

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

**U.S.-VIETNAM THIRD-COUNTRY
CODE-SHARING OPPORTUNITIES**

Docket OST-2000-7194

CONSOLIDATED REPLY OF NORTHWEST AIRLINES, INC.

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Dated: April 17, 2001

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Northwest Airlines, Inc. (“Northwest”), submits this consolidated reply to the answers of American Airlines, Delta Air Lines and United Air Lines to Northwest’s motion for leave to file Amendment No. 1 to its Application in this proceeding. To the extent necessary, Northwest also moves for leave to file this consolidated reply.¹

Collectively, American, Delta and United make three points: first, they argue that it would be unfair to allow Northwest to amend its application at this time, but if Northwest is allowed to amend its application, they should be allowed to do so as well; second, they argue that granting Northwest’s motion would delay this proceeding; and third, they argue that their service proposals are superior to Northwest’s in any event. For the purposes of this reply, it is necessary to address only the first two of these points. Northwest reserves its right to respond to the third point.

1. Northwest’s Request Would Not Result in Unfairness to Other Carriers.

In response to the claims of potential “unfairness” if Northwest’s motion were granted, Northwest states that it has no objection whatever to the Department allowing all four of the

¹ The Department’s procedural regulations do not expressly provide for the filing of replies to answers to motions. Accordingly, Northwest requests leave to file this reply. See 14 C.F.R. § 302.11(c).

applicants equal opportunities to update their applications. Indeed, United has already proceeded to do so. The simple fact of the matter is that over a year has passed since the applications were filed in this proceeding. To the surprise of no one, circumstances have changed during that time. These changed circumstances include developments in commercial relationships, such as the developments in Northwest's code-share relationships with KLM and Malaysia Airlines, and changes in the regulatory environment, such as the expiration of the ban on overflying Afghanistan.² To allow the parties to update their applications to reflect changed circumstances makes sense and would be in the public interest.

No one should be heard to argue that the public interest would be better served by having the Department make a decision in this proceeding on the basis of facts that are stale and circumstances that no longer apply. If the substantial passage of time allows the applicants to offer service options that are superior to and promise more consumer benefits than the services they originally proposed, the public should be allowed to receive those benefits.

2. Northwest's Request Would Not Result in Unacceptable Delay.

The argument that granting Northwest's motion would engender unnecessary delay rings very hollow. At the outset of this proceeding, Northwest was as intent as any party in seeing that

² The other applicants attack Northwest's statement that commercial arrangements reached with KLM and Malaysia Airlines (MAS) in the time since Northwest filed its application in this case allow Northwest to offer the additional services identified in Amendment No. 1 to Northwest's application. The carriers cite, in particular, the fact that Northwest and KLM have been code-sharing for many years. The relevant fact, however, is that Northwest has not previously code-shared on KLM flights to points in Asia, and it was necessary for the carriers to finalize an expansion of their code-share operations in order for code-sharing on the Amsterdam-Kuala Lumpur leg to be a possibility. Kuala Lumpur is the first Asia point to which Northwest will code-share on KLM flights. In the case of MAS, the Northwest-MAS code-share arrangement is a new and evolving relationship. The Department did not even authorize code-sharing by Northwest and MAS until October 13, 2000, 6 months after the applications were filed in this case. Order 2000-10-12.

the benefits of the U.S.-Vietnam MOC become available to consumers quickly. As we know, that simply has not happened. Through no fault of the Department, there has been a substantial delay in the processing of this case. Any additional delay created by granting Northwest's motion would be merely incremental and is certainly not a reason to deny the motion.

Along these lines, American argues that the principle of "administrative finality" should bar Northwest's effort to update and amend its application. The principle of administrative finality, however, does not exist in a vacuum. While Northwest generally agrees that every proceeding should reach a logical and timely conclusion, the desire to achieve "administrative finality" does not and cannot prevail over the need to serve the public interest. With the passage of over a year since applications were filed in this case, the importance of achieving administrative finality relative to other considerations is necessarily reduced.

3. Northwest's Request is Supported by Ample Precedent.

In support of their arguments in opposition to Northwest's motion, each of the other carriers cites the Department's action in the U.S.-Ukraine Third-Country Code-Share Opportunities case, Order 2000-11-1. The facts of that case, however, bear no resemblance to the facts of this case. In that case, the Department issued an order to show cause tentatively re-allocating to American a designation that had been awarded to TWA but never used. After the show cause order was issued, TWA – which had not even participated in the case – asked the Department to allow it to use the designation, on the grounds that it was now in a position to do so. In fact, TWA did not even hold the underlying economic authority to serve Ukraine. These circumstances led to the Department's lengthy statement denying TWA's request, which is

quoted at pages 4 and 5 of United's Answer and which, by its very terms, is limited to "the circumstances of this [that] case."³

In fact, Northwest does not propose or request anything unprecedented. There are numerous cases in which the Department has allowed carriers to amend service proposals, at various stages of carrier selection proceedings, where to do so was consistent with the public interest. See, e.g., Hong Kong Fifth Freedom All-Cargo Proceeding, Order 96-3-14, Docket OST-95-764 (granting motion of UPS to file amended service proposal); U.S.-Lima Combination Service Proceeding (1996) Phase Two, Order 96-6-54, Docket OST-96-1104 (granting motion of American to file amended service proposal); U.S.-China Air Services, Order 99-6-17 at 5, note 8, Docket OST-99-5539 (accepting into the record United's amended service proposal because "all interested parties have had a full opportunity to comment on the United pleading"). In the recent U.S.-France Frequency Allocation Proceeding, Docket OST-00-7628, Delta successfully argued that "[t]he Department has historically allowed carriers flexibility in amending their route case proposals after applications have been filed" and that in "less formal" route proceedings (i.e., cases such as the instant U.S.-Vietnam proceeding, in which the Department has not requested direct and rebuttal exhibits) "the Department has also afforded carriers considerable latitude in amending their applications and frequency requests." Consolidated Answer of Delta Air Lines, Inc., at 2 (July 21, 2000)(citations omitted).

³ It is of more than passing interest that United, which attempts to use the Ukraine case decision against Northwest, supported TWA's effort to have its Ukraine designation reinstated. American asserted that United's position was "self-serving." Order 2000-11-1 at 2, 3.

4. Conclusion.

In sum, there is no reason why granting Northwest's motion should result in unfairness to any party. To the contrary, it is in the public interest to allow Northwest, and others, to update the service proposals to reflect current realities. Nor, given the substantial passage of time since the applications were filed in this case, is avoidance of delay a reasonable basis for denying Northwest's motion. The relatively small delay that would be occasioned by granting Northwest's motion is easily justified by the increased public benefits that would result.

WHEREFORE, Northwest Airlines, Inc. respectfully requests that the Department grant its motion for leave to file Amendment No.1 to its Application and such other and further relief as the Department deems to be in the public interest.

Respectfully submitted,

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