

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

U.S.-CHINA AIR SERVICES (2001) : Docket OST-99-6323
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ANSWER OF
FEDERAL EXPRESS CORPORATION
TO PETITION FOR RECONSIDERATION

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Federal Express Corporation supports the petition of American Airlines, Inc. for reconsideration of DOT Order 2000-1-21, to the extent that it would require applicant carriers to provide information regarding traffic carried under their “brand.”¹ American accurately notes that the Department will need to decide the threshold issue of whether a combination carrier or an all-cargo carrier should be chosen.² The requested information will give the Department

¹ Petition of American Airlines at 6 (Feb. 2, 2000). Federal Express understands American’s use of the term “brand” to refer to traffic for which the applicant is directly responsible to the shipper under the contract of carriage or air waybill. In the case of passenger air transportation, the term would refer to the carrier having the contract of carriage with the passenger.

² Of course, Federal Express continues to believe that an oral evidentiary hearing is necessary, and that the expertise of an Administrative Law Judge would assist the Department in identifying and assessing the data required for a complete record in this proceeding. This case presents the Department with a rare choice between combination and all-cargo services. Not only will it be complex and fact-intensive, but the Department will have to develop criteria for balancing the benefits offered by both all-cargo and combination services to the U.S. economy.

This aspect of the proceeding will make it very different from the many cases the Department has decided in which it could simply compare service levels proposed by the applicants, and select the proposal that (1) offered the highest level of service; and (2) was credible. Having selected the carrier with the superior proposal, the Department could then rely on competition and its oversight authority to ensure that the needs of the market are met.

In assessing the public interest in this case, however, the Department must first assess the separate needs of shippers and passengers in this tightly regulated market. This will require it to review the

critical information regarding the actual size of the U.S.-China market and the extent of U.S. participation in it. The Department will require that information to develop a complete and accurate record on which it can base an award in this proceeding.

Federal Express suggests four modifications to American's proposal. First, the requested information should be supplied at the earliest possible time as information responses, and all evidentiary and briefing dates should be adjusted by the same number of days. This will enable applicants sufficient time to analyze the data and incorporate their analysis in their direct exhibits.

Second, the requested historical information should pertain to passenger traffic, in addition to cargo, to identify clearly the volumes of code-shared traffic, and to gauge the success of code-sharing or other arrangements between U.S. and foreign-flag carriers. Although Order 2000-1-21 required disclosure of code-sharing operations and forecasts, it did not require an applicant to provide historical traffic data for these operations. American is essentially suggesting that the Department gather evidence on the extent of U.S.-carrier participation in the U.S.-China market by all applicants holding out air transportation in that market (whether directly or indirectly, including indirect air cargo carriage or its passenger

reasonableness of each proffered forecast in light of the individual carrier's service proposal. Then it will have to evaluate the equally credible cargo and combination service proposals. Federal Express believes that the assistance of an administrative law judge will assist the Department greatly in this highly complex proceeding.

service analogue, code-sharing). Comparable historical data should be collected for both passenger and cargo traffic.

Third, Federal Express cannot endorse American's suggested definition of "express cargo." Not only does it confuse small-package service with express service, but it also fails to consider the variety of price and service options that are offered as express products in the marketplace. For example, Federal Express offers express service products that carry time-definite guarantees, but the terms vary according to the weight of the shipment.³ Further, Federal Express offers its express product both on a door-to-door and on an airport-to-airport basis, whereas other carriers may offer their express products from airport to airport.⁴ Accordingly, the use of an arbitrary standard definition may be misleading, and may not accurately reflect the marketplace options. Carriers should therefore report data for each of their service offerings to ensure that the data accurately reflect the market for those services.

Finally, Federal Express believes that American's request is too broad in asking for the country of origin of all shipments. This information would be extremely burdensome to produce, and of little probative value. For example, some traffic may originate in Latin America and

³ FedEx International Priority is aimed at packages weighing less than 150 pounds, whereas International Priority Freight applies only to cargo weighing more than 150 pounds. FEDEX SERVICE GUIDE at 63 and 70, respectively (March 15, 1999).

⁴ For example, Northwest's Select 100 service is an express product that offers flight specific arrival and guaranteed time-definite recovery on an airport-to-airport basis. *See*, <http://www.nwa.com/services/shipping/cargo/products/international.shtml> (visited Feb. 7, 2000).

move to China via the United States; depending on the carrier's method of recordkeeping, this sixth-freedom traffic might be categorized as either U.S.- or Latin American-originating.

Federal Express offers the following substitute for American's proposal:

"Add a new paragraph 3 to part A of Appendix C as follows:

3. All Applicants. Carriage of Passengers: Provide total number of U.S.-China passengers carried under a ticket on which the applicant's code appears as the carrier (*i.e.*, the carrier with which the passenger has a contract of carriage), by direction. Such data should be provided by month, beginning January 1, 1996 through the latest available month and should distinguish between passengers carried on the applicant's aircraft, and those transported by other carriers, broken down by transporting carrier.⁵

Carriage of Cargo: Provide total weight and number of shipments (regardless of piece count) carried under an air waybill on which the applicant is the responsible carrier (*i.e.*, the carrier with which the shipper has a contract of carriage), by direction. Such data should be provided for (1) total cargo, (2) express cargo, and (3) U.S. mail, by month, beginning January 1, 1996 through the latest available month, between the United States and China. Such data should distinguish between cargo carried on the applicant's aircraft, and that transported by other carriers, broken down by transporting carrier. For purposes of this proceeding only, applicants should include as "express cargo" all products or services that they hold out to the public as express products or services.

⁵ Federal Express understands that DOT table 15 data already provided may partially respond to this request, especially from Jan. to June, 1999. If so, the Department could tailor the request to eliminate duplication.

Federal Express agrees with American that complete historical data are necessary to develop a full evidentiary record. The requested information will enable the Department to assess the air service needs of the U.S.-China market accurately.

Respectfully Submitted,

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Certificate of Service

I hereby certify that I have this seventh day of February, 2000 caused this Answer Of Federal Express Corporation To Petition For Reconsideration to be delivered to each party listed below by facsimile.

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