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DEPARTMENT OF TRANSPORTATION  
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*Los Angeles-Puerto Vallarta Combination Service Proceeding*  
Docket OST-2005-23497

*New York/Newark-Cancun Combination Service Proceeding*  
Docket OST-2005-23494

*Los Angeles-San Jose del Cabo Combination Service Proceeding*  
Docket OST-2005-23498

**ORDER TO SHOW CAUSE**

**Summary**

By this order, we tentatively award (1) primary exemption authority to Delta Air Lines, Inc. (Delta), and backup exemption authority to United Air Lines, Inc. (United) in the captioned *Los Angeles-Puerto Vallarta Combination Service Proceeding*; (2) primary exemption authority to JetBlue Airways Corporation (JetBlue), and backup exemption authority to Delta in the captioned *New York/Newark-Cancun Combination Service Proceeding*; and (3) primary exemption authority to Frontier Airlines, Inc. (Frontier), and backup exemption authority to Delta in the captioned *Los Angeles-San Jose del Cabo Combination Service Proceeding*. We will afford interested parties ten calendar days from the service date of this order to file objections to our tentative decisions here, with answers to objections due seven calendar days thereafter.

**Background**

On December 12, 2005, the United States and Mexico signed amendments to the U.S.-Mexico aviation agreement, providing for the expansion of services between the two countries for both combination and all-cargo air transportation services.<sup>1</sup> Among other things, the amended agreement increases, from two to three, the number of U.S. carriers that may be designated to provide direct-carrier (own aircraft) nonstop service in the Los Angeles-Puerto Vallarta, New York/Newark-Cancun, and Los Angeles-San Jose del Cabo markets.<sup>2</sup> Currently, Alaska Airlines, Inc. (Alaska), and Mesa Airlines, Inc. (Mesa) each hold authority and designation to provide direct-carrier nonstop service on the Los Angeles-Puerto Vallarta route;<sup>3</sup> American Airlines, Inc. (American), and

<sup>1</sup> For detailed information about the agreement, see the Department's Notice dated October 5, 2005, describing the then-*ad referendum* agreement, and inviting applications for the soon-to-be-available opportunities. The Notice is available at: [http://dmses.dot.gov/docimages/pdf93/347701\\_web.pdf](http://dmses.dot.gov/docimages/pdf93/347701_web.pdf).

<sup>2</sup> Under the aviation agreement, New York/Newark is considered as one U.S. point.

<sup>3</sup> Currently, Delta is authorized to provide code-share service in the Los Angeles-Puerto Vallarta market by placing its "DL" code on the flights of Aeromexico on the route.

Continental Airlines, Inc. (Continental) each hold authority and designation to provide direct-carrier nonstop service on the New York/Newark-Cancun route;<sup>4</sup> and American and Alaska each hold authority and designation to provide direct-carrier nonstop service on the Los Angeles-San Jose del Cabo route. Thus, under the amended agreement, there is one new designation opportunity available in each of the subject markets.

United and Delta filed applications for the available Los Angeles-Puerto Vallarta authority; Delta, JetBlue, and Brendan Airways, LLC d/b/a USA 3000 (USA 3000), filed applications for the available New York/Newark-Cancun authority; and Delta, Frontier, ExpressJet Airlines, Inc., d/b/a Continental Express (Continental Express), and United filed applications for the available Los Angeles-San Jose del Cabo authority.<sup>5</sup> By Order 2005-12-18, we instituted carrier selection proceedings to handle these competing applications.<sup>6</sup>

### **Basis for Awards and Carrier Selection Criteria**

The available opportunity to serve each of the subject city-pair markets constitutes valuable economic rights obtained in exchange for granting Mexico route opportunities for its airlines to serve the United States. The public interest calls for the prompt use of these rights. We believe that each of the applicants would provide valuable services in the respective markets for which they have applied and, were we able, we would authorize all of them to serve. However, only one opportunity is available in each of the subject markets. Thus, we must choose among the applicants in each case.

Our primary objective in awarding limited-entry route rights is to maximize the public benefits that will result from award of the subject authority. In this regard, we considered, for each city-pair market at issue here, which applicant would maximize use of the valuable route rights to serve the market, and which applicant would most likely offer and maintain the best service for the traveling and shipping public. Pursuant to Order 2005-12-18, supplements/amendments, answers, and replies have now been filed in all of the subject proceedings. Below, for each city-pair market at issue here, is a summary of the applications, in chart form, and a summary of responsive pleadings filed in each of the subject cases, along with our tentative findings and conclusions for primary and backup awards in each case.

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<sup>4</sup> American serves Cancun from New York's John F. Kennedy International Airport (JFK), and Continental serves Cancun from Newark's Liberty International Airport (EWR).

<sup>5</sup> America West Airlines, Inc. d/b/a US Airways (US Airways) also applied for the available authority to serve the Los Angeles-San Jose del Cabo market. However, by letter dated January 17, 2006, counsel for the carrier advised the Department that, because of current market conditions, it has decided to withdraw its application in this matter.

<sup>6</sup> More specifically, we instituted proceedings to handle these competing requests, as well as those filed for the Chicago-Cancun market. This show-cause order addresses only those applications filed in the (1) *Los Angeles-Puerto Vallarta*, (2) *New York/Newark-Cancun*, and (3) *Los Angeles-San Jose del Cabo Service Proceedings*. We have already handled the fourth proceeding, the *Chicago-Cancun Combination Service Proceeding*, by separate order (Order 2006-4-22, Docket OST-2005-23496).

## Los Angeles-Puerto Vallarta Case

### Applicant Proposals

<b>Applicants<sup>7</sup></b>	<b>Frequency Level/Seasonality</b>	<b>Aircraft Type, Seats<sup>8</sup></b>	<b>Startup Date</b>
Delta	Daily, year-round	B-737-800 aircraft (134 coach seats, and 16 first-class seats)	Within 90 days of award.
United	Daily, during peak season (6/12/06 - 9/5/06) (12/14/06 – 12/31/06) <sup>9</sup>  2 x weekly, during off-peak (5/4/06 - 6/11/06) and (9/6/06 - 12/13/06)	A320 “Ted” Service aircraft (156 economy seats)  A320 aircraft <sup>10</sup> (126 economy seats, and 12 first-class seats)	5/4/06, or within 90 days of award.

### Positions of the Parties

**Delta** maintains that the record is clear that it, alone, will offer daily year-round mainline service in the Los Angeles-Puerto Vallarta market. Delta states that it has proposed the most regular and comprehensive pattern of service for Los Angeles-Puerto Vallarta travelers, as well as the most new capacity on the route. As a result, Delta contends that it will offer and maintain the best service for the traveling and shipping public and will maximize public benefits in this proceeding. Delta asserts that, because the Los Angeles-Puerto Vallarta market has competitive service by established incumbents, Delta’s “daily service advantage will give Delta a substantial edge over United in competing for passengers.”<sup>11</sup> Delta further states that the large Los Angeles local market should be of primary importance in this proceeding, and the Department should focus on selecting the best new challenger for Los Angeles area passengers. Delta states that, in this regard, there is little significance to United’s claim of its connecting benefits when virtually all of the largest traffic points United claims as potential one-stop connections via Los Angeles have equal or better connections at Denver, where United already offers nonstop Denver-Puerto Vallarta service, and at Chicago, where United already offers nonstop Chicago-Puerto Vallarta service.<sup>12</sup> Delta claims that there is sufficient demand at Los Angeles to support Delta’s daily, year-round proposal. Delta maintains that its eight percent growth in Los Angeles operations since 2002 makes it a viable competitor against United, the carrier with the largest operations at Los Angeles. Delta further states that controlling its own inventory and providing its own direct-carrier service on the Los Angeles-Puerto Vallarta route will allow Delta to offer important new

<sup>7</sup> As mentioned above, Alaska and Mesa are currently authorized to serve the Los Angeles-Puerto Vallarta route. Thus, one new designation opportunity is available under the amended agreement.

<sup>8</sup> We have used the carriers’ own terminology regarding “coach” and “economy” seats.

<sup>9</sup> United states that some of the applicants have been misled by United’s use of the term “infinity” as the end date of its proposed service (*see* United Exhibit UA-1, at 3). United explains that, consistent with the evidence request in Order 2005-12-18, it has submitted a service proposal only for the first year of service – calendar year 2006 (through December 31, 2006). United states that the service it will operate in the second year will depend to some extent on the results of the first year of service. (Reply of United, at 11.)

<sup>10</sup> United states that it reserves the right to use other aircraft in its fleet depending upon market conditions (*see* Amendment and Supplement Information of United, at 3).

<sup>11</sup> Reply of Delta, at 3.

<sup>12</sup> Reply of Delta, at 3 and 4.

service and competitive benefits to consumers, and that its code-share arrangement with its Mexican-flag partner, Aerovias de Mexico, S.A. de C.V. (Aeromexico), will enable Delta to provide connecting flights to many behind-gateway destinations served by Aeromexico in Mexico.

In response to Delta's application, United argues that Delta would provide only mainline service on the Los Angeles-Puerto Vallarta route and would offer no meaningful connections, and that United's proposed "Ted" service would provide stronger and more sustainable competition to Alaska's and America West Express' existing Los Angeles-Puerto Vallarta service, by providing both local and network competition through United's Los Angeles hub, with a service geared toward the leisure traveler. Delta contends that, because the Los Angeles-Puerto Vallarta market is largely a local market, the local market should be of primary importance in this proceeding, and that Delta's daily, year-round service proposal will provide the superior local market public interest benefits in this matter, whereas United's proposal would serve the market just twice a week in the off-peak season.<sup>13</sup> United further argues that only United would be a new competitor in the market, as Delta already serves the route on a daily basis through its code-share arrangement with Aeromexico. In response, Delta states that this notion is without merit, in that code-share service is not a substitute for direct-carrier service on a route. Delta explains that, by controlling its own inventory, Delta will be able to offer important new service and competitive benefits to consumers on the route.<sup>14</sup>

**United** maintains that, because of Delta's current code-share services with Aeromexico on the Los Angeles-Puerto Vallarta route, United is the only true new entrant in the *Los Angeles-Puerto Vallarta Case*. United states that, as a new entrant, it would offer new public benefits to the traveling and shipping public, with daily service in the market during the peak season, using its low-fare "Ted" service (156-economy seat A-320 aircraft), and twice-weekly service during off-peak, using its mainline service (126 economy and 12 first-class seat A-320 aircraft). United claims that, from its Los Angeles hub, it will not only serve the local Los Angeles-Puerto Vallarta market, but also passengers in 34 other cities with online, one-stop connecting service,<sup>15</sup> and would provide new service options to many of the largest U.S./Canada-Puerto Vallarta origin and destination markets.<sup>16</sup> United further claims that it would also provide the first one-stop, connecting service to Puerto Vallarta via Los Angeles from 24 cities<sup>17</sup> and, through its code-share arrangement with US Airways, it would provide other connections to numerous other markets. United states that its proposal is supported by the Board of Supervisors, County of Los Angeles; the California Chamber of Commerce; the Los Angeles Area Chamber of Commerce; and LA, Inc., The Convention and Visitors Bureau.<sup>18</sup>

In response to United's application, Delta argues that the Department has consistently held that frequency and capacity are critical to maximizing public benefits and that, in this regard, United should not receive an award here with its proposal of peak and off-peak service on the route. In response, United states that the Los Angeles-Puerto Vallarta market experiences seasonal variations and that United has conservatively scheduled its services to reflect that seasonality.<sup>19</sup> Delta argues that there is little significance to United's claim of Los Angeles hub benefits because there are equal or better connections at Denver, where United operates nonstop Denver-

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<sup>13</sup> Reply of Delta, at 4.

<sup>14</sup> Delta Reply, at 4.

<sup>15</sup> Answer of United, at 6.

<sup>16</sup> Answer of United, at 3.

<sup>17</sup> Answer of United, at 7.

<sup>18</sup> Amendment and Supplement of United, at 6.

<sup>19</sup> Reply of United, at 13.

Puerto Vallarta service. United states that Delta would offer no new online connections at Los Angeles, whereas United would offer both local and network competition through its Los Angeles hub.

### Tentative Decision for Primary Award

We have carefully examined the applicant proposals and the responsive pleadings in the *Los Angeles-Puerto Vallarta Case* and have tentatively decided that the public interest is best served by (1) selecting Delta for primary exemption authority to provide foreign scheduled air transportation of persons, property, and mail on the Los Angeles-Puerto Vallarta route; and (2) selecting United for back-up exemption authority on the route.<sup>20 21</sup>

Based on our review of the proposals and all other matters of record, we have tentatively determined that Delta's service proposal offers greater public benefits than does United's proposal in the Los Angeles-Puerto Vallarta market. In this regard, we tentatively find that Delta has offered to provide substantially more service in the primary market than United, and that its consistent, year-round, daily service proposal would more effectively compete with the incumbent carriers' strong service on the route than would United's peak and off-peak proposal. We also tentatively find that an award to Delta in this case would result in new U.S.-Mexico market structure benefits that would not be available if we were to select United here.

Specifically, Delta has proposed to serve the Los Angeles-Puerto Vallarta market with year-round daily service, whereas United proposes daily peak season service, but only twice-weekly off-peak service for four months of the year.<sup>22</sup> Although United has argued that its peak/off-peak proposal is reasonable and sustainable given the seasonality of the Los Angeles-Puerto Vallarta market, we note that the incumbent carriers, Alaska and Aeromexico, consistently offered daily or better service on the route in calendar year 2005 (including during the period of time for which United would offer off-peak service only), with Alaska offering double-daily service for seven months of the year.<sup>23</sup> Against this background, we tentatively conclude that the introduction of consistent daily year-round service would offer more meaningful competition to the current incumbents than would a mix of peak and off-peak service. While United questions Delta's ability to mount and maintain a year-round daily service, we tentatively find it reasonable, based on the existing levels of service and traffic in the market, for Delta to conclude that it can maintain a year-round daily service. Lastly, we are mindful of the connection options that United's Los Angeles-Puerto Vallarta proposal would provide. However, we tentatively

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<sup>20</sup> Based on officially noticeable data, we tentatively conclude that Delta and United are qualified to provide the services proposed. Delta has been found fit to provide foreign scheduled air transportation of persons, property, and mail (*see* Order 2006-1-1, issued January 3, 2006, which issued blanket route integration certificate authority), and holds exemption authority to provide scheduled combination services in various U.S.-Mexico city-pair markets. United has been found fit to provide foreign scheduled air transportation of persons, property, and mail (*see* Order 2006-1-1, issued January 3, 2006, which issued blanket route integration certificate authority), and holds exemption authority to provide scheduled combination services in various U.S.-Mexico city-pair markets. No information has come to our attention that would lead us to question the qualifications of Delta or United to conduct the proposed operations at issue here.

<sup>21</sup> We tentatively find that our action here would not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined by section 313.4(a)(1) of the Department's regulations. Further, should United's back-up authority be activated, we tentatively find that such action would not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975.

<sup>22</sup> United proposes daily service in the market from June 12, 2006, through September 5, 2006, resuming daily service again with the onset of the peak season at the end of the calendar year.

<sup>23</sup> Official Airline Guide, calendar year 2005.

find that such benefits are outweighed by Delta's offer of consistent nonstop service on this route, throughout the year.

We also tentatively find that a selection of Delta in this case would result in certain market structure benefits that would not be available were we to pick United. In this regard, we note that United is already authorized and designated to provide direct-carrier service to Puerto Vallarta from its West Coast hub point, San Francisco, and also serves Puerto Vallarta from its hubs in Chicago and Denver. Delta, on the other hand, does not currently hold any West Coast authority to serve Puerto Vallarta on a direct-carrier basis. Under these circumstances, we tentatively find that an award to Delta in this proceeding would increase competition for passengers interested in flying between the West Coast and Puerto Vallarta.

Finally, we note United's argument that Delta should not receive an award for the limited-entry authority at issue here because it already has a presence in the Los Angeles-Puerto Vallarta market through its code-share arrangement with Aeromexico. In support of this argument, United maintains that, in the 2000-2001 *Los Angeles-San Jose del Cabo Exemption Proceeding*, the Department selected American over United because United already served the Los Angeles-San Jose del Cabo market pursuant to a code-share arrangement with the Mexican-flag carrier, Compania Mexicana de Aviacion, S.A. de C.V. (Mexicana), and American would enter the market as a new competitor.<sup>24</sup> We note, however, that the cited proceeding involved generally comparable proposals where, all things effectively being equal, we selected the carrier that had no code-share presence in the market. Unlike the cited precedent, the proposals in the present case are far from comparable, with Delta offering a significantly superior service proposal in the primary market over that of United, as well as the just-discussed structural advantages.

Based on all of the above, we tentatively find that the services proposed by Delta will provide the most benefits to the traveling and shipping public and will maximize use of the bilateral rights available to U.S. carriers in the Los Angeles-Puerto Vallarta market.

### Back-Up Award

Because the Los Angeles-Puerto Vallarta designation opportunity is a valuable and important right, we find that it is in the public interest to have a back-up carrier in place should Delta not institute service or if its authority in the market becomes dormant (see Terms, Conditions, and Limitations section, below). In this regard, we have decided to select United as back up to Delta here. United has stated that it would accept an award of back-up authority if it was not awarded primary authority on the route, and it stated that it would accept the conditions of back-up exemption authority as specified in Order 2005-12-18. In making this decision, we have tentatively determined that United, as an experienced operator in various U.S.-Mexico city-pair markets, would be in a position to implement service quickly on the Los Angeles-Puerto Vallarta route should Delta not inaugurate service or discontinue service during the first year of operations.

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<sup>24</sup> See the *Los Angeles-San Jose del Cabo Exemption Proceeding*, Docket OST-2000-8361, Order 2000-11-23, at 6, and Order 2001-1-11, at 7.

## New York/Newark-Cancun Case

### Applicant Proposals

<b>Applicants<sup>25</sup></b>	<b>Frequency Level/Seasonality<sup>26</sup></b>	<b>Aircraft Type, Seats</b>	<b>Startup Date</b>
Delta	Daily (JFK) Year-round	B-767-300s (228 coach, 24 first-class seats) for six months – peak season <sup>27</sup>  B-757-200s (161 coach, 22 first-class seats) for off peak/rainy months <sup>28</sup>	Within 90 days of award.
JetBlue	Daily (JFK) Year-round	Airbus A-320s (156 seats)	5/3/06, or within 90 days of award.
USA 3000	Daily (EWR) Plus Saturday and Sunday effective 2/4/06 <sup>29</sup>	Airbus A-320s (168 seats)	Within 30 days of award

### Positions of the Parties

**Delta** states that it would offer the largest aircraft and the most new capacity; and that JFK is one of Delta's largest and most important international gateways, where it offers nonstop service to 65 points around the globe. Delta states that it has recently announced nonstop service from JFK to Acapulco, San Jose del Cabo, Puerto Vallarta, and Cozumel, and that the absence of Cancun service makes it difficult for Delta to market a full pattern of Mexico service in competition with American and Continental. Delta states that, while it has provided viable one-stop connecting schedules for the proposed authority, Delta believes that, with nearly 300,000 annual passengers, New York-Cancun is a huge local market, and that its proposed service will benefit predominantly local passengers.<sup>30</sup> Delta further states that Delta's code-share arrangement with Aeromexico will enable Delta to offer consumers additional transborder services, as well as flights to many behind-gateway destinations served by Aeromexico in Mexico.

<sup>25</sup> As mentioned above, American and Continental are currently authorized to serve the New York/Newark-Cancun route. Thus, one new designation opportunity is available under the amended agreement.

<sup>26</sup> JFK is New York's John F. Kennedy International Airport and EWR is Newark's Liberty International Airport.

<sup>27</sup> Delta describes the peak season as December 15 through January 15, and the months of March, April, June, July, and August. (See Supplement to Application of Delta, Exhibit DL-101, page 1.)

<sup>28</sup> Delta describes the off-peak season as January 16 through January 31, the months of February, May, September, October, November, and December 1 through December 14. (See Supplement to Application of Delta, Exhibit DL-102, page 2.)

<sup>29</sup> The record is unclear as to the length of time that USA 3000 would offer the additional Saturday and Sunday flights. USA 3000 has indicated that the extra flights would be provided for a six-month period (see USA 3000's Exhibit USA3K-A-2, page 1). Delta states, however, that USA 3000 advised Delta's counsel, via telephone, that the Saturday and Sunday flights would be offered on a seasonal basis through May 15 only (see Delta Answer, at 7 and Delta's Reply, at 8). USA 3000 does not address the alleged discrepancy.

<sup>30</sup> Application Supplement of Delta, at 4.

In response to Delta's application, JetBlue argues that Delta hardly needs another Cancun route when its existing service to Cancun is already substantial. Delta responds that it is "precisely such broad U.S.-Mexico competition that is critical to ensuring that the successful applicant in this proceeding can compete effectively with the two incumbent carriers, both of which have extensive U.S.-Mexico service offerings."<sup>31</sup> JetBlue further argues that Delta is not offering new entrant services in this proceeding, and that passengers wishing to use Delta's New York-Cancun service can today avail themselves of (1) Delta's code-share services with Aeromexico on the route; (2) Delta's code-share services with Continental on the route; or (3) one-stop service over three of Delta's hubs to Cancun. In response, Delta states that "connecting service is not equivalent to nonstop service in the important New York-Cancun market,"<sup>32</sup> and that Delta has been interested in obtaining this route for a long time.

JetBlue also argues that, while Delta makes much of its connecting benefits on the New York-Cancun route, JetBlue has presented far superior connections in this proceeding, with at least 1,648 New York-Cancun connecting seats, whereas Delta will provide only 240 connecting seats in the market.<sup>33</sup> Delta states that JetBlue ignores the fact that Delta's offer of substantially more capacity in the market makes Delta the best choice for the subject services, particularly when the New York-Cancun market is largely a local market.

Both JetBlue and USA 3000 question the viability of Delta's proposed New York/Newark-Cancun service, stating that Delta has been reducing its service at New York, and has several dormant Cancun routes. Delta responds that its strong international presence at JFK and established track record of developing new U.S.-Mexico service ensure that Delta will fully and effectively use the New York-Cancun designation opportunity. USA 3000 further argues that Delta failed to provide information requested in the Department's instituting order in this case regarding its current U.S.-Mexico services, making it difficult to ascertain Delta's current service levels to Mexico,<sup>34</sup> and further bringing into question Delta's ability to operate the proposed daily service on the New York-Cancun route. Delta responds that, as requested by the Department, Delta provided a "brief description" of its U.S.-Mexico services by presenting its June 2005 schedules. Delta states that, due to the hurricane-related service disruptions, the June "schedule was most representative and would best assist the Department and other applicants in comprehending Delta's pattern of U.S.-Mexico services."<sup>35</sup>

JetBlue also argues that the benefits of a low-fare competitor in a given market, like JetBlue, are well established and long recognized by the Department,<sup>36</sup> and that Delta has repeatedly shown itself as "anything but a 'low fare' carrier."<sup>37</sup> Delta responds that price competition in the market

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<sup>31</sup> Answer of Delta, at 4.

<sup>32</sup> Reply of Delta, at 5.

<sup>33</sup> Answer of JetBlue, Exhibit JetBlue-A-6.

<sup>34</sup> USA 3000 argues that Delta, instead, provided an exhibit which merely listed Delta-operated U.S.-Mexico flights for the month of June 2005. (Answer of USA 3000, at 10.)

<sup>35</sup> Reply of Delta, at 7 and 8.

<sup>36</sup> JetBlue cites the Department's January 2001 statement that the entry of a low-fare competitor into a hub-spoke route normally results in increased capacity in the market and that, while the new entrant adds frequency and seats, the incumbent carrier typically maintains its seats and frequencies. The Department went on to say "it is evident that a strong demand for low-fare seats remains unmet in markets without low-fare competition, and that the pent-up demand for low-fare service is enormous." (*Dominated Hub Fares*, Office of the Assistant Secretary for Aviation and International Affairs, January 2001.) (See Answer of JetBlue, at 3.)

<sup>37</sup> JetBlue maintains that Continental (Delta's SkyTeam partner) offers nonstop fares ranging from \$179-\$503 each way in coach (with the lowest walk-up fare being \$403); American offers fares ranging from \$179-\$988 each way in coach; and Delta (serving over Atlanta, as well as through its codeshare partner,

is already intense and that JetBlue's proposed fares fall well within the range of the existing market prices offered by both American and Continental on the route. Delta further states that, contrary to JetBlue's claims regarding its proposed low fares, Delta will likely bring much more competition to the route for the simple reason that Delta will offer far more capacity than JetBlue, and that, as in any market, it is supply and demand that determines pricing.<sup>38</sup>

**JetBlue** maintains that its proposal offers important new-entrant low-cost carrier benefits, not only in the New York-Cancun market, but in the U.S.-Mexico market, overall;<sup>39</sup> that, in contrast to the other applicants, JetBlue's single largest operation is at JFK; and that it is the largest domestic carrier at JFK today, with 112 daily flights and nonstop service to 30 markets, carrying approximately 26,000 daily customers. JetBlue states that it expects its low-cost service on the New York-Cancun route to stimulate significant additional demand on *all* carriers serving the market. JetBlue maintains that, for the second quarter ended June 2005, there were 566 passengers per day each way in the New York-Cancun market. JetBlue states that it expects to stimulate growth in the market with its low-fare proposal, increasing to 832 the number of passengers per day each way, resulting in a 47 percent growth rate.<sup>40</sup> JetBlue states its belief that its ability to add additional frequencies (should the market warrant), and not simply offer larger gauge, best serves this growing market, and that JetBlue is well positioned to offer those additional services because it currently operates 94 aircraft (86 Airbus A320s with 156 seats and eight Embraer E190 jets with 100 seats each), and has firm orders and options for an additional 339 aircraft.

In response to JetBlue's application, both Delta and USA 3000 argue that they will offer more seats on the route and, thus, their respective proposals are superior in this proceeding. JetBlue responds that, by selecting JetBlue, the Department has the opportunity to award authority to an "entirely new entrant" in not only the New York-Cancun market, but in the U.S.-Mexico market overall. JetBlue states that, "while Delta's presence may improve competition by harming American and Continental, Delta's self-professed reason for seeking DOT authority, JetBlue's selection and its history of operations demonstrates that it will improve competition and benefit the traveling public by introducing low fares and award winning service and by growing the entire New York-Cancun market, rather than simply redistributing existing passengers."<sup>41</sup> JetBlue further maintains that, while the competing applicants have proposed to offer more seats on the route, those proposals are questionable, as Delta is currently seeking bankruptcy court approval to reject aircraft leases and return aircraft, and USA 3000 has failed to provide daily service in any market it currently operates. JetBlue claims that, in this regard, it would rather underpromise (to the Department) and overdeliver (to its customers and the traveling public), than the reverse,<sup>42</sup> and that its large and growing operation at New York will allow JetBlue to offer and maintain the best service for the traveling public in the New York-Cancun market.

Delta argues that JetBlue's claim of connecting services is of little significance, as five northeastern connecting cities claimed by JetBlue have competitive one-stop service on multiple carriers, and the sixth city - Richmond, Virginia - would involve nearly 600 miles of circuitry to reach Cancun on a backhaul routing through JFK.<sup>43</sup> JetBlue responds that it is Delta that would

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Aeromexico, over Atlanta and Mexico City), offers fares ranging from \$179-\$503. (Answer of JetBlue, at 5.)

<sup>38</sup> Answer of Delta, at 3 and 4.

<sup>39</sup> JetBlue does not currently provide scheduled combination service in the U.S.-Mexico market.

<sup>40</sup> Answer of JetBlue, at 7.

<sup>41</sup> Reply of JetBlue, at 3 and 4.

<sup>42</sup> Reply of JetBlue, at 2.

<sup>43</sup> Answer of Delta, at 5.

offer connecting services of little significance, with Delta's offer of only 240 connecting seats, whereas JetBlue will offer 1,648 connecting seats for its proposed New York/Newark-Cancun service.<sup>44</sup>

USA 3000 argues that JetBlue should not receive an award here, as it has no experience in providing service to Cancun or any other point in Mexico. Similarly, Delta argues that JetBlue could inaugurate first-time U.S.-Mexico services from any number of other markets available under the agreement, but that JetBlue has, up until now, decided not to do so. Delta argues further that the fact that JetBlue has failed previously to avail itself of any U.S.-Mexico service should not give JetBlue an advantage in the present proceeding to allocate the service rights on this "critical" route. JetBlue responds that it has a very large, loyal, and growing customer base at its hub in New York and that, as JetBlue "expanded and liberated the San Juan and Aguadilla markets, to name just a few, from exorbitant fares, JetBlue seeks to do the same in the New York-Cancun market."<sup>45</sup>

Finally, USA 3000 raises its concern that JetBlue will not be able to provide adequate hotel space in Cancun, as a result of hurricane damage to the city in October 2005. In response, JetBlue states that, through its JetBlue Getaways program, it offers travel packages consisting of JetBlue airfare, hotel and/or rental cars, and that JetBlue has significant experience in bundling flights and hotel rooms for the leisure traveler.

**USA 3000** states that, by any criterion, its proposed New York/Newark-Cancun service is far superior to that offered by the other applicants in this proceeding. USA 3000 states that as soon as possible it will operate nine weekly flights to Cancun from Newark (EWR), whereas JetBlue (from JFK) and Delta (from JFK) propose to serve Cancun only on a daily basis. USA 3000 further states that, due to its total focus on the leisure market, USA 3000 has access to a sufficient number of hotels rooms in Cancun to satisfy the needs of its current and potential customers. USA 3000 asserts that, given the recent hurricane damage in Cancun and the lack of hotel rooms there, the Department should give special consideration to applicants that can offer such accommodations.<sup>46</sup> USA 3000 further asserts that both JFK and EWR already receive Cancun service by traditional legacy hub carriers (American at JFK and Continental at EWR) and that an award to another legacy hub carrier like Delta would merely replicate the American and Continental services already offered at these airports. USA 3000 states that the public interest would best be served by USA 3000's selection as a low-cost competitor to the services of both American and Continental in the subject market.

In response to USA 3000's application, both Delta and JetBlue argue that USA 3000 should not receive an award here because it already provides year-round public charters to Cancun from both JFK and EWR airports.<sup>47</sup> JetBlue argues that USA 3000 would add little to the market other than moving a charter service to a scheduled service with no prospect of overall growth in the New York/Newark-Cancun market,<sup>48</sup> and Delta further argues that it would be the worst possible result from a public interest and market structure standpoint for the Department to preempt new entry merely to allow USA 3000 to convert its existing charter service to scheduled

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<sup>44</sup> See Answer of JetBlue, Exhibit JetBlue-A-6.

<sup>45</sup> Reply of JetBlue, at 9.

<sup>46</sup> Answer of USA 3000, at 3.

<sup>47</sup> In its Supplement/Amendment to Application of USA 3000, USA 3000 indicates that it operates once-weekly year-round public charter service in the New York (JFK)-Cancun market, and three-times weekly year-round public charter service in the Newark (EWR)-Cancun market. (See Exhibit USA3K-201, at 2.)

<sup>48</sup> Reply of JetBlue, at 9.

service on the New York/Newark-Cancun route.<sup>49</sup> USA 3000 responds that it should not be penalized for its commercial flexibility to operate charters as a less desirable alternative to scheduled service due to the restrictive bilateral agreement. JetBlue questions the viability of USA 3000's nine-times weekly service proposal here, stating that USA 3000 is unable "to provide daily service in any market"<sup>50</sup> in which it currently operates and that, while USA 3000 makes much of its Cancun service after the October hurricane, USA 3000 has recently decided to cease service between Washington, D.C., and Cancun.<sup>51</sup> In response, USA 3000 states that it is a highly experienced leisure market carrier and that it tailors its service levels in any particular market to the demand in that market. USA 3000 maintains that, in this regard, it evaluates both the availability of hotel rooms in the destination and seasonality factors in the market, and operates the appropriate level of service for the market and for the season.<sup>52</sup>

### Tentative Decision for Primary Award

We have carefully examined the applicant proposals and the responsive pleadings in the *New York/Newark-Cancun Case* and have tentatively decided that the public interest is best served by (1) selecting JetBlue for primary exemption authority to provide foreign scheduled air transportation of persons, property, and mail on the New York/Newark-Cancun route; and (2) selecting Delta for back-up exemption authority on the route.<sup>53 54</sup>

Based on our review of the proposals and the issues raised, we tentatively find that JetBlue's proposal offers important new-entrant benefits, not only at Cancun, but also in the U.S.-Mexico market overall, offering superior market structure benefits and connecting service advantages, making JetBlue the superior choice in this proceeding.

We tentatively find that USA 3000's proposal would provide fewer benefits than either JetBlue or Delta. In this regard, we tentatively determine that a selection of USA 3000 for an award here would result in a conversion to scheduled service of its currently operated public charter services to Cancun from Newark. Specifically, we found that USA 3000 already offers three-times weekly year-round Newark (EWR)-Cancun charter flights, and once-weekly year-round New York (JFK)-Cancun charter flights.<sup>55</sup> As we discuss below, the proposals of JetBlue and Delta each offer a number of superior features.

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<sup>49</sup> Answer of Delta, at 5.

<sup>50</sup> Reply of JetBlue, at 5.

<sup>51</sup> Reply of JetBlue, at 7.

<sup>52</sup> Reply of USA 3000, at 13.

<sup>53</sup> Based on officially noticeable data, we tentatively conclude that JetBlue and Delta are qualified to provide the services proposed. JetBlue has been found fit to provide scheduled interstate and overseas air transportation of persons, property, and mail (See Order 2000-2-7), and holds exemption authority to provide scheduled combination services between the United States and various points in the Caribbean and Central America. The foreign air transportation services proposed here are not markedly different in terms of aircraft size or stage length from the carrier's current international services. As stated earlier, Delta has been found fit to provide foreign scheduled air transportation of persons, property, and mail (see Order 2006-1-1, issued January 3, 2006, which issued blanket route integration certificate authority), and holds exemption authority to provide scheduled combination services in various U.S.-Mexico city-pair markets. No information has come to our attention that would lead us to question the qualifications of JetBlue or Delta to conduct the proposed operations at issue here.

<sup>54</sup> We tentatively find that our action here would not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined by section 313.4(a)(1) of the Department's regulations. Further, should Delta's backup authority be activated, we tentatively find that such action would not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975.

<sup>55</sup> See Supplement/Amendment to Application of USA 3000, Exhibit USA3K-201, at 2.

As to JetBlue and Delta, we tentatively find that JetBlue offers the superior proposal in this proceeding. The Department has consistently found that new entry is a significant carrier selection factor because it provides consumers with new service options and incumbents with new incentives to provide consumers with services that meet their needs.<sup>56</sup> We believe that this consideration strongly supports the selection of JetBlue in this proceeding because, unlike Delta and USA 3000, JetBlue does not now serve Cancun or any other point in Mexico on a scheduled basis. We tentatively conclude that the public benefits that are likely to result from the selection of JetBlue outweigh those that are likely to result from the selection of any other applicant.

Awarding authority to JetBlue in this proceeding would allow JetBlue to offer service to Cancun for the first time and, indeed, first-time service in the U.S.-Mexico market, overall. In this regard, JetBlue's service would enhance competition with (1) the various carriers (both U.S. and foreign), providing service at Cancun; (2) American's and Continental's direct-carrier services on the New York-Cancun route; (2) USA 3000's regularly-operated public charter services on the New York-Cancun route; and (3) Delta's code-share services with Aeromexico on the New York-Cancun route. In addition to these new-entrant competition benefits, we tentatively find that JetBlue's proposal offers considerably more connecting services at its hub in New York at JFK (involving services at Buffalo, Rochester, Syracuse, Burlington, Boston, and Richmond), whereas Delta will offer minimal connecting services at JFK (involving services only at Boston, Columbus, and Pittsburgh), and USA 3000 will not offer any connecting service. We tentatively conclude that, with JetBlue's introduction of new daily competing scheduled service at JFK and its access to system support at its hub in New York, it should be able to offer and maintain service in the primary market, as well as to attract behind traffic to support its primary service on the route. Against this background, we tentatively conclude that the selection of JetBlue would improve competition and on-line service more than would the selection of any other applicant, and that these advantages outweigh any capacity advantages that Delta's proposal may otherwise provide.

We tentatively find that the arguments presented by Delta and USA 3000 against the selection of JetBlue based on its lack of Mexico-market experience are not persuasive. JetBlue offers hub services at New York to points throughout the United States and the Caribbean, along with a number of key city services at Boston, Washington, D.C., Ft. Lauderdale, Long Beach, and Oakland. JetBlue has an extensive history of entering new markets effectively and of increasing traffic in those markets. In short, we are simply not persuaded by Delta's or USA 3000's arguments that JetBlue would not be able to provide its proposed service.

We note that JetBlue states that it will offer low-fare service on the route and, in this way, grow the New York-Cancun market. USA 3000 has also indicated that it would offer low-fare service on the route. Delta has argued that pricing will be dictated by supply and demand and, therefore, its offer of more capacity on the route is fare-significant. While we recognize the benefits of low-fare service on international routes and believe that such service could potentially expand a given market, we do not believe it need be determinative in this case, given the superior competition benefits that would be afforded by JetBlue's initial entry in the U.S.-Mexico market.

Based on all of the above, we tentatively find that the services proposed by JetBlue will provide the most benefits to the traveling and shipping public and will maximize use of the bilateral rights available to U.S. carriers in the New York/Newark-Cancun market.

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<sup>56</sup> See the *Los Angeles-San Jose del Cabo Exemption Proceeding*, Docket OST-2000-8361, Order 2000-11-23, at 6.)

## Back-Up Award

Because the New York/Newark-Cancun designation opportunity is a valuable and important right, we find that it is in the public interest to have a back-up carrier in place should JetBlue not institute service or if its authority in the market becomes dormant (see Terms, Conditions, and Limitations section, below). In this regard, we have decided to select Delta as back up to JetBlue here. Delta would bring consistent daily, year-round service to the market, providing for meaningful service options for the traveling and shipping public should JetBlue fail to use the primary authority awarded to it. As mentioned earlier, USA 3000's service proposal would result in a conversion to scheduled service of its currently operated public charter services on the route. Specifically, USA 3000 already provides a total of four weekly year-round flights in the New York-Cancun market. Considering these current services, we find that USA 3000's proposal would result in a net gain to the New York/Newark-Cancun market of, at best, only five new weekly frequencies (using 168-seat aircraft).<sup>57</sup> In contrast, the proposal of Delta (using 183-seat or 252-seat aircraft) would result in a net gain of at least seven new weekly frequencies on the New York/Newark-Cancun route. The positive features of USA 3000's proposal do not overcome the frequency disadvantage. Against this background, we have tentatively selected Delta for the back-up award in this market.

Delta has stated that it would accept an award of back-up authority if it was not awarded primary authority on the route, and it stated that it would accept the conditions of back-up exemption authority as specified in Order 2005-12-18. In making this decision, we have tentatively determined that Delta, as an experienced operator in various U.S.-Mexico city-pair markets, would be in a position to implement service quickly on the New York/Newark-Cancun route should JetBlue not inaugurate service or discontinue service during the first year of operations.

## Los Angeles-San Jose del Cabo Case

### Applicant Proposals

<b>Applicants</b> <sup>58</sup>	<b>Frequency Level/Seasonality</b>	<b>Aircraft Type, Seats</b> <sup>59</sup>	<b>Startup Date</b>
Continental Express	Daily, year-round	Embrarer ERJ-145 aircraft (50 seats) <sup>60</sup>	6/1/06, or within 90 days of award.
Delta	Daily, year-round	B-737-800 aircraft (134 coach & 16 first-class seats)	Within 90 days of award.
Frontier	Daily, year-round	Airbus A-319-111 aircraft (132 seats)	Within 90 days of award.
United	Daily (peak) <sup>61</sup>	"Ted" service-A 320 aircraft (156 economy seats)-peak	4/2/06, or within 90 days of award.
	2 X weekly (off-peak)	Mainline service-A320 aircraft <sup>62</sup> (126 economy & 12 first-class seats)-off peak	

<sup>57</sup> This takes into consideration USA 3000's offer of daily year-round service, and the additional Saturday and Sunday flights to be operated on a seasonal basis.

<sup>58</sup> As mentioned above, American and Alaska are currently authorized to serve the Los Angeles-San Jose del Cabo route. Thus, one new designation opportunity is available under the amended agreement.

<sup>59</sup> We have used the carriers' own terminology regarding "coach" and "economy" aircraft.

<sup>60</sup> Continental Express states that, pursuant to the Department's regulations 14 C.F.R. 206, Part 206.5 and 14 C.F.R. 298, subpart B, it does not need exemption authority to serve the subject market because it proposes service with aircraft having less than 60 seats. Continental Express states that, for this reason, it has filed a competing request for designation only to serve the Los Angeles-San Jose del Cabo route.

## Position of the Parties

**Continental Express** maintains that, with its offer of daily service on the route with 50-seat aircraft (with four incumbents already providing service on the route), it is the only applicant that can provide economically viable service on the route and offer a distinctive pattern of service that will give passengers a real option to the service already offered by the incumbents.

Continental Express states that it will develop the market by operating the only proposed service that will provide meaningful alternative flight times for local passengers on the route, with the earliest flight southbound, and the latest flight northbound (allowing recreational travelers the first flight to the beach or golf course and the last flight of the day), “effectively providing an extra day to enjoy the resort facilities of San Jose del Cabo.”<sup>63</sup> Continental Express states that, although its proposal will focus primarily on the strong local Los Angeles-San Jose del Cabo market, “some Continental connecting passengers will connect between points in the U.S. and San Jose del Cabo at Los Angeles, using other flights operated as part of the Continental network.”<sup>64</sup> Continental Express urges that, if another applicant is selected in this proceeding, the Department should impose a condition requiring that the applicant operate the daily, nonstop year-round service “belatedly proposed,”<sup>65</sup> in this proceeding, and to require the service without interruption (subject only to a 90-day startup period), and without the normal allowance for dormancies of up to 90 days once flights have been instituted.

In response to Continental Express’ application, Delta, Frontier, and United argue that Continental Express offers the weakest proposal in this proceeding with its offer of 50-seat regional jet aircraft. Continental Express responds that with a total of five competitors on the subject route,<sup>66</sup> the other applicants’ large aircraft proposals would result in an oversupply of capacity in the market, leading to empty seats and wasted fuel.<sup>67</sup> Frontier argues that Continental Express has “not shown any leadership in offering low fares to stimulate market demand where, conversely, Frontier will work closely with the Los Angeles and Mexico communities to build the market through low fares.”<sup>68</sup> United similarly argues that Continental Express’ “high seat-cost” small aircraft will provide Continental Express with little incentive or ability to offer meaningful low-fare competition; and that Continental Express will not offer any meaningful

<sup>61</sup> United’s illustrative service proposal reads: daily service from April 2, 2006, through September 5, 2006, two-times weekly service from September 6, 2006, through October 3, 2006, resuming daily service from October 4, 2006, through “infinity.” United explains that the term “infinity” indicates a first year service proposal for calendar year 2006 only (through December 31, 2006). United states that the service it will operate in the second year will depend to some extent on the results of the first year of service. (Reply of United, at 11.)

<sup>62</sup> United states that it reserves the right to use other aircraft in its fleet depending upon market conditions (*see* Amendment and Supplement Information of United, at 3).

<sup>63</sup> Answer of ExpressJet (Continental Express), at 8.

<sup>64</sup> Continental Express reiterates that the Department’s focus in this proceeding should be on the primary local market, not connecting traffic but, nonetheless, offers certain winter and summer connecting schedules reflecting certain connecting services involving Honolulu, Kahului, Houston, New York/Newark, and Cleveland. (*See* Continental Express’ Amendment/Supplement to Application, CO-100, page 3 of 3; and Exhibit CO-113, page 1 of 1.)

<sup>65</sup> Continental Express notes repeatedly that it initially proposed daily service on the route, and that the other carriers did so only after seeing Continental Express’ proposal. (*See, i.e.*, Reply of ExpressJet (Continental Express), at 8.

<sup>66</sup> The five competitors are Aerocalifornia, Alaska, American, Mexicana, and the new incumbent selected in this proceeding. (Answer of ExpressJet (Continental Express), at 2.)

<sup>67</sup> Answer of ExpressJet (Continental Express), at 1 and 2.

<sup>68</sup> Answer of Frontier, at 7.

connecting services at Los Angeles.<sup>69</sup> Continental Express responds that, in light of the fact that both Frontier and United have reduced certain services and abandoned certain markets, Frontier and United are more likely than Continental Express to reduce Los Angeles-San Jose del Cabo service or abandon the route altogether.

**Delta** maintains that it is the only applicant to offer daily year-round mainline service on the Los Angeles-San Jose del Cabo route and that, as such, it will provide the most regular and comprehensive pattern of service for Los Angeles travelers, as well as the most capacity in this proceeding and, thus, would best satisfy the Department's objective to maximize public benefits. Delta states that its growing presence in the U.S.-Mexico market; its marketing and promotion of new transborder flights to leisure travelers; and its growth at Los Angeles (eight percent since 2002), make it a viable competitor against United, the carrier with the largest operations at Los Angeles. Delta further states that, because the Los Angeles-San Jose del Cabo market is predominantly local in nature, the Department should give little weight to a carrier's ability to offer flow traffic and, instead, give more weight to the applicant that best serves Los Angeles area passengers. Delta claims that its code-share arrangement with Aeromexico will enable Delta to provide additional transborder services and connecting flights to behind-gateway destinations served by Aeromexico in Mexico.

In response to Delta's application, both Continental Express and Frontier question the viability of Delta's proposal and Delta's commitment to serving the Los Angeles-San Jose del Cabo route. Delta responds that it has an excellent track record of satisfying its route case commitments, and "can be relied upon to implement an award of Los Angeles-San Jose del Cabo authority."<sup>70</sup> United argues that, while Delta is not currently an incumbent competitor in the Los Angeles-San Jose del Cabo market, Delta does compete for Los Angeles-San Jose del Cabo service via its code-share services on Aeromexico's Ontario-San Jose del Cabo flights. United asserts that Ontario airport is like Los Angeles, in that it is owned and operated by the City of Los Angeles and serves the eastern portion of the Los Angeles basin. United and Continental Express also argue that Aeromexico could, in the future, obtain designation from its government to serve the subject Los Angeles-San Jose del Cabo market, giving Delta an opportunity to introduce new code-share service on the route, as it has done in others.<sup>71</sup> Delta responds that code-share service is not a substitute for an applicant's direct service with its own aircraft, where a carrier can control its own inventory.<sup>72</sup>

**Frontier** maintains that it is the leading low-cost carrier (LCC) serving Mexico, and is the only LCC carrier applying for Los Angeles-San Jose del Cabo authority that will offer a new product and change the pricing regime on the route. Frontier claims that it would be the first carrier to offer low-fare service to Mexico from Los Angeles and that, by doing so, it will stimulate market growth as Frontier has done in its current markets,<sup>73</sup> meeting the Department's mandates and goals to place maximum reliance on competitive market forces and to encourage new entry and,

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<sup>69</sup> Reply of United, at 19.

<sup>70</sup> Reply of Delta, at 6 and 7.

<sup>71</sup> Reply of United, at 17.

<sup>72</sup> Reply of Delta, at 4.

<sup>73</sup> Frontier states that in most markets it currently serves to Mexico, Frontier was the first airline to seek scheduled service in that market. In this regard, Frontier cites service in the following U.S.-Mexico markets: Nashville/Kansas City/Salt Lake City-Cancun, Denver-Acapulco/Cancun/Cozumel/Mazatlan/Puerto Vallarta/San Jose del Cabo/Zihuatanejo/Ixtapa, and Kansas City-Puerto Vallarta, stating that, on seven of those routes, Frontier "inspired another carrier to apply for service." Frontier further maintains that it has "an unblemished record of lowering fares in all of its U.S.-Mexico markets," and, in every case, "the market has multiplied and fares have declined." (See Answer of Frontier, at 3.)

thus, “further expand U.S.-Mexico demand.”<sup>74</sup> Frontier states that it will not connect any traffic at Los Angeles with its proposed Los Angeles-San Jose del Cabo service because, unlike the incumbents and other carriers seeking the available subject authority, Frontier believes that the market will support its service and that demand will expand with the introduction of its low fares.<sup>75</sup> Finally, Frontier states that its service in Mexico has been growing since 2002, and that its presence was fortified by initiatives it took to obtain authority from the U.S. and Mexico in October 2005 to evacuate stranded passengers in hurricane-damaged areas of Mexico and return them to the United States.

In response to Frontier’s application, Continental Express questions the viability of Frontier’s “vastly increased” service proposal, questioning how Frontier will be able to operate daily service to San Jose del Cabo at Los Angeles, when it does not do so from its Denver hub. Frontier responds that Frontier was the first applicant to apply for authority to serve the Los Angeles-San Jose del Cabo route and that, upon further review of the market, became convinced that it could support a daily service on the route with the low fares it uses throughout its system. Frontier further states that the Los Angeles-San Jose del Cabo market is far less seasonal than Frontier’s existing Midwest-Mexico markets, and that it is eager to obtain the subject authority in order to maintain the daily year-round service proposed in this proceeding.<sup>76</sup>

Delta argues that Frontier’s daily service proposal is inferior to Delta’s daily service proposal, when measured against Delta’s offer of greater capacity on the route (Delta’s 150-seat B737-800 aircraft versus Frontier’s 132-seat A-319-111 aircraft).<sup>77</sup> Delta further argues that, while Frontier claims that it will offer low fares in the market, Delta’s larger aircraft will provide Delta with more inventory and stronger incentives to offer discounts.<sup>78</sup> Frontier responds that Delta should not receive another valuable award where it will ultimately fly minimal service or transfer the authority to one of its many commuter affiliates.<sup>79</sup> Frontier further responds that, unlike Delta, Frontier “will offer low fares on all flights.”<sup>80</sup>

United argues that Frontier claims to be the only low-fare carrier applying for this route, but that United’s “Ted” service offers aggressive and effective low-fare competition with Frontier and with other carriers, and “will bring the same competitive pricing benefits to passengers in the Los Angeles-San Jose del Cabo market as it has in other Mexican leisure markets.”<sup>81</sup> Frontier responds that “Ted” is more likely to offer low fares when it is competing with a genuine low-fare operator like Frontier, not against the current incumbents, American and Alaska.

United further argues that, like Delta, Frontier has been reducing its presence as a competitor at Los Angeles and that, without a hub to back it up, and in the face of four incumbent competitors,

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<sup>74</sup> Supplement Application of Frontier, at 4.

<sup>75</sup> Frontier cites a 75 percent growth rate in the Salt Lake City-Cancun market, allegedly spurred by Frontier’s entrance in the market. It further claims that its entrance in the Nashville-Cancun market resulted in a quadrupling of that market size, with a 22 percent reduction in fares. (Supplement Application of Frontier, at 2.)

<sup>76</sup> Reply of Frontier, at 5.

<sup>77</sup> Answer of Delta, at 3.

<sup>78</sup> *Id.*

<sup>79</sup> Frontier maintains that Delta was recently awarded Los Angeles-Cancun authority, but elected to serve the market with once-weekly flights; that Delta recently pulled out of the Los Angeles-Mexico City market after serving the route for only a few months; and that Delta recently sought to switch its mainline service on the Los Angeles-Guadalajara route to regional jet service with its commuter affiliate, ASA. (Reply of Frontier, at 3.)

<sup>80</sup> Reply of Frontier, at 3.

<sup>81</sup> Reply of United, at 18.

Frontier will be no more likely to sustain a daily service in the Los Angeles-San Jose del Cabo market than it has in other point-to-point Los Angeles markets.<sup>82</sup> Frontier responds that, in its experience, connecting opportunities will not fill planes – “low fares, on the other hand, will increase market demand.”<sup>83</sup> Frontier further states that it is the only applicant that has historically built market share by offering low fares to area travelers, and that neither United nor Delta has any such record.<sup>84</sup>

**United** states that it will operate a mix of peak and off-peak service, using mainline equipment for its off-peak service and its “Ted” product for peak service. United explains that its “Ted” product was developed specifically for leisure markets, such as this one, where its low-fare service has been well received by consumers. United maintains that, unlike the other applicants, United is the only applicant that will bring both new low-fare and network competition to the market, thus generating significantly more public benefits than any of the other applicants.<sup>85</sup> United states that, from its Los Angeles hub, it will not only serve the local Los Angeles-San Jose del Cabo market, but also passengers in 38 other cities with online, one-stop connecting service. United further states that it will provide a new service option to many of the largest U.S./Canada-San Jose del Cabo origin and destination markets,<sup>86</sup> the first one-stop online connecting service to San Jose del Cabo via Los Angeles from 12 cities, and the first online competing service via Los Angeles to the existing services of American and Alaska from 11 cities.<sup>87</sup> United also claims that it will offer code-share and other interline connections to numerous additional markets. Finally, United notes that its proposal is supported by the Board of Supervisors, County of Los Angeles; the California Chamber of Commerce; the Los Angeles Area Chamber of Commerce; and LA, Inc., The Convention and Visitors Bureau.<sup>88</sup>

In response to United’s application, Continental Express questions the viability of United’s proposal, stating that United’s current Los Angeles-Mexico resort service is “a far cry from the daily year-round service proposal United has made for the subject Los Angeles-San Jose del Cabo route.”<sup>89</sup> In response, United states that most carriers reduced services after September 11, 2001, restoring those services during the period 2002-2006. United claims that, in this regard, United continues to serve 54 markets at Los Angeles as compared to nine for Continental, even after Continental’s post-September 11 restoration of service.<sup>90</sup>

Continental Express argues that the Los Angeles-San Jose del Cabo market is already served by two airlines that provide connections at Los Angeles, and an award of authority to United would result in United competing with its own San Francisco hub (noting that the connections United offers in this proceeding mirror those it already offers at San Francisco), and “would jeopardize United’s existing services at San Francisco or its proposed daily year-round service at Los Angeles or both.”<sup>91</sup> Continental Express further argues that all of the top cities to San Jose del Cabo listed by United in this proceeding already have nonstop service, as well as convenient

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<sup>82</sup> Reply of United, at 18.

<sup>83</sup> Reply of Frontier, at 3.

<sup>84</sup> Reply of Frontier, at 7 and 8.

<sup>85</sup> Answer of United, at 3.

<sup>86</sup> Specifically, United states that its proposed service would offer one-stop online service to San Jose del Cabo from Vancouver, British Columbia, Canada (*see* Answer of United Airlines, Inc., Exhibit UA-ANS-3, page 1 of 1).

<sup>87</sup> *Id.*, at 13.

<sup>88</sup> Amendment and Supplemental Information of United, at 5.

<sup>89</sup> Reply of ExpressJet (Continental Express), at 5 and 6.

<sup>90</sup> Reply of United, at 20.

<sup>91</sup> Reply of ExpressJet (Continental Express), at 7.

online connecting service, on various airlines.<sup>92</sup> Frontier similarly argues that, while United claims certain connection benefits with its proposal, competition is not promoted by awarding the subject service to yet another carrier that focuses on connections on the route. United states that an award to United here would result in improved connections for passengers that, in turn, would more likely stimulate new traffic than divert traffic from little-used circuitous connections via San Francisco.<sup>93</sup>

Both Delta and Frontier have criticized United in this proceeding for offering an inferior, less-than-daily year-round service pattern, arguing that their respective proposals are superior here. In response, United asserts that its proposal for Los Angeles-San Jose del Cabo service has a brief seasonal adjustment and that this brief adjustment is not of decisional significance, given United's proposal of low-fare "Ted" service, its connections at Los Angeles, and its proven commitment to maintaining service at its Los Angeles hub.<sup>94</sup>

#### Tentative Decision for Primary Award

We have carefully examined the applicant proposals and the responsive pleadings in the *Los Angeles-San Jose del Cabo Case* and have tentatively decided that the public interest is best served by (1) selecting Frontier for primary exemption authority to provide foreign scheduled air transportation of persons, property, and mail on the Los Angeles-San Jose del Cabo route; and (2) selecting Delta for back-up exemption authority on the route.<sup>95 96</sup>

Based on our review of the proposals and the issues raised, we have tentatively determined that a selection of Frontier, over the proposals of the other applicants, as the primary carrier for Los Angeles-San Jose del Cabo service best serves the public interest here, and will optimize use of these important new bilateral rights. In this regard, we tentatively find that Frontier's proposal will provide for consistent daily year-round service, introducing new competition for the incumbent carriers and providing passengers and shippers with more service options than that of any of the other applicants in this case, and will provide important new market structure benefits.<sup>97</sup>

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<sup>92</sup> Reply of ExpressJet (Continental Express), at 6.

<sup>93</sup> Reply of United, at 20.

<sup>94</sup> Reply of United, at 17.

<sup>95</sup> Based on officially noticeable data, we tentatively conclude that Frontier and Delta are qualified to provide the services proposed. Frontier has been found fit to provide scheduled interstate and overseas air transportation of persons, property, and mail (See Order 98-7-6, issued July 8, 1998), and holds exemption authority to provide scheduled combination services between various points in the United States and Mexico. As stated earlier, Delta has been found fit to provide foreign scheduled air transportation of persons, property, and mail (*see* Order 2006-1-1, issued January 3, 2006, which issued blanket route integration certificate authority), and holds exemption authority to provide scheduled combination services in various U.S.-Mexico city-pair markets. No information has come to our attention that would lead us to question the qualifications of Frontier or Delta to conduct the proposed operations at issue here.

<sup>96</sup> We tentatively find that our action here would not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined by section 313.4(a)(1) of the Department's regulations. Further, should Delta's backup authority be activated, we tentatively find that such action would not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975.

<sup>97</sup> We note that Frontier states that it will offer low-fare service on the route and, in this way, expand the Los Angeles-San Jose del Cabo market. United has also indicated that it would offer low-fare service on the route with its "Ted" product. Delta has argued that pricing will be dictated by supply and demand and, therefore, its offer of more capacity on the route is fare-significant. As stated in the *New York/Newark-Cancun Case*, above, we recognize the benefits of low-fare service on international routes

In reaching this tentative decision, we were sensitive to the services being provided by incumbents and to the competitive challenge they would represent. The officially noticeable T-100 data for the period January 2005 through October 2005 show that American offered anywhere from double-daily to over three-times daily service on the route, using aircraft with 130 seats or more, reflecting average load factors of over 75 percent; Alaska offered anywhere from four-times daily to over six-times daily service on the route, using aircraft with over 140 seats in the beginning of the year, increasing to 170 plus seats in July, also reflecting average load factors of over 75 percent; Aerocalifornia offered anywhere from double-daily (with the exception of September and October, where it offered slightly less than double-daily) to over three-times daily service on the route, using aircraft with 115 seats or more, reflecting average load factors of nearly 75 percent; and Mexicana offered consistent double-daily service on the route, using aircraft with 150 seats, reflecting average load factors of 64 percent. In light of the robust Los Angeles-San Jose del Cabo market, we tentatively conclude that Delta and Frontier are the only applicants that offer the consistent, daily year-round service with similarly-sized aircraft that would effectively compete with the strong incumbent services on the important, large Los Angeles-San Jose del Cabo route, whereas the remaining applicants either propose service with significantly smaller aircraft or offer a less consistent service proposal with a mix of peak and off-peak service that would not as effectively compete with the established incumbent services on the route.

As between Delta and Frontier, however, we tentatively decide that, on balance, Frontier's proposal is superior to the proposal of Delta, and will offer the most public benefits in this case. While we recognize that Delta would offer slightly larger aircraft on the route with its proposed 150-seat aircraft, versus Frontier's proposed 132-seat aircraft, we tentatively find that the capacity advantages that Delta's proposal would provide are outweighed by the significant and superior market structure benefits that Frontier's proposal would provide. In this regard, we note that Frontier is the only applicant for the route that does not currently provide any direct-carrier services to Mexico from either Los Angeles or the West Coast.<sup>98</sup> In fact, Frontier is currently authorized to provide direct-carrier service to certain points in Mexico only from Austin, Denver, Indianapolis, Kansas City, Nashville, Salt Lake City, and St. Louis. In consideration of Frontier's consistent daily, year-round proposal with 132-seat aircraft, and in light of the fact that all of the other applicants in this proceeding already provide direct-carrier services to Mexico from Los Angeles or elsewhere on the West Coast, we tentatively conclude that Frontier's service proposal will provide for important and superior new-entrant competition and market structure benefits that are pivotal in this case, and would not be available were we to select any of the other applicants here.

With regard to Continental Express and United in this proceeding, we considered (1) Continental Express' argument that, with four incumbent carriers already providing service on the route, the large-aircraft proposals of the opposing applicants cannot be sustained, and (2) United's argument that its "brief seasonal adjustment" is not decisional, given United's proposal of low-fare "Ted" service and its connection benefits in the Los Angeles-San Jose del Cabo market. However, our own analysis of service on the route for calendar year 2005 shows that the Los Angeles-San Jose del Cabo market enjoys a large volume of traffic, with strong

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and believe that such service could potentially expand a given market. However, given our other findings discussed here, we do not believe it should be determinative in this case.

<sup>98</sup> At Los Angeles, alone, we note that Delta is currently authorized to provide direct-carrier service to Cancun, Guadalajara, and Ixtapa/Zihuatanejo; Continental Express is currently authorized to provide direct-carrier service to Guadalajara, Aguascalientes, Durango, Leon, Morelia, and Queretaro; and United is currently authorized to provide direct-carrier service to Cancun, Ixtapa/Zihuatanejo, and Mexico City.

incumbent services. In addition, a comparison of services offered in April 2005 to those offered in April 2006, show that services for most of the incumbents has been maintained at the previous year's level. Indeed, American doubled the flights it offered in April 2006, compared to those it offered in April 2005. Under these circumstances, we tentatively conclude that the evidence presented here does not support a selection of either small aircraft services or seasonal peak/off-peak services in this proceeding, in the face of competing consistent daily, year-round large-aircraft proposals in this significant U.S.-Mexico market. Thus, we tentatively conclude that it would not be in the public interest to limit the benefits to be derived from this new important limited-entry service opportunity by selecting either Continental Express or United for the route.<sup>99</sup>

### Back-Up Award

Because the Los Angeles-San Jose del Cabo designation opportunity is a valuable and important right, we find that it is in the public interest to have a back-up carrier in place should Frontier not institute service or if its authority in the market becomes dormant (see Terms, Conditions, and Limitations section, below). We have decided to select Delta as back up to Frontier here. Delta would bring consistent daily, year-round service to the market with large aircraft, providing meaningful service options for the traveling and shipping public in the strong Los Angeles-San Jose del Cabo market, should Frontier fail to use the primary authority awarded to it. In this regard, we tentatively determine that Delta's proposal is superior to both the small aircraft (50-seat) service offered by Continental Express and the peak (daily) and off-peak (only twice-weekly) service offered by United in this proceeding.

Delta has stated that it would accept an award of back-up authority if it was not awarded primary authority on the route, and it stated that it would accept the conditions of back-up exemption authority as specified in Order 2005-12-18. In making this decision, we have tentatively determined that Delta presents the second best proposal in this proceeding and, as an experienced operator in various U.S.-Mexico city-pair markets, would be in a position to implement service quickly on the Los Angeles-San Jose del Cabo route should Frontier not inaugurate service or discontinue service during the first year of operations.

### Terms, Conditions, and Limitations

We propose to issue two-year exemption authority to (1) Delta for foreign scheduled combination service in the Los Angeles-Puerto Vallarta market; (2) JetBlue for foreign scheduled combination service in the New York/Newark-Cancun market; and (3) Frontier for foreign scheduled combination service in the Los Angeles-San Jose del Cabo market. In addition, we propose to issue contingent exemption authority for one-year's effectiveness for back-up foreign scheduled combination service to (a) United for foreign scheduled combination service in the Los Angeles-Puerto Vallarta market; (b) Delta for foreign scheduled combination service in the New York/Newark-Cancun market; and (c) Delta for foreign scheduled combination service in the Los Angeles-San Jose del Cabo market. Consistent with our policy regarding U.S.-Mexico authorizations, we will issue the subject primary and back-up U.S.-

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<sup>99</sup> Continental Express has urged that, if we do not select Continental Express for the Los Angeles-San Jose del Cabo award, we should impose certain conditions on the subject authority to require service without interruption (subject only to a 90-day startup period), and without the normal allowance for dormancies of up to 90 days once flights have been instituted. We believe that our current dormancy conditions are adequate for ensuring that unused authority is available promptly to another interested carrier. No information has come to our attention that would lead us to conclude that these conditions should be altered.

Mexico authority on a city-pair basis, imposing the standard 90-day dormancy condition and dormancy notice requirements for U.S.-Mexico authority set forth in condition 7 of Appendix A of Order 88-10-2. We will also impose a startup condition for the primary awards.<sup>100</sup> We note that the carriers that would receive primary awards in the captioned cases have indicated that they can commence the respective services within 90 days of an award here. To allow sufficient time for the carriers to inaugurate service, and consistent with our standard practice, we have tentatively decided to require institution of service within 90 days after the service date of a final order in these matters.

**ACCORDINGLY,**

1. We tentatively select Delta Air Lines, Inc., in Docket OST-2005-23497, for primary authority to provide foreign scheduled air transportation of persons, property, and mail between Los Angeles, California, and Puerto Vallarta, Mexico;
2. We tentatively select JetBlue Airways Corporation, in Docket OST-2005-23494, for primary authority to provide foreign scheduled air transportation of persons, property, and mail between New York, New York, and Cancun, Mexico;
3. We tentatively select Frontier Airlines, Inc., in Docket OST-2005-23498, for primary authority to provide foreign scheduled air transportation of persons, property, and mail between Los Angeles, California, and San Jose del Cabo, Mexico;
4. We tentatively select United Air Lines, Inc., in Docket OST-2005-23497, for back-up authority to provide foreign scheduled air transportation of persons, property, and mail between Los Angeles, California, and Puerto Vallarta, Mexico;
5. We tentatively select Delta Air Lines, Inc., in Docket OST-2005-23494, for back-up authority to provide foreign scheduled air transportation of persons, property, and mail between New York, New York, and Cancun, Mexico;
6. We tentatively select Delta Air Lines, Inc., in Docket OST-2005-23498, for back-up authority to provide foreign scheduled air transportation of persons, property, and mail between Los Angeles, California, and San Jose del Cabo, Mexico;
7. We grant the request of America West Airlines, Inc. d/b/a US Airways dated January 17, 2006, to withdraw its application for foreign scheduled air transportation of persons, property, and mail between Los Angeles, California, and San Jose del Cabo, Mexico, in Docket OST-2005-23498;
8. We direct any interested parties having objections to our tentative decisions set forth in this order and in ordering paragraphs 1 through 6, above, to file their objections, in the respective docket, with the Department's Docket Section, U.S. Department of Transportation, 400 Seventh Street,

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<sup>100</sup> We note that the dormancy provisions are written such that carriers must advise the Department **as soon as** the decision not to inaugurate service or to discontinue service is made, but in no case later than the 91<sup>st</sup> day of dormancy (emphasis added). Because these are valuable limited-entry route rights, where carrier interest has been strong, we would expect carriers to notify us **immediately** of any decisions not to inaugurate or not to resume service in the subject markets. Notices should be filed in the form of a letter addressed to the U.S. Department of Transportation, U.S. Air Carrier Licensing Division, X-44, 400 Seventh Street, SW, Washington, DC 20590, and must identify the dormant city-pair market, and the date the market became (or will become) dormant.

SW, Washington, DC 20590, no later than 10 calendar days from the date of service of this order; answers thereto shall be filed no later than 7 calendar days thereafter;<sup>101</sup>

9. If timely and properly supported objections are filed, we will afford full consideration to the matter or issues raised by the objections before we take further action;<sup>102</sup> and
10. We will serve this order on the parties to the captioned dockets of this order; the Ambassador of Mexico in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration.

By:

**Michael W. Reynolds**  
Acting Assistant Secretary  
for Aviation and International Affairs

(SEAL)

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<sup>101</sup> The original filing should be on 8 1/2" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, filers are encouraged to use the electronic filing submission capability available through the Dockets/DMS Internet site (<http://dms.dot.gov>), by following the instructions at the web site.

<sup>102</sup> Because we are providing for the filing of objections to our tentative decision, we will not entertain petitions for reconsideration of this order.