



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

**May 4, 2006**

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Application of	)	
	)	
VIRGIN AMERICA, INC.	)	<b><u>Docket OST-2005-23307</u></b>
	)	
for a certificate of public convenience and	)	
necessity under 49 U.S.C. § 41102 to engage	)	
in interstate scheduled air transportation	)	
	)	

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**ANSWER OF DELTA AIR LINES, INC. TO PETITION FOR  
RECONSIDERATION OF ORDER 2006-4-15**

Delta Air Lines, Inc. (“Delta”) hereby files this answer in opposition to the petition filed by Virgin America Inc. (“Virgin”) seeking reconsideration of Order 2006-4-15, which directed Virgin to submit additional documents and information. Specifically, Virgin asked the Department to eliminate Information Request 1(c) in Appendix A of Order 2006-4-15 and, in lieu thereof, Virgin offers proposed “stipulations” which it plans to submit in response to Information Request 11.

Virgin’s petition is without merit and is inconsistent with longstanding Department citizenship precedent. Its proposal to substitute stipulations in place of documentary evidence is unprecedented. The petition for reconsideration should be denied.

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In further support of this Answer, Delta states the following:

The Department's Information Request 1(c) requires Virgin to submit "all documents to or from Sir Richard Branson or any party related to Virgin America, Inc. about the Company's formation, operations, management, or services."

The Department was entirely correct in directing Virgin to submit documents to or from Sir Richard Branson with respect to matters involving the applicant's formation, operations, management, or services. In fact, Information Request 1(c) is too narrow and should be revised to include documents to or from any member of the Virgin Group of Companies, not just Sir Richard Branson. It should not be limited to documents only to or from Sir Richard Branson because this limitation risks omission of key evidence relating to activities conducted on behalf of Sir Richard Branson by his U.K.-controlled companies that make up the Virgin Group. Thus, Delta urges the Department to expand the scope of Information Request 1(c).

Contrary to Virgin's petition, there is no sound basis for deleting Information Request 1(c) or for allowing Virgin to substitute its own self-serving characterizations of evidence in so-called "stipulations" in place of solid documentary evidence. Delta does not disagree that this case will involve an examination of the "current" citizenship of Virgin. However, the

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fact that the issue in this proceeding involves an examination of the “current” citizenship of Virgin in no way undercuts the importance of reviewing evidence (not self-serving stipulations) relating to prior activities through which the current applicant’s business plans, operations, management, services, cooperative arrangements, branding agreements, etc. have been developed and established. Indeed, Department precedent prohibits foreigners from having the “substantial ability to influence the carrier’s activities.” Order 89-9-51. The Department has also made it clear that in making this determination, the Department will consider “the totality of circumstances” relating to the ability of foreign entities to influence the activities of the applicant. Order 2004-5-10, page 8: “The inquiry required by the actual control standard examines whether the totality of the circumstances means that the carrier is subject to foreign control.” See also, Supplemental Notice of Proposed Rulemaking, issued May 3, 2006, Docket OST-2003-15759, pp. 7-8: “In our cases, we have not applied a fixed interpretation of ‘actual control;’ instead, we have considered the totality of circumstances of an airline’s organization, including its capital structure, management, and contractual relationships, in determining whether a carrier is actually controlled by U.S. citizens.” See, also, Order 93-7-26, Order 94-3-52, Order 82-5-11.

In addition, the Department has determined that the scope of the prior events constitute “circumstances” that are relevant to an applicant’s current citizenship. Order 2004-5-10. The documents sought by the Department would be highly relevant to these determinations. In fact, Virgin concedes that the Virgin Group developed the business plan and hired most of the key managers of Virgin. Therefore, it is necessary for the Department and interested parties to review the evidence relating to those activities. As the Department said in the Supplemental NPRM issued on May 3, 2006, it is the Department’s policy “that a U.S. citizen who acts as president, as a director, or as another managing officer would be treated as a foreign citizen for carrier citizenship purposes if our evaluation determined that the U.S. citizen was appointed or designated for that position by foreign citizens. ... [N]either the president nor those managing officers may be appointed by or otherwise beholden to foreign interests.” Supplemental NPRM at 21-22, 24 (emphasis added).

The Department knew what it was asking for and was fully aware of this precedent when it issued the Supplemental Information Request set forth in Order 2006-4-15 directing Virgin to submit the additional information and documents. Clearly, documents “about the Company’s formation, operations, management, or services” involving the Virgin Group or Sir Richard Branson would be relevant to an understanding of and have a

direct bearing on Virgin's "current" citizenship. Accordingly, the Department should not only retain Information Request 1(c), but for the reasons stated above, the request should be expanded to include documents to or from the Virgin Group.

In addition, Virgin's proposal to substitute its own self-serving characterizations in lieu of the actual documents and hard evidence must be rejected. The Department should not allow an applicant to avoid submission of relevant evidence on its citizenship and then allow it to characterize the facts in its own terms. That would turn the Department's citizenship inquiry on its head by allowing the applicant to describe the evidence rather than the evidence itself. Self-serving characterizations of evidence cannot substitute for an evaluation of hard evidence by the Department and interested parties.

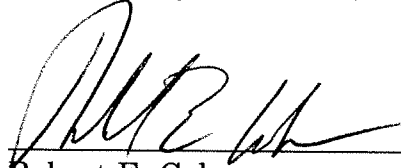
Significantly, Virgin cannot and does not claim that Information Request 1(c) is not relevant to the issues in this proceeding. Nor does Virgin claim there are no such documents. To the contrary, Virgin's petition concedes that there are numerous documents responsive to the Department's Information Request. Virgin tries to justify its use of "stipulations" instead of evidence by claiming this would be "an efficient way for the Department to concentrate its analysis on the existing ownership and management structure of Virgin America Inc." Virgin Petition, p. 3 (emphasis included).

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Virgin misses the key point. The issue in this case is not just the “existing ownership and management structure” of the applicant, but rather, whether actual control of the applicant rests with foreign entities. The documents sought by the Department (expanded as Delta requests to include the Virgin Group) is the best evidence to address that issue and should not be substituted by Virgin’s argumentative recitation of historical events.

For the foregoing reasons, Virgin’s petition for reconsideration should be denied.

Respectfully submitted,



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Robert E. Cohn  
HOGAN & HARTSON L.L.P.  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
(202) 637-4999

Counsel for  
DELTA AIR LINES, INC.

May 4, 2006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer of Delta Air Lines, Inc. has been served this 4th day of May, 2006, upon each of the following addressees:

william.evans@dlapiper.com; john.mietus@dlapiper.com; carl.nelson@aa.com; rbkeiner@crowell.com; lhalloway@crowell.com; thomas.bolling@coair.com; megan.rosia@nwa.com; bruce.rabinovitz@wilmerhale.com; david.heffernan@wilmerhale.com; howard\_kass@usairways.com; prizzi@omm.com; youngj@gtlaw.com; kirsteind@gtlaw.com; msinick@ssd.com; dshort@fedex.com; brein@wrf.com; ebailey@wrf.com; efaberman@wrf.com; russell.bailey@alpa.org; jerry.anker@alpa.org; ejames@jamhoff.com; mchopra@jamhoff.com; larryw@ttd.org

John Martin, Airport Director  
Jackson Wong, CEO  
San Francisco International Airport,  
P.O. Box 8097  
San Francisco, CA 94128

Warren Kroeppel, LGA General  
Manager  
Hangar #7, Third Floor  
Flushing, NY 11371

William DeCota  
Aviation Dept. Manager  
Port Authority of New York  
and New Jersey  
225 Park Avenue South, 9<sup>th</sup> Floor  
New York, NY 10003

John Howard, Manager  
Bill Dime, Certification Project  
Manager  
San Jose FSDO  
Federal Aviation Administration  
1250 Aviation Avenue, Suite 295  
San Jose, CA 95110-1130

Al Graser, JFK General Manager  
JFK Airport, Building 14  
Jamaica, NY 11430

Frederick W. Reid  
Chief Executive Officer  
David H. Pflieger, Jr.  
Acting General Counsel  
Virgin America Inc.  
533 Airport Blvd., Suite 400  
Burlingame, CA 94010

Susan Baer, EWR General Manager  
Building #1-Conrad Road  
Newark, NJ 07114

  
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Helena Richardson