

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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LOS ANGELES-PUERTO VALLARTA  
COMBINATION SERVICE PROCEEDING

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) Docket OST-2005-23497  
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**SUR-REPLY OF DELTA AIR LINES, INC. AND  
MOTION FOR LEAVE TO FILE SUR-REPLY TO  
UNAUTHORIZED REPLY OF UNITED AIR LINES, INC.**

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July 18, 2006

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Not satisfied with filing an Objection, then an Answer to its own Objection and then an Answer to Delta's Objection, United somehow felt compelled to file an unauthorized reply to Delta's Answer. United's latest missive should be rejected because it is not authorized by the Show Cause Order and because it is entirely repetitious and adds nothing new to the record in this proceeding. To the extent the Department nonetheless considers United's unauthorized reply, Delta requests leave to file this brief Sur-Reply.

United's submission does not undermine the underlying rationale for the Department's award of Los Angeles – Puerto Vallarta authority to Delta and, indeed, it confirms the appropriateness of the tentative award.<sup>1</sup>

First, United confirms the disparity between its LAX-PVR proposal and Delta's – specifically, that Delta would provide daily, year-round service as

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<sup>1</sup> Delta requests leave to file this unauthorized sur-reply to United's unauthorized submission to address issues raised therein and provide a more balanced record upon which to evaluate United's Objections.

compared to United's substantial reduction in capacity during the off-peak season by operating only two weekly flights. (United Unauthorized Reply, at 2-3.) There is no dispute on this point, which represents a fundamental underpinning for the Department's award.

Second, United's continuing attempt to raise questions about the sustainability of Delta's proposal once again misses the mark. In its latest submission, United drops its fallacious "new entrant" argument because, as Delta pointed out, there is no Aeromexico nonstop service, much less Delta codeshare service, in the LAX-PVR market. Instead, it erroneously argues that Aeromexico's departure from this market means Delta cannot sustain such service without a hub at Los Angeles. (United Unauthorized Reply, at 2.)<sup>2</sup>

To the contrary, Aeromexico's departure supports Delta's proposal because it exacerbates the void in the LAX-PVR market. Delta's Answer demonstrated that LAX-PVR is a large O&D market. Moreover, the Department evaluated the sustainability of Delta's proposal in the Show Cause Order, determining that Aeromexico's prior service *and* Alaska Airlines' service (including twice-daily service for most of the year) – provided "consistently" during 2005 – demonstrated the size and robustness of the LAX-PVR market. (DOT Order 2006-6-25, at 5.) Delta seeks (i) to fill the void being left by Aeromexico and (ii) to provide daily service for the large number of passengers

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<sup>2</sup> Had United simply checked the current OAG before its Objections, it would have avoided repeating such an inaccurate statement.

in the LAX-PVR market. Nothing in United's latest unauthorized salvo undermines the year-round sustainability of Delta's proposed service.

Third, United unsuccessfully tries to distort the implications of DOT precedent cited by Delta which shows the inappropriateness of the condition United would like imposed on Delta's award. (United Unauthorized Reply, at 3.) United argues that the restrictions placed on the *frequencies* in the *1997 U.S.-Brazil Combination Case* are analogous to, and govern, the situation here. (*Id.*) United's argument is wrong.

There are no U.S.-Mexico frequencies at issue in this proceeding. The sole issue here is the award of underlying authority, not frequencies. DOT's rejection in Order 97-4-3 of a condition that would make the back-up authority effective if the primary carrier "does not provide the full pattern of nonstop service" is clear, on point, and persuasive:<sup>3</sup>

However, we also recognize that airlines must adapt their services to market conditions, and in these circumstances we are not persuaded that Continental's authority should be so restricted. It has been our longstanding policy to rely on the temporary and conditional nature of section 41102 awards and to afford carriers the necessary flexibility to tailor their services to the changing demands of the marketplace, rather than imposing specific service restrictions. Should subsequent circumstances warrant reexamination of this issue, it is always in our discretion to do so.

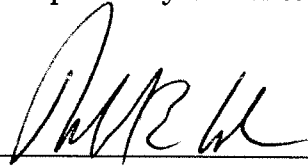
(DOT Order 97-4-13, at 10.)

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<sup>3</sup> As the back-up carrier did in the *1997 U.S.-Brazil* case, United asks here for a condition requiring Delta to maintain "the continuous operation of that level of service." (United Objections, at 5-6.)

WHEREFORE, Delta respectfully requests that the Department reject United's Objections and unauthorized Reply and finalize the award to Delta as soon as possible so that Delta can begin preparation for a timely start-up of this new service.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Sur-Reply of Delta Air Lines, Inc. and Motion for Leave to File Sur-Reply to Unauthorized Reply of United Air Lines, Inc. has been served this 18th day of July, 2006, upon each of the following e-mail addressees:

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