



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

Issued by the Department of Transportation
on the **15th day of October, 2004**

Served: **October 15, 2004**

In the Matter of

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

Docket OST-2004-19077

ORDER

Summary

By this Order (1) we grant, in part, and deny, in part, the motion filed by Federal Express Corporation (Federal Express) to compel other applicants to comply with the Information Request included in the Department's Order instituting this proceeding; (2) we deny the motion filed by Hawaiian Airlines, Inc. (Hawaiian) requesting the Department to release, in this proceeding, additional O & D Survey Data under 14 CFR §241.19-7(d)(2); and, (3) we amend the procedural schedule in this proceeding to reflect our decision to require United Parcel Service Co. (UPS) to file additional information.

Background

By Order 2004-9-5, the Department instituted the *2005/2006 U.S.-China Air Services Case*, and invited interested U.S. carriers to file applications for authority to serve the U.S.-China market and for allocations of frequencies, effective March 25, 2005, and March 25, 2006. The Order established a procedural schedule requiring the incumbent carriers (Federal Express, Northwest, United, and UPS) to file information responses by September 10, 2004. All the incumbent carriers filed submissions on September 10.

In Order 2004-9-5, the Department also stated that it would make available to the parties relevant and material T-100 traffic data and O & D survey data.¹ On September 10, 2004, we released the specified data.

¹Order 2004-9-5, Appendix at 1-2.

Motion of Federal Express

On September 17, 2004, Federal Express filed a motion in the captioned proceeding requesting that the Department compel Northwest, United, and UPS to “fully and completely” respond to the Information Request.

Federal Express stated that Northwest, United, and UPS failed to supply departure and arrival times for their services and that UPS failed to provide the days of operation for the subject flights. Federal Express stated that rather than identifying the requested flights by flight number and complete routing, UPS provided a list of city-pairs and indicated how often each city-pair is served on a month-by-month basis. Federal Express maintained that it is impossible for the Department or the applicants to determine with any certainty how all of the various city-pair segments are connected.

Motion of Hawaiian

On September 22, 2004, Hawaiian filed a motion requesting the Department to release DB1B data, under 14 CFR §241.19-7(d) (2).² Hawaiian argues that origin and destination traffic information contained in this data base is necessary for a detailed analysis of directional flows and gateway stop-over traffic activities.³

Responsive Pleadings

Northwest and UPS filed answers opposing Federal Express’ motion to provide additional data. Federal Express filed a consolidated reply.

Northwest states that Federal Express is incorrect in asserting that it failed to meet the Department’s information response requirements. Northwest disputes Federal Express’ assertion that schedules are an intrinsic element of the concept of “itinerary.”

UPS disagrees with Federal Express’ interpretation of the information requested, and states that it has fully complied with the instituting order by providing a by-month accounting of all flights for each city-pair relevant to its U.S.-China service, listing the aircraft type used for these flights, and answering the Department’s questions with regard to seasonality and code-sharing requirements.

In its reply, Federal Express argues that neither Northwest nor UPS have provided any reasonable excuse for failing to provide the complete itinerary. Federal Express maintains that providing the additional information will enable the Department and the applicant-parties to analyze the level and quality of U.S. carrier service in the U.S.-China market.

² September 22 Motion of Hawaiian Airlines, Inc., at 1, 2. On September 22, 2004, Hawaiian applied for new route authority effective March 25, 2006.

³ *Id.*

No responsive pleadings were filed in response to the motion filed by Hawaiian Airlines. On October 4, 2004, Hawaiian filed a motion requesting an immediate ruling on its motion.

Decision

We have decided to (1) grant, in part, and deny, in part, Federal Express' Motion requesting that the Department compel the incumbent carriers to file additional information in their Information Responses; (2) deny the Motion of Hawaiian requesting the release of the DB1B data base; and, (3) amend the procedural schedule in this case to reflect our decision.

In the Evidence Request appended to Order 2004-9-5, the Department required, among other things, that incumbent carriers Federal Express, Northwest, United, and UPS "[f]or 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."⁴ This section of the evidence request clearly contemplates that applicants for the authority at issue will provide complete routings for their past China services because this information is potentially relevant to understanding the level and scope of operations in the US-China market.

We find that Northwest and United complied with this request, and in this regard have provided routings for their historic services in a format that is generally used by applicants in this type of case.

We have also determined that UPS did not comply with the Information Request in that it failed to provide the complete routings for its historic operations in the market. We are, therefore, directing UPS to file this information within one business day.

By contrast, the other information requested by Federal Express is not critical to understanding traffic flows, and not necessarily contemplated by the term "complete itinerary" in the context in which it was used in the evidence request in this case. Thus, to the extent that Federal Express' motion requests that incumbent carrier Information Request submissions include such other additional information, we deny the motion.

Regarding Hawaiian's September 22 motion, in releasing data for use by parties in carrier selection cases, we traditionally have not released the DB1B information that Hawaiian would have us release for use here. The issues that Hawaiian cites as a reason for seeking the data release are issues that have arisen in other proceedings, and the absence of the public release of the DB1B data base has not prevented the carrier applicants in those cases from producing meaningful traffic forecasts or the Department from developing an adequate decisional record. We find nothing in Hawaiian's motion that persuades us that we need to adopt a different course here, nor is public release of the data necessary for Hawaiian to use the data as it proposes. We have required that applicant carriers develop

⁴ Order 2004-9-5, Appendix at 2-3.

their traffic forecasts on the traffic data based on (1) the O&D survey; (2) the U.S. International Air Travel Statistics (INS data); (3) T-100 and T-100F data; or (4) a combination of these sources.⁵ The DB1B data base is part of the O&D Survey. Although we have not released these data, Hawaiian has access to the more detailed DB1B data that it seeks and may use that data in its direct exhibits. If, as it says in its motion for immediate ruling, Hawaiian would present the data in aggregate form only, with no identification of specific carriers, it can submit the exhibits based on the data without seeking confidential treatment. Otherwise, it would need to accompany its forecast with a motion for confidential treatment pursuant to 14 CFR 302.12. Hawaiian is the only carrier that has sought the public release of these data and none of the other parties has supported Hawaiian's request. In these circumstances, and given that Hawaiian otherwise has access to the data that it seeks and can use it under the conditions noted above, we do not find that public release of the data is necessary for Hawaiian to develop or submit a traffic forecast in this case.

In light of our decision to compel UPS to file additional information, we are amending our procedural schedule in this proceeding as follows:

Revised UPS Information Responses:	October 18 2004
Direct Exhibits:	October 20, 2004
Rebuttal Exhibits:	November 10, 2004
Briefs:	November 22, 2004

ACCORDINGLY,

1. We grant, in part, and deny in part, the Motion of Federal Express Corporation;
2. We direct United Parcel Service Co., no later than one business day after the service date of this order, to file in this Docket, and to serve on all parties to this proceeding, a revised Information Response to include the information specified in the body of this order;
3. We deny the Motion of Hawaiian Airlines, Inc.;
4. We amend the procedural schedule of this proceeding as set forth above; and,

⁵ Order 2004-9-5, Appendix at 3.

5. We will serve this order on all parties to this proceeding; the Department of State (Office of Aviation Negotiations), the Federal Aviation Administration (AFS-200); and the Ambassador of the People's Republic of China in Washington, D.C.

By:

KARAN K. BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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