



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 8<sup>th</sup> day of February, 2007

Served: February 8, 2007

In the Matter of

**2007 U.S.-CHINA COMBINATION AND  
ALL-CARGO FREQUENCY  
ALLOCATION PROCEEDING**

**Docket OST-2006-25275**

**FINAL ORDER**

**Summary**

By this Order, we make final our tentative findings and conclusions set forth in Order 2007-1-4, and allocate United Air Lines, Inc. (United) seven weekly combination frequencies for its proposed Washington (Dulles)-Beijing combination services in the U.S.-China market. Under the protocol to the U.S.-China agreement, these rights become available on March 25, 2007.

**Background**

On July 24, 2004, representatives of the United States and the People's Republic of China (PRC) signed a protocol to amend the U.S.-PRC aviation agreement, greatly expanding opportunities in the U.S.-China market through 2010. This proceeding was established to allocate the following combination and all-cargo frequencies available for use beginning on March 25, 2007: (1) seven combination frequencies to serve points in China Zone 1 or China Zone 2;<sup>1</sup> (2) 15 all-cargo frequencies to serve points in China Zone 1 or China Zone 2; and (3) seven combination or all-cargo frequencies specifically limited to serving points in China Zone 2. Since the amended agreement does not provide for a new U.S. carrier designation until 2008, only incumbent U.S. carriers that are currently designated

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<sup>1</sup> As defined by the amended agreement, China Zone 1 consists of Beijing, Shanghai, and Guangzhou. China Zone 2 consists of Anhui, Fujian, Guangdong (except Guangzhou), Hebei, Henan, Hubei, Hunan, Jiangsu, Jiangxi, Shandong, Shanxi, Tianjin, and Zhejiang.

to operate combination and/or all-cargo services to China were eligible to apply for these additional frequencies.<sup>2</sup>

On July 10, 2006, the Department issued Order 2006-7-9, instituting the 2007 U.S.-China Combination and All-Cargo Frequency Allocation Proceeding, and inviting applications from incumbent combination and all-cargo carriers for the frequencies at issue.

As we noted in our tentative decision, the incumbent all-cargo carriers applied for only 12 of the 15 all-cargo frequencies that were available in this proceeding. Consequently, by Notice of Action Taken dated August 24, 2006, we awarded four all-cargo frequencies each to Federal Express Corporation, Polar Air Cargo, Inc., and Northwest, for use beginning March 25, 2007.<sup>3</sup> No applications were filed for the allocation of the seven additional frequencies for combination or all-cargo services specifically limited to serving points in China Zone 2. Therefore, the remainder of this proceeding addressed the allocation of seven available combination frequencies for U.S. carriers to serve points in either China Zone 1 or China Zone 2.

Continental, Northwest, and United filed applications for the seven available combination frequencies to expand their services in the U.S.-China market.<sup>4</sup> Each carrier requested seven frequencies to institute daily nonstop service. Continental would serve the Newark-Shanghai market.<sup>5</sup> Northwest would serve the Detroit-Shanghai market. United would serve the Washington, D.C. (Dulles)-Beijing market.

By Order 2007-1-4, we tentatively decided to allocate United seven weekly combination frequencies for its proposed Washington (Dulles)-Beijing combination services in the U.S.-China market, effective March 25, 2007. We allowed 14 calendar days for the filing of objections to our tentative decision and seven days for responses to objections.

Continental and Northwest both filed objections to our tentative decision in this case. The New Jersey Parties and the Port Authority of New York and New Jersey filed answers in support of Continental's objection. Continental filed an answer to Northwest's objection. United, the Washington Airports Task Force, and the Metropolitan Washington Airports Authority each filed answers to the objections of

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<sup>2</sup> The incumbent combination carriers are Northwest Airlines, Inc. (Northwest), United Air Lines, Inc., Continental Airlines, Inc. (Continental), and American Airlines, Inc. (American). The incumbent all-cargo carriers are Northwest, Federal Express Corporation, United Parcel Service Co., and Polar Air Cargo, Inc.

<sup>3</sup> By Notice of Action Taken dated January 25, 2007, in Docket OST-27069, we granted a separate and unopposed request of Northwest for allocation of one of the three remaining unallocated frequencies.

<sup>4</sup> American also filed an application for seven frequencies to provide daily nonstop service in the Dallas/Ft. Worth-Beijing market. On December 8, 2006, American filed a motion for leave to amend its Dallas/Ft. Worth-Beijing service application and to reopen the record or, in the alternative, to withdraw from the proceeding. By Order 2007-1-4, issued January 9, 2007, we denied American's motion to amend and granted its alternative request for leave to withdraw its original application in this proceeding.

<sup>5</sup> Continental's proposal will offer single flight number service to Cleveland passengers through Newark to Shanghai. It proposes to operate Cleveland-Newark with B-737 aircraft and Newark-Shanghai with B-777 aircraft.

Continental and Northwest. On February 7, 2007, Northwest filed a motion for leave to file and supplement to objections of Northwest Airlines, Inc.<sup>6</sup>

### **Summary of Responsive Pleadings**

**Continental** objects to our tentative decision and urges the Department to award Continental seven frequencies to institute the first U.S.-flag daily nonstop New York/Newark-Shanghai service. Continental disagrees with the Department's tentative conclusion that the need for the first-ever nonstop service to China from the Washington, D.C. metro area presents a more urgent need and will result in greater overall public benefits than Continental's Newark-Shanghai service.<sup>7</sup> It notes that United already provides one-stop service from Washington, D.C. to China via Chicago, and states that the Department ignored that Continental would serve a larger local market, offer an entire new network to Shanghai, and compete with American, United, and Northwest networks for Shanghai passengers. Continental further contends that United should not be awarded additional frequencies due to United's current domination of U.S.-China service and that an award to United would run counter to the Department's long-standing pro-competition policies in carrier selection cases.<sup>8</sup> In this connection, Continental cites the *1996 U.S.-Lima Combination Service Proceeding*, where the Department selected Continental over American in order to add competition to a limited entry market that was dominated by American.<sup>9</sup> Continental also asserts that the Department ignored United's failure to respond fully or in timely fashion to the Department's evidence request and interrogatories. Finally, Continental objects to the Department's failure to award Continental backup authority for the frequencies in this proceeding. In its answer, Continental argues that the Department has created a new decisional standard that stresses the value of incremental capacity and code-share services beyond foreign gateways.

**The New Jersey Parties and the Port Authority of New York and New Jersey** concur with Continental's position and urge the Department to award Continental seven frequencies to bring the first-ever nonstop Shanghai service to New York/New Jersey. Both civic parties emphasize the community of interest benefits of selecting Continental and assert that the Department's tentative selection of United's Washington-Beijing proposal would not enhance market structure benefits or competition in the U.S.-China market.

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<sup>6</sup> We have decided to deny Northwest's motion with its attached late-filed supplemental reply. As we stated in the instituting order and reiterated in denying American's motion to amend its service proposal, we established and have continued to adhere to a procedural schedule expressly designed to generate a decision enabling the selected carrier to commence scheduled combination services as close to the March 25, 2007 availability date as possible. We declined to reopen the record for American in light of its changed circumstances, and now, even closer to the start-up date for service and with even less time for the selected carrier to secure foreign government approvals, airport slots, etc., we see no persuasive reason to act differently with respect to Northwest's motion in this proceeding.

<sup>7</sup> Objections of Continental, at 8.

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> *See* Order 96-6-53, in Docket OST-1996-1037.

**Northwest** objects to the Department's tentative decision and asks the Department to award the frequencies to Northwest for its nonstop Detroit-Shanghai service. Northwest contends that its proposal would provide new nonstop-to-nonstop service to 108 cities and maintains that the Department's tentative decision erroneously prioritizes the needs of Washington, D.C. local passengers over the U.S. cities that would receive new service via Detroit.<sup>10</sup> It argues that United already enjoys unique and unprecedented service coverage of the entire U.S.-China market from East and West coast hubs, and that, apart from the narrowly limited nonstop benefits on a single city-pair route, United's Washington-Beijing services offer nothing new to the public. Northwest takes exception to the Department's tentative conclusion that Northwest's election to provide its China service via Tokyo results in the U.S. public receiving less than optimal benefit from Northwest's existing allocation of China frequencies. Northwest outlines the basis for its continuing to offer Detroit-China service via Tokyo while now wanting to add new nonstop Detroit-Shanghai service. Northwest also states that the Department's tentative decision erroneously prioritizes the needs of government over private industry and notes the significance of the communities of interest between Detroit's extensive catchment area and Shanghai.<sup>11</sup> Finally, Northwest argues that the Department's tentative decision overlooks the fact that the public support for its proposal outpaced that of United.

**Continental** filed an answer to Northwest's objection, agreeing with Northwest to the extent that United should not be awarded additional frequencies for its proposed Washington-Beijing service and that Shanghai, not Beijing, should receive new service.<sup>12</sup>

**United's** answer reiterates that its nonstop Washington, D.C. (Dulles)-Beijing proposal offers the greatest public interest benefits in this proceeding. United notes that the Department properly determined in its tentative decision that the Washington metro area is the largest U.S. gateway without any nonstop service to China; that United's Washington, D.C. (Dulles) service would create the first mid-Atlantic gateway to China; that only United would offer the benefits of providing beyond-Beijing services through its existing code-share arrangements; that United would create the greatest capacity in this proceeding; and that United's proposal uniquely promotes the clear community of interest between the two gateway cities.<sup>13</sup> Based on those benefits, United states that the Department properly concluded that the attractive attributes of the competing proposals are outweighed by the superior service benefits of United's proposal and the benefits of the new Washington, D.C. gateway. Contrary to Continental's claim that an award to United would contradict decades of precedent, United notes that the Department's tentative findings here are consistent with past Department practice in weighing factors differently in each case.<sup>14</sup> United argues that the objections of Continental and Northwest offer nothing new in support of their claims that their proposals offer greater public benefits than does United's. Finally, United requests that the Department adopt a start-up date of March 28, 2007, for United's Washington-Beijing services in the final order.

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<sup>10</sup> Objections of Northwest, at 2.

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> Answer of Continental, at 1.

<sup>13</sup> Answer of United, at 3-4.

<sup>14</sup> *Id.* at 8.

**The Washington Airports Task Force** (Task Force) and the **Metropolitan Washington Airports Authority** (MWAA) filed answers in support of the tentative selection of United. Both state that the objections of Continental and Northwest do not raise any relevant facts or arguments that were not previously made and fully taken into account by the Department. The Task Force and MWAA note that, among other things, the Washington, D.C. metro area is the largest gateway without any nonstop service to China.

### **Decision**

We have decided to make final our tentative decision to allocate United seven weekly combination frequencies for its proposed Washington (Dulles)-Beijing combination services in the U.S.-China market.

In our tentative decision, Order 2007-1-4, we outlined the steps that we have taken to date to address shortfalls in the U.S.-China air services market as additional rights became available under the 2004 protocol. In 2005, we selected Continental to introduce Newark-Beijing service to address the biggest service deficiency in the U.S.-China market at that time -- the lack of any U.S. carrier nonstop service to China from New York, which represented the largest U.S.-China Origin & Destination (O&D) market in that proceeding. In 2006, we selected American's proposal for Chicago-Shanghai service, which addressed a competitive deficit in the U.S.-China market by enhancing both inter-gateway competition and intra-gateway competition with United's Chicago-Shanghai service.

We further noted that the record in this proceeding highlights the growing inadequacy of U.S.-China air services, with demand far exceeding supply under the current restrictive bilateral environment. Though China is the second largest trading partner of the United States, a combined total, on average, of only eleven daily nonstop flights are offered between the two countries. This shortfall of available nonstop service options emphasizes the importance of injecting as much nonstop capacity into the U.S.-China market as possible when awarding these frequencies.

Against that background, we tentatively concluded that, on balance, the selection of United's Washington, D.C. (Dulles)-Beijing proposal would provide the greatest combination of public interest benefits in this case. The Washington, D.C. metro area is the largest gateway in this proceeding without any nonstop service (U.S. or foreign carrier) to China.<sup>15</sup> We tentatively found that the only gateways with more China O&D traffic than the Washington, D.C. metro area -- San Francisco, Chicago, and New York/Newark -- already have more than one nonstop service option to China.<sup>16</sup> We also tentatively found that the selection of United would fill the critical service gap between the Washington, D.C. metro area and China, establish a new mid-Atlantic gateway to China from Dulles, address the increasing demand of traffic in the restrictive U.S.-China market by providing the most capacity proposed in this proceeding with B-747 aircraft,

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<sup>15</sup> Order 2007-1-4, at 16-17.

<sup>16</sup> Department O&D data for 12 months ended March 2006.

and address a large service deficiency in the U.S.-China market, that is, the absence of any nonstop service between the Washington, D.C. metro area and China.<sup>17</sup> We further noted that another factor in the balance in this case is that United is the only applicant in this proceeding with a Chinese code-share partner, and its code-share arrangement with Air China enables it to offer service to 16 Chinese cities beyond Beijing, further maximizing service benefits in this highly restricted market.

After carefully reviewing all of the comments and objections filed in response to Order 2007-1-4, we have decided to make final our tentative decision allocating United seven weekly combination frequencies for its proposed Washington, D.C. (Dulles)-Beijing combination services. We have determined that no party has brought to our attention any new argument that warrants a different conclusion.

In reaching our tentative decision that the service proposal of United offers the greatest public benefits in the context of this proceeding, we acknowledged that the proposals of the other applicants also offered attractive attributes. However, on balance, we tentatively found that United's proposal is superior in the particular circumstances of this case.

Continental disagrees with the Department's conclusion that, given existing New York/Newark-China services, the need for the first-ever nonstop service to China from the Washington, D.C. metro area is a more urgent need and will result in greater overall public benefits than Continental's Newark-Shanghai service. However, we believe that, while United would provide the Washington, D.C. metro area with its first-ever nonstop service to China, the New York/New Jersey area already enjoys services provided by three carriers (including the U.S.-flag carrier Continental) currently providing a total of 16 weekly nonstop flights in the New York/Newark-China market, 14 to Beijing and two to Shanghai. Continental argues that convenient one-stop service already exists between Washington, D.C., and Beijing over other U.S. gateways. We acknowledge that one-stop online Washington-Beijing service is available, but note that the same applies in the New York/Newark-Shanghai market.<sup>18</sup> While Continental's proposal to establish the first U.S. carrier nonstop service between New York/Newark and Shanghai indeed has positive factors, we tentatively concluded, and reaffirm here, that on balance the lack of any nonstop service whatsoever to China from the largest O&D market lacking such service -- the Washington, D.C. metro area -- clearly presents a more urgent need in the current U.S.-China market.

Further, we are not persuaded by Continental's argument that because of United's position as the carrier having the largest number of frequencies in the market, United's selection is counter to the Department's pro-competition policy. We disagree. As stated above, we selected American in 2006 based on the record in that case to address a competitive deficit in those circumstances. While considering the number of frequencies and the current service of each applicant, and in analyzing the record before us, we

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<sup>17</sup> Order 2007-1-4, at 17.

<sup>18</sup> For example, American, United, and a number of foreign-flag carriers offer nonstop-to-nonstop connecting services between New York/Newark and Shanghai.

weighed the various carrier selection factors in light of the particular circumstances presented in this specific case. We tentatively concluded that the public interest benefits of United's service proposal -- gaining the first-ever nonstop service to China from a new gateway representing the largest O&D market in this proceeding, coupled with the largest capacity to maximize the benefits of that new service -- were compelling. Nothing asserted by Continental in its objections would now persuade us to change that analysis and conclusion.

In this regard, we find Continental's attempted reliance on the *1996 U.S.-Lima Combination Service Proceeding*<sup>19</sup> to be misplaced. The Department reached its decision in that case favoring Continental over American on competition grounds only after first concluding that the Continental and American proposals would provide comparable service benefits.<sup>20</sup> In the present case, however, it is precisely because of the distinct and compelling advantages of United's service proposal in the circumstances presented that we have, on balance, decided in favor its selection.

Regarding Continental's assertions as to United's evidentiary non-compliance, we have concluded that none of the alleged evidentiary shortcomings had any determinative impact on our tentative decision; therefore, we see no prejudice to the interests of any of the parties.

Continental objects to the absence of a back-up award and urges that it be selected for such an award.<sup>21</sup> As reflected by the absence of a tentative backup selection in the show-cause order, we have decided not to award backup authority in this case. Our award here is directly tied to the specific public interest concerns needing to be addressed in the circumstances presented, taking into account the relative merits of the specific proposals before us in terms of addressing those concerns. Against this background, there is no indication that United, as an established carrier in the China market, will not begin its service. If the frequencies awarded to United revert to the Department, we believe we can take timely action to select another U.S. carrier.

We do not agree with Northwest's argument that our tentative decision erroneously prioritizes the needs of local Washington, D.C., passengers over the U.S. cities that would have received new service via Detroit. While Northwest's proposed service would offer convenient connections through Detroit from a substantial behind-gateway catchment area, United's proposal immediately rectifies the most critical shortfall in the current U.S.-China market -- the lack of any nonstop service to China from the largest U.S. market without such service -- the Washington, D.C. metro area. We found that United's Washington, D.C. (Dulles)-Beijing proposal fills that service gap with significant capacity and provides other valuable service benefits, including the added value of beyond gateway code-share services in China, which, in sum, clearly outweigh the potential attributes of Northwest's Detroit-Shanghai nonstop service.

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<sup>19</sup> Order 96-6-53.

<sup>20</sup> Order 96-6-53 at 2 and 6.

<sup>21</sup> Objections of Continental, at 11.

In striking that decisional balance, we recognized that because Northwest operates all of its China services via Tokyo, the U.S. public receives fewer nonstop choices to China than might otherwise be provided. Therefore, we tentatively found that an award of additional frequencies to Northwest would not be the most efficient use of these valuable and limited frequencies when compared to United's proposal and in light of the constraints on capacity that limit travel options for U.S. passengers to China, and Northwest has not introduced any new argument to convince us otherwise. We find no merit to Northwest's assertion that we are asking it to alter services at Detroit whereas United could similarly alter its existing China services and thereby begin nonstop Washington service without the award of additional frequencies. The situations are not analogous. Northwest has, and has had, the authority to provide nonstop service from the United States to China and has chosen not to do so. United, on the other hand, has used all of its nonstop U.S.-China authority to provide U.S.-China nonstop service. Passengers are benefiting from that service, and we would not see it as advancing the public interest for United to deprive them of those benefits when we have an alternative available that would address a critical additional service need in the U.S.-China market.

Finally, Northwest asserts that the Department's tentative decision over-prioritizes the needs of government travelers over those of the private sector. To the contrary, the record demonstrates that United's Washington, D.C. (Dulles)-Beijing service would enhance travel options for a significant number of private sector interests in the Washington, D.C. area and throughout the mid-Atlantic region in addition to any government travelers that may benefit from United's service.<sup>22</sup>

Taking all of the above considerations of this particular case into account, we have decided to make final our tentative decision that, on balance, an award to United of the seven combination frequencies available in 2007 would best serve the public interest.

### **Economic Authority**

We grant United's request to integrate Beijing on its Certificate of Public Convenience and Necessity for Route 246 with its authority to serve Washington, D.C. on its Certificate of Public Convenience and Necessity for Route 130.<sup>23</sup> We will also grant United's request to change the proposed start-up date for its Washington (Dulles)-Beijing service to March 28, 2007.<sup>24</sup>

In addition, consistent with our standard practice, we propose that the frequencies allocated in this proceeding be subject to our standard 90-day dormancy condition, wherein any frequencies not operated for a period of 90 days (once inaugurated) would be deemed dormant. Under the dormancy condition, if any of the frequencies allocated are not used for a period of 90 days (once inaugurated), the frequency allocation with

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<sup>22</sup> See, e.g., MWAA Brief, at 13.

<sup>23</sup> United holds blanket route integration authority under Order 2006-1-1.

<sup>24</sup> Although our standard practice in awarding frequencies is to allow a 10-day leeway in the proposed start-up date, we will allow that United to inaugurate service within 10 days of March 28, 2007 (*i.e.*, by April 7, 2007). Any frequency not inaugurated by April 7, 2007, will revert to the Department..

respect to each frequency would expire automatically and the frequency would revert to the Department for reallocation.<sup>25</sup>

**ACCORDINGLY,**

1. We make final our tentative findings, conclusions, and decision in Order 2007-1-4 with respect to the allocation to United Air Lines, Inc. of seven combination frequencies to provide combination services in the Washington, D.C. (Dulles)-Beijing market pursuant to rights that become available effective March 25, 2007, under the U.S.-China Air Transport Agreement and require that United Air Lines, Inc. commence service no later than March 28, 2007;<sup>26</sup>
2. We deny the motion of Northwest Airlines, Inc. for leave to file and supplement to objections of Northwest Airlines, Inc.;
3. The frequencies allocated in ordering paragraphs one above will remain in effect indefinitely, *provided that* the holder continues to hold the necessary underlying authority to serve the markets authorized; and *provided further* that the frequencies will become dormant and will revert automatically to the Department if they are not used for a period of 90 days (once inaugurated);<sup>27</sup>
4. We will not entertain petitions for reconsideration of this order; and
5. We will serve this order on the parties to the captioned docket of the order, the Chinese Ambassador to the United States in Washington, DC, the Federal Aviation Administration, and the U.S. Department of State (Office of Aviation Negotiations).

By:

**ANDREW B. STEINBERG**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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<sup>25</sup> As we have noted earlier, the frequencies allocated represent valuable rights obtained in exchange for rights to Chinese carriers. Accordingly, we remind the selected carrier that the frequencies awarded are for weekly operations. A scheduled carrier may not bank frequencies from one week to the next.

<sup>26</sup> See Note 23 *supra*.

<sup>27</sup> The 90-day dormancy period will begin upon the carrier's implementation of services, such implementation to be in accordance with the startup provisions of the carrier's certificate of public convenience and necessity.