

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Application of)
)
 DELTA AIR LINES, INC.)
)
 for a certificate of public convenience and)
 necessity pursuant to 49 U.S.C. § 41102)
 and frequency allocation (U.S.-China))
)

Docket OST-2007-27019

**ANSWER OF US AIRWAYS, INC.
AND MOTION TO INSTITUTE ROUTE PROCEEDING**

Communications with respect to this document should be sent to:

Howard Kass
Managing Director and Associate General Counsel
US Airways, Inc.
1401 H Street, NW, Suite 1075
Washington, DC 20005
(202) 326-5153
howard_kass@usairways.com

Benjamin T. Slocum
Director and Assistant General Counsel
US Airways, Inc.
111 West Rio Salado Parkway
Tempe, Arizona 85281
(480) 693-5782
benjamin.slocum@usairways.com

February 9, 2007

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Application of)	
)	
DELTA AIR LINES, INC.)	Docket OST-2007-27019
)	
for a certificate of public convenience and)	February 9, 2007
necessity pursuant to 49 U.S.C. § 41102)	
and frequency allocation (U.S.-China))	
)	

**ANSWER OF US AIRWAYS, INC.
AND MOTION TO INSTITUTE ROUTE PROCEEDING**

On January 19, 2007, Delta Air Lines, Inc. (“Delta”) filed in this docket an application for certificate authority to operate daily nonstop flights in the Atlanta-Shanghai market, as well as an allocation of seven weekly combination frequencies. This would use the additional designation and frequencies that become available on March 25, 2008, under Article 3, paragraph (1)(d) and Annex V, paragraph (4)(c) of the 1980 U.S.-China bilateral, as amended by the 2004 Protocol.

US Airways urges DOT to defer consideration of Delta’s application until there is the opportunity for full consideration of such other applications as may be submitted. Specifically, US Airways intends to apply for the designation and frequencies at issue, and it is presently coordinating its proposal with affected parties, including the U.S. gateways and communities it will serve.

Given the highly restrictive nature of the U.S.-China agreement, the opening of a new designation and seven new combination frequencies is anything but a routine occurrence. As Delta itself notes, “the Department has a significant and unique opportunity to enhance

competition and public benefits....” For that very reason, the Department should not consider Delta’s application in isolation, but concurrent with applications by other interested contenders.

In light of the scarcity and value of U.S.-China frequencies and designations, the Department has conducted virtually every allocation of China frequencies by means of a comparative selection route proceeding. There is no reason to deviate from that longstanding practice now, more than a year before the frequencies at issue even become available.

US Airways’ application to enter the U.S.-China market¹ may well be met by other applications as well, given the value of this opportunity. Since only one designation is available, any application by a new entrant, such as US Airways, is necessarily mutually exclusive of Delta’s application.² Further, as Delta has requested all seven newly available frequencies, any other application would similarly be mutually exclusive.

US Airways therefore motions, pursuant to §302.212(c), that the Department follow well-established precedent and institute a route proceeding for the 2008 passenger-combination designation and frequencies. This should include the establishment of a date for filing competing applications for service to China at such time as will afford the Department and interested parties, respectively, adequate time to process the case and market the service effectively.³ This step will ensure the required contemporaneous consideration of the US Airways and Delta applications, and any others that may be filed.

¹ Although US Airways expects soon provide code-share services on United Airlines’ flights between Washington Dulles and Beijing, it has never served China with its own aircraft.

² An agency is required to consider mutually exclusive applications contemporaneously. *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

WHEREFORE, US Airways requests that the Department institute a route proceeding to allocate the China designation and frequencies that will become available in March 2008, and accordingly defer consideration of Delta's application until other potential applicants, including US Airways, have the opportunity to submit applications.

Respectfully submitted,

/s/ Howard Kass _____
Howard Kass
Managing Director and
Associate General Counsel
US Airways, Inc.
1401 H Street, NW, Suite 1075
Washington, DC 20005
(202) 326-5153
howard_kass@usairways.com

Benjamin T. Slocum
Director and Assistant General Counsel
US Airways, Inc.
111 West Rio Salado Parkway
Tempe, Arizona 85281
(480) 693-5782
benjamin.slocum@usairways.com

February 9, 2007

³ See, e.g., Order Instituting Proceeding and Inviting Applications, Order 2006-7-9; cf. Order 2004-9-5.

CERTIFICATE OF SERVICE

I certify that, on February 9, 2007, I caused to be served a copy of the foregoing Answer of US Airways, Inc. and Motion to Institute Route Proceeding by email or first class U.S. mail, postage pre-paid, upon those addressees listed below:

byerlyjr@state.gov
jim.ballough@faa.gov
carl.nelson@aa.com
hkamen@coair.com
dan.weiss@coair.com
rbkeiner@crowell.com
sametta.c.barnett@delta.com
scott.mcclain@delta.com
reohn@hhlaw.com
prrizzi@hhlaw.com
sascha.vanderbellen@nwa.com
jonathan.moss@wilmerhale.com
msinick@ssd.com
nssparks@fedex.com
dvaughan@kelleydrye.com
jhill@dlalaw.com
rpommer@atlasair.com
kevin.montgomery@polaraircargo.com
ben.decosta@atlanta-airport.com

John Varley (via U.S. mail)

/s/ Benjamin T. Slocum_____

Benjamin T. Slocum