

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

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U.S. - CHINA AIR SERVICES)
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Docket OST-99-5539-42

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**SURREPLY
AND MOTION FOR LEAVE TO FILE OF NORTHWEST AIRLINES, INC.**

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Dated: May 6, 1999

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

U.S. – CHINA AIR SERVICES)
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**SURREPLY
AND MOTION FOR LEAVE TO FILE OF NORTHWEST AIRLINES, INC.**

Northwest Airlines, Inc. (“Northwest”) submits this Surreply to the Consolidated Reply of United Air Lines, Inc. (“United”). In its pleading, United announces a service proposal that is a significant departure from the service proposal described and inherent in the Application that it filed in this case. United’s pleading is a blatant, last-minute attempt to submit a flawed and unsupported proposal to the Department, while avoiding any response from the other parties; it is an act of deliberate gamesmanship that is disrespectful of the parties, the Department and the process. Northwest moves for leave to file this Surreply in order to address both the procedural aspects of United’s action and the substance of its latest proposal.¹

1. Unless The Department Establishes A Comparative Selection Proceeding, United’s Service Proposals Should Be Stricken.

Not to put too fine a point on the matter, United has tried to sandbag the parties by making a last-minute change to its service proposal. A review of United’s Application and Consolidated Answer show a proposal focussed exclusively on service between San Francisco

¹ Northwest does not purport in this pleading to deal exhaustively with United’s new service proposal, given the limited amount of time United’s strategy permitted for comparative analysis.

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and China. Those pleadings contain lengthy argument about the supposed strengths of San Francisco as a gateway to China and about how United's new service would enhance intergateway competition. United submitted numerous exhibits purporting to show that San Francisco is the superior gateway for much of the population of the United States and that a significant amount of U.S.-China traffic originates in California (points Northwest has successfully disproved). See, e.g., Exhibits UA-1, -2, -4, -5, -7, -11 and -12.

United's Application in this case dealt exclusively with San Francisco-Shanghai nonstop service. United made no mention of proposed service from Chicago to Beijing or from New York to Shanghai. Accordingly, Northwest did not, and had no reason to, address such proposed service in its responsive pleadings. To the extent that United in its Application suggested any possible changes to its overall U.S.-China service, it vaguely suggested that an award in this proceeding might allow it to "modify its present U.S.-Tokyo-Shanghai one-stop flight to serve a new Chinese point." Application at 4 (emphasis added). This statement makes no mention of any possible changes to United's service to U.S. gateways or to Beijing.

In its Consolidated Reply, United for the first time announced proposed changes to its U.S.-China one-stop service that are integral to its overall U.S.-China service proposal in this case and are irrefutably inconsistent with the above-quoted statement: if United receives seven frequencies as requested, it will change its Chicago-Beijing and New York-Shanghai services to single-plane from connecting services.² Thus, directly contrary to what it told the Department in

² United asserts, with no credibility whatsoever, that the Department's Notice did not request information about existing service. This is at best a tortured and self-serving reading of the Notice. United cannot expect the Department to accept the proposition that its proposal for new San Francisco-Shanghai nonstop service should be assessed in isolation from the remainder of United's U.S.-China service. The fact is that United deliberately chose to give the parties and the Department only half of the picture and deliberately misled the parties and the Department in the process.

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its Application, United has now proposed new service affecting (a) U.S. gateways and (b) Beijing.

A further element of United's new proposal is that existing single-plane service between San Francisco and Shanghai will be downgraded to connecting service. This latter element is added, notwithstanding United's prior exclusive emphasis on improving service at San Francisco. United's last-minute proposal directly impacts the country-pair market at issue in this case and the very city-pair market that is central to United's original proposal.

In its Consolidated Reply, United claims to have withheld its complete service plan for U.S.-China from the Department and the parties because "United would obviously prefer not to expose its planned service changes to its competitors." Consolidated Reply at 5. It is clear from United's pleading, however, that United informed the airport authorities in New York and Chicago and numerous civic parties of its intentions but deliberately withheld this information from the Department and the parties. *Id.* at 7 ("United has, as a matter of courtesy, advised the new U.S. gateway cities of these planned service improvements.")(emphasis added). Thus, United's real "preference" was to withhold information and protect its proposal from competitive analysis in the context of this proceeding. This hide-the-ball strategy is pure gamesmanship.

The effects of United's strategy are several. First, United's Application and the service proposal contained therein are deficient because they are incomplete and non-responsive to the Department's April 14, 1999 Notice. Second, the new service proposal contained in United's Consolidated Reply is deficient and non-responsive because it was filed late. Third, the late-filing of a new service proposal denies the other parties the opportunity to analyze and rebut it.

The Department has made clear in other proceedings clear that it will not countenance such conduct. It would be an obvious and unambiguous denial of due process to allow a party to

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revise its service proposal and deny the other parties the ability to respond to it. It would be a further denial of due process to allow one party to use its new proposal as a basis for a new, final attack on the other parties' proposals, as United has done here.³ It would be a further violation of principles of due process to require two of the parties, Northwest and Federal Express, to file their service proposals in compliance with the schedule set forth in the April 14, 1999 Notice while allowing United to file its actual service proposal at a later time in its final pleading. In comparative carrier selection cases, the Department has forbidden parties to revise their service proposals at an advanced stage of the proceeding, and the Department should do so in this case. See Order 98-5-3; Order 93-9-12.

In the context of a show-cause proceeding, the Consolidated Reply is the parties' final submission, and no changes to service proposals should be allowed at this stage. Although the Department suggested in its Notice that it might institute comparative selection procedures in this case, if the Department decides instead to proceed using show cause procedures, then it should strike United's Consolidated Reply. Furthermore, since the service proposal contained in United's Application was incomplete and non-responsive to the Department's Notice, the Department should strike United's Application as well. As a very inferior alternative, the Department should schedule a date by which the parties may file formal responses to the United pleading.⁴

³ For example, United claims that "United's single-plane services to Beijing and Shanghai will be as good as, or superior to those offered by Northwest at Detroit." Consolidated Reply at 7.

⁴ Northwest has previously stated its view that the Department should release critical O&D traffic data for the purposes of this proceeding and institute some form of expedited comparative selection proceeding to permit thorough and reasoned analysis by the parties of the relative benefits of the passenger and cargo service proposals at issue here. United's last-minute proposal makes the use of show-cause procedures even less appropriate.

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2. United's New Proposal Offers No New Consumer Benefits.

Referring to its new proposal for service from New York and Chicago, United claims that the proposal “will offer important improvements in U.S.-China service” and that its “improved China services will offer important new intergateway competition in midwest and east coast markets.” Consolidated Reply at 7. These claims are absurd. United’s new proposal involves no actual improvements at all. New York and Chicago will not receive more frequencies, more seats or more efficient service to China compared with existing services. At most, United’s New York-Shanghai and Chicago-Beijing passengers will receive single plane service, with a stop at Tokyo, instead of having to change planes when they stop at Tokyo. This is a distinction without a qualitative difference.

As is shown in Exhibit NW-SR-1, United currently provides daily 747-400 service between Chicago and Beijing. In the westbound direction, the service (UA 881) departs O’Hare daily at 11:50 a.m., arrives at Tokyo at 14:30 the next day, connects with UA 853, which departs Tokyo at 16:50 and arrives at Beijing at 19:40. Under United’s “improved” proposal, the same flight UA 881 departs O’Hare daily at 11:50 a.m., arrives at Tokyo at 14:30 the next day, departs Tokyo at 16:55 and arrives at Beijing at 19:40. The current and “improved” times are identical. In the eastbound direction, the same holds true, except that flight UA 882 is projected to arrive at O’Hare five minutes earlier under the proposal than flight 882 currently does. With regard to elapsed times, United’s current and proposed Chicago-Beijing westbound elapsed times are identical (18 hours and 50 minutes) and there is the same insignificant 5 minute difference in the eastbound direction. Thus, there is no actual improvement for Chicago-Beijing passengers under United’s latest proposal.

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In the New York-Shanghai market, United's new, "improved" service actually is worse than its current service. As is shown in Exhibit NW-SR-2, United's current and proposed eastbound times are identical. The elapsed time of its proposed westbound New York-Tokyo-Shanghai service, however, actually is 15 minutes greater than the elapsed time of its current service.

Exhibits NW-SR-1 and NW-SR-2 also show that a passenger's layover time at Narita Airport is virtually identical whether he is traveling on single-plane or connecting service: slightly in excess of three hours westbound and slightly in excess of two and a half hours eastbound, in each case.

In addition, any possible greater convenience inherent in a single-plane operation is negated at Narita because even single-plane passengers have to disembark with their carry-on luggage and go through airport security before re-boarding the flight. In this sense they are exactly like connecting passengers, and the potential value of a single-plane service is virtually eliminated. Finally, as the Department knows, in scheduling a hub operation such as that at Narita, a carrier will routinely rotate its equipment among routes so that single flight number connecting service is often substituted for single-plane service.

In sum, notwithstanding United's representations, the alleged "important improvements" in New York and Chicago-China services contained in United's latest proposal are not improvements at all. When compared with the status quo, United's proposal provides (a) no new frequencies, (b) no new capacity and (c) no elapsed time improvements.

3. United's Claims Regarding Its "New Gateways" Are Wrong and Unsupported.

Given the facts, United's further claim that its proposed "improved" service from its "new gateways" of New York and Chicago will create "important new intergateway

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competition” is completely without merit. It is clear that United’s service from those points will not change in any meaningful sense. United’s proposal will not enhance either New York or Chicago as a gateway to China. The “new” service cannot be expected to attract increased traffic flows through either of those points, since the new service is essentially the same as, and not more attractive than, United’s current service at these gateways.

Furthermore, if United actually believed its own representations about intergateway competition, it would have submitted some sort of traffic analysis or data to support those representations, as it did in support of its San Francisco service. Instead, United has submitted no data or evidence to bolster its claims.⁵

In its Consolidated Reply, United suggests that its proposed services from New York and Chicago to Shanghai and Beijing will be superior to Northwest’s services over Detroit. The facts prove otherwise. As is shown in Exhibit NW-SR-3, Northwest’s service over Detroit will provide for shorter elapsed times between New York and Shanghai and between Chicago and Beijing than United’s newly-proposed single-plane service will provide.

5. Conclusion.


As is explained above, the Department should take a very harsh view of United’s actions in this proceeding. Serious due process problems have been created. The proper thing for the Department to do under the circumstances is to strike United’s Application and its Consolidated Reply. If the Department decides to proceed on a show-cause basis, the Department at a minimum should set a schedule for the submission of formal responses to United’s Consolidated

⁵ Attached hereto in Exhibit NW-SR-4 are letters from civic parties supporting Northwest’s service proposal in this case.

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Reply. Northwest repeats its view, however, that the Department should institute an expedited comparative selection proceeding in this case.

Respectfully submitted,

A handwritten signature in black ink, reading "Megan Rae Poldy", is written over a horizontal line. The signature is cursive and includes a long, sweeping flourish that extends to the right.

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, I served a copy of the foregoing document of Northwest Airlines on the following individuals by facsimile:

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