - (d) How the remaining frequencies, if any, should be allocated; and
 - (e) What terms, conditions, and limitations, if any, should be placed on any authority awarded in this proceeding.
4. We require that petitions for reconsideration of this order be filed no later than seven calendar days from the date of service of this order; answers to petitions shall be due no later than three calendar days thereafter;

5. Applications and evidentiary material should be filed in accordance with the procedural schedule set forth in this order; and

6. We will serve this order on all U.S. certificated air carriers operating large aircraft, 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 the Peoples Republic of China in Washington, DC.

By:

Karan K. Bhatia
Assistant Secretary
for Aviation and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp

EVIDENCE REQUEST

Advisory Regarding Compliance

In responding to this evidence request, all parties are advised to heed the admonitions and notice regarding compliance contained in the attached order, at 3-4.

I. Public Disclosure of Data

Pursuant to sections 241.19-6 of the Department's regulations, it is determined that the Department's T-100 data for both passenger and cargo operations for the period January 1, 2001, through a final Department decision in this proceeding, and the Origin & Destination Survey Data (Data Bank 2-A) for the period January 1, 1998, through a final Department decision in this proceeding, for operations between the United States and China, are material and relevant to a final determination of the issues in this case. Those will be released to the U.S. carriers and U.S. non-airline civic and governmental parties to this proceeding, who will be free to use those data to the extent they deem necessary, as specified in Section III. (A)(1) below.

II. Procedures and Ground Rules

In the interest of a complete and adequate record, the parties should submit the following information in the form of exhibits. The exhibits should contain sufficient detail, including sources, bases, all assumptions, and methodology, so that, without further clarification, any party can derive the final results from the basic data.¹

III. Request for Information and Evidence

A. Information Responses

1. DOT Data

The Competition and Policy Analysis Division of the Office of Aviation Analysis will make available to the parties the following data in the form of information responses:²

¹ The base year for developing the forecast data should be the 12-month period ending March 2004. All financial data must be given in U.S. dollars and all weights must be in U.S. pounds. Applicants seeking cargo authority should specify the payload capacity used on the stage lengths and full routings involved in determining their estimates. Projected load factors should be space-based and carriers should indicate the average density on which the load factor is based.

² Due to the volume of this material, we will be unable to print and distribute copies to the parties. The Department will issue the information responses on computer diskettes. Parties who wish to receive the information responses should contact Michael Lane or Kevin Bryan in the Competition and Policy

- (a) T-100 and T-100(f) nonstop segment passenger data, by month, beginning January 2001, through the latest available month, between the United States and China, and fifth freedom data between foreign countries and China.
 - (b) T-100 and T-100(f) on-flight market passenger data, by month, beginning January 2001, through the latest available month, between the United States and China, and fifth freedom data between foreign countries and China.
 - (c) For the calendar years 1998 through 2003, and the 12 months ended March 2004, O&D traffic from Table 15 of the Department's O&D Survey between all U.S. points and all China points.
 - (d) For calendar years 1998 through 2003, and the 12 months ended March 2004, O&D traffic from Table 15 of the Department's O&D Survey between all U.S. points and China by U.S. gateway.
 - (e) T-100 and T-100 (f) nonstop segment cargo data, including *inter alia* belly cargo, by month, beginning January 2001, through the latest available month, between the United States and China, and fifth freedom data between foreign countries and China.
 - (f) T-100 and T-100 (f) on-flight market cargo data, including *inter alia* belly cargo, by month, beginning January 2001, through the latest available month, between the United States and China, and fifth freedom data between foreign countries and China.
2. Incumbent Carrier Data (Federal Express, UPS, Northwest, and United)

For each month of the twelve months ended June 2004 provide the number of flights and complete itinerary for all flights operated in each

city-pair market where service was provided in the U.S.-China market, and the type of aircraft used in providing those services. If service was seasonal, the markets and level of service should be clearly identified. Carriers should distinguish between flights operated under code-share arrangements and those that are not operated under code-share arrangements.

B. Direct Exhibits

The applicant carriers are directed to provide the sources in exhibit form, for their traffic forecast. The source data for passenger traffic forecasts made by any party shall be (1) the O&D Survey, or (2) the U.S. International Air Travel Statistics (commonly referred to as INS Data) or (3) T-100 and T-100 (F) data, or (4) a combination of these data sources, provided that the respective contributing role of each source is clearly identified. The source data and methodology for cargo forecasts should be clearly explained. For both passenger and cargo forecasts, applicants should indicate growth rates, stimulation rates, and participation rates, and clearly outline the bases for such rates.³

All parties providing passenger forecasts (described in paragraph B. 1.(b) below) are required to base those forecasts on the four sources set forth above. Any party may also provide a separate, additional passenger forecast based on other source data if it wishes, but if so, that party should clearly explain the differences between its data source and the four specified (*e.g.*, differences in collection methods, or adjustments made to raw data). Furthermore, the information in such additional forecast shall be set forth in such a manner that any party could construct a passenger traffic forecast from the exhibits without the necessity of having the actual source document at hand.

1. Applicant Carriers

Submit, at a minimum, the following:⁴

³ The base year for traffic forecasting purposes should be the 12 months ended December 2004, and the forecast year should be, for the first selection, the 12 months ending March 31, 2006, and, for the second selection, the 12 months ending March 31, 2007.

⁴The original filing should be on 8½" 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, parties are encouraged to use the electronic submission capability available through the Dockets DMS Internet site (<http://dms.dot.gov>) by following the instructions on the web site. Additionally, service by facsimile or electronic mail is authorized. Parties should include their fax numbers and email addresses on their submissions and should indicate the method(s) of service used on their certificates of service.

(a) Schedule of flights, showing a firm date for instituting service in the market(s) proposed to be operated in the forecast year for the 12 months ending March 31, 2006, for the 2005 selection and March 31, 2007, for the 2006 selection, in the U.S.-China market. Applicants proposing passenger service should submit schedules for both single-plane and nonstop-to-nonstop flights. If a carrier intends to offer seasonal service, it must so specify and specify the period during which seasonal service would be offered.

Schedules should contain flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points), departure and arrival times in local time (with time difference between local time and time at point of origin), equipment types (including the seat configuration by class of service and the cargo capacity available), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service or the cargo capacity available;⁵

(b) Passenger traffic forecasts, if applicable, on an O&D market-by-market (city-pair) basis (single-plane and on-line connecting and, to the extent possible, interline connecting) for the 12 months ending March 31, 2006, for the 2005 selection, and March 31, 2007, for the 2006 selection. Cargo traffic forecast (revenue tons), if applicable, for the 12 months ending March 31, 2007. The forecasts should be based upon the applicant's proposed schedules and should be based on the data supplied by the Department. Include any anticipated traffic changes in other markets on the applicant's existing system, including but not limited to diversion and service level/aircraft changes as a result of the proposal in this case. Indicate any anticipated seasonal

Carriers should also provide the Department with a computer diskette of all information responses, exhibits, and briefs prepared using electronic spreadsheet or word processing programs. Such diskettes should be filed with the Department's Competition and Policy Analysis Division of the Office of Aviation Analysis, X-55, Room 6401, 400 Seventh Street, SW, Washington, DC 20590. Diskettes should be DOS formatted. Submissions prepared with Microsoft Excel®, Lotus 1-2-3® (version 3.x or earlier), Microsoft Word®, or WordPerfect® (version 5.2 or earlier) should be filed in their native formats. Parties using other software may either (1) file IRs, exhibits and briefs in the foregoing formats, or (2) contact Mr. Michael Lane at (202) 366-2352 or Mr. Kevin Bryan at (202) 493-0182 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy of all submissions, however, will be the official record.

⁵ For combination service, cargo capacity should be computed using a standard total weight for a passenger and his or her baggage of 224 pounds and should be computed at passenger load factors of both 70 percent and 100 percent and should be shown on a month-by-month basis.

fluctuations. In addition, cargo traffic forecasts should include separate traffic forecasts by direction for:

- a. single-plane U.S. point(s)-China point(s) or third country point(s) traffic to be carried;
- b. total all other U.S. point(s)-China point(s) or total all other U.S. point(s)-third country point(s);
- c. total third country-China traffic to be carried on the proposed services; and
- d. total third country-third country traffic that would be carried on the proposed services.

For all four of the market types specified above, cargo forecasts should also separately specify the percentage of express/small package and general air freight expected to be carried. If mail is expected to be carried, this should also be shown separately.

(c) 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 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;

(d) 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

(e) A description of any code-sharing agreements with foreign carriers providing for the applicant's proposed service to be marketed under the foreign carrier's codes, or for U.S.-China service operated by the foreign carrier to be marketed under the applicant's code, including a description of integrated connecting services to be provided by the applicant's code-sharing partner(s).⁶ If there is an existing code-share relationship with a carrier(s) involving the U.S.-

⁶ Traffic forecasts under III.B.1, *supra*, should separately show connecting feed from the applicant's foreign-flag code-sharing partner(s).

China market, provide in detail a description of whether the proposed services in this proceeding will replace, supplement, or decrease operations with said code-share partner(s). Any carrier operating under a code-share agreement that has not filed that agreement, or any revisions thereto, with the Department should provide a copy of that agreement, and any revisions, in its direct exhibits. If both code-share and separate operations will be conducted, the applicant's exhibits should clearly reflect the full scope of the carrier's operations, including the levels of service under each operational arrangement, the cities to be served, and traffic forecasts;

(f) A separate description of collection and distribution systems in the United States and China for freight and express/small package air cargo; and

(g) Responses to the following interrogatories:⁷

- (1) If the carrier is selected for primary authority, will it accept a condition in the certificate requiring institution of service by a date specified by the Department? What date should the Department specify?
- (2) If the carrier is selected for backup authority, will it accept a condition in its certificate that (a) permits it to implement the authority within the first year should the primary carrier withdraw from the market, and (b) expires at the end of one year should the authority not be activated?
- (3) If an applicant is not awarded all of the frequencies that it has requested, would the applicant accept partial grant of its frequency allocation? How would a partial allocation be used, and what would the start-up date be, if different than above? Also, what is the minimum number of frequencies that a carrier will accept?

⁷ Any certificate issued in this case for primary authority would be for five years' duration, and any backup certificate issued would be for one year.

Service List

Marshall S. Sinick (Alaska, Aloha, Florida West)	<u>msinick@ssd.com</u>
Brian Hunt (American Trans Air)	<u>brian.hunt@iflyata.com</u>
Ed Faberman (MN Airlines)	<u>epfaberman@uhl.com</u>
Jonathan Hill (Hawaiian)	<u>jhill@dlalaw.com</u>
Nathaniel Breed (Pan American)	<u>npbreed@zsrlaw.com</u>
Gary Garofalo (Air Transport Int'l)	<u>ggarofalo@ggh-airlaw.com</u>
Steve Lachter (ASTAR)	<u>lachter@erols.com</u>
Joanne Young/David Kirstein (North American, America West & World)	<u>jyoung@bakerlaw.com</u>
Aaron Goerlich (Sunworld)	<u>dkirstein@bakerlaw.com</u>
R. Bruce Keiner, Jr. (Continental, Continental Micronesia)	<u>agoerlich@ggh-airlaw.com</u>
Jeffrey Manley (United)	<u>rbkeiner@crowell.com</u>
Megan Rosia (Northwest)	<u>jeffrey.manley@wilmerhale.com</u>
David E. Vaughan (UPS)	<u>megan.rosia@nwa.com</u>
John L. Richardson (Amerijet)	<u>dvaughan@kelleydrye.com</u>
Carl Nelson, Jr. (American, TWA)	<u>jrichardson@johnrichardson.com</u>
Robert E. Cohn/Sascha Vanderbellen (Delta)	<u>carl.nelson@aa.com</u>
Lorraine Halloway (Air Micronesia)	<u>robert.cohn@shawpittman.com</u>
Howard Kass (US Airways)	<u>Sascha.VanderBellen@shawpittman.com</u>
Robert P. Silverberg (ABX, Kitty Hawk, Midwest)	<u>lhalloway@crowell.com</u>
Kevin Montgomery (Polar)	<u>Howard_Kass@usairways.com</u>
Russ Pommer (Atlas)	<u>rsilverberg@sbgdc.com</u>
Tom Lydon (Evergreen)	<u>kevin.montgomery@polaraircargo.com</u>
Moffett Roller (Gemini)	<u>rpommer@atlasair.com</u>
Mark W. Atwood (Custom Air, Kalitta)	<u>tom.lydon@evergreenaviation.com</u>
Nancy Sparks (Federal Express)	<u>mroller@rollerbauer.com</u>
Stephen Alterman (Northern Air Cargo, Horizon)	<u>matwood@sherblackwell.com</u>
Lawrence Wasko (Arrow)	<u>nssparks@fedex.com</u>
Pierre Murphy (USA 3000)	<u>cargoair@aol.com</u>
Cecilia Bethke (Air Transport Association)	<u>ldwasko@erols.com</u>
Ronald Priddy (National Air Carrier Assn.)	<u>pmurphy@lopmurphy.com</u>
	<u>cbethke@airlines.org</u>
	<u>rpriddy@naca.cc</u>