



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

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on the 21st day of June, 2007

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In the Matter of

**2007/2008/2009 U.S.-CHINA AIR
SERVICES AND COMBINATION
FREQUENCY ALLOCATION
PROCEEDING**

Docket OST-2007-28567

ORDER INSTITUTING PROCEEDING AND INVITING APPLICATIONS

SUMMARY

By this order we institute the *2007/2008/2009 U.S.-China Air Services and Combination Frequency Allocation Proceeding* and invite interested U.S. air carriers to file applications for certificate authority to serve the U.S.-China market, and for allocation of combination frequencies.¹

BACKGROUND

On May 23, 2007, representatives of the United States and the People's Republic of China (PRC) signed a memorandum of consultations reflecting *ad referendum* agreement on an amended U.S.-PRC aviation agreement that provides for extensive increases in service opportunities for U.S. carriers for both combination and all-cargo services between the two countries.² The first of these new U.S. carrier rights becomes available August 1, 2007.³ All other rights become available March 25 of each succeeding year through 2012. We are instituting this proceeding to award the expanded rights available for combination services through 2009.⁴ The rights at issue in this proceeding are as follows:

¹ Those carriers seeking frequencies in this proceeding that also need additional economic authority to operate such frequencies, should submit applications for certificate authority, along with their applications for frequencies.

² Cargo frequency allocations and the 2009 cargo carrier designation will be handled separately.

³ We will address the combination opportunities that are available for the 2010-2012 timeframe in subsequent proceedings.

⁴ We are aware that the August 1, 2007 designation can be awarded for either combination or all-cargo services. We address this matter in the Decision section, below.

- 2007 – one additional airline may be designated to operate combination services between the United States and China.⁵ Seven combination frequencies are available to serve points in China Zone 1 or China Zone 2.⁶
- 2008 – seven combination frequencies are available to provide nonstop service between the United States and Guangzhou, China. There are also seven frequencies for combination services specifically limited to serving points in China Zone 2.⁷
- 2009 - one additional airline may be designated to operate combination services between the United States and China. Twenty-eight weekly combination frequencies are available for allocation to serve points in China Zone 1 or China Zone 2. There are also seven frequencies available for combination services specifically limited to serving points in China Zone 2.⁸

COMMENTS ON PROCEDURES

On May 25, 2007, the Department issued a Notice Inviting Comments soliciting the views of interested persons on procedural options for awarding the designations and allocating the frequencies available under the expanded agreement.⁹ Comments were due June 1, 2007. We received comments from 16 U.S. air carriers and four civic parties.¹⁰ While the comments varied in their suggested approaches to awarding the newly available rights -- such as whether to have a single case or multiple cases, whether to consider combination and cargo services in separate cases or together, or whether to consider requests involving new designations separate from or together with other awards -- the commenters were generally interested in proceedings that would facilitate the award of U.S. air carrier rights with the greatest efficiency and with a minimum of procedural/evidentiary burden.

⁵ *Id.*

⁶ As defined by the amended agreement, China Zone 1 consists of Beijing, Shanghai, and Guangzhou. China Zone 2 consists of Fujian, Guangdong (except Guangzhou), Hebei, Jiangsu, Shandong, Tianjin, and Zhejiang.

⁷ There are also 15 all-cargo frequencies available to serve points in China Zone 1 or China Zone 2. As already indicated in note 2, we will handle these separately.

⁸ Also available in 2009, but not part of this proceeding, is one designation opportunity to operate all-cargo services between the United States and China. There are also 15 all-cargo frequencies available to serve points in China Zone 1 or China Zone 2.

⁹ See Docket OST-2007-28361.

¹⁰ The following U.S. air carriers responded to the Notice: American Airlines, Inc.; Continental Airlines, Inc.; Delta Airlines, Inc.; Hawaiian Airlines, Inc.; Northwest Airlines, Inc.; United Air Lines, Inc.; US Airways, Inc.; ABX Air, Inc.; Cargo 360, Inc.; Evergreen International Airlines, Inc.; FedEx Express; Gemini Air Cargo, Inc.; Kalitta Air LLC; TradeWinds Airlines, Inc.; UPS; and World Airways, Inc. The following civic parties responded to the Notice: Hartsfield-Jackson Atlanta International Airport; Dallas/Ft. Worth International Airport; The Port Authority of New York and New Jersey; and Wayne County Airport Authority.

DECISION

Having considered the various comments received and options presented, we have decided to institute a streamlined proceeding for the combination service opportunities available through 2009. Accordingly, we will adopt an approach designed to ensure that all of the valuable rights available now through 2009 can be promptly awarded, and we invite interested U.S. carriers to apply for the authority at issue.¹¹

We will be proceeding under several rebuttable presumptions. First, we are strongly inclined to use the August 1, 2007 award for combination rather than all-cargo services. We note that the all-cargo frequencies available to U.S. carriers for China service are currently undersubscribed.¹² Meanwhile, there remains a critical need to add combination services in the U.S.-China market.¹³ Against this background, and in light of the opportunities immediately available under the amended agreement, we find that we now have an opportunity to mitigate the impact of the shortage of combination services on the traveling public and to utilize fully valuable rights in the U.S.-China market by awarding the 2007 designation opportunity to a combination carrier.

Should we follow through on our presumption and select a combination carrier, we would allocate the carrier the seven available combination frequencies. Experience in past China cases has shown that new combination services are typically introduced at the level of daily service, and we see no reason to presume a different result would better serve the public interest here.¹⁴

Finally, we presume that we would take advantage of the opportunities to introduce new entrant combination carriers in 2007 and 2009, rather than forgo either or both opportunities and instead simply award available combination service frequencies to an incumbent. Given that the U.S. Government negotiated for these valuable designation rights, it is our strong sense that the public interest favors that they be fully used to secure the benefits of expanded service options and enhanced competition that a new entrant would provide.

In awarding the rights available in this proceeding, our principal objective will be to maximize the public benefits that will result from the various awards of authority in this case. In this regard, we will consider which applicants will be most likely to offer and maintain the best service for the traveling and/or shipping public. We will consider the effects of the applicants' service proposals on the overall market structure and level of competition in the U.S.-China market, and any other market shown to be relevant, in order to promote an air transportation

¹¹ We also invite designated carriers to apply for the 2008 and 2009 frequencies available for combination services specifically limited to serving points in China Zone 2. .

¹² There are available for immediate allocation in 2007 two all-cargo frequencies for service to China Zone 1 or China Zone 2 and seven all-cargo and/or combination frequencies to serve points in China Zone 2 that became available March 25, 2007, and are as yet unallocated.

¹³ The Department recently noted the inadequacy of U.S.-China air services, with demand far exceeding supply, in awarding seven combination frequencies to United to provide Washington, D.C.-Beijing service. *See* Order 2007-2-10, at 5.

¹⁴ *See, e.g.*, Order 2005-3-24 awarding Continental, a new entrant in the U.S.-China market, economic authority and seven frequencies to institute combination service between Newark and Beijing and Order 2005-3-40 awarding American, also a new entrant in the U.S.-China market, economic authority and seven frequencies to institute combination service between Chicago and Shanghai.

environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where relevant. Based on the material in the record, we will consider whether it is in the public interest to award backup authority for any of the awards at issue.

The agreement for combination services, in general, provides for service from any point or points in the United States, either nonstop or via Tokyo or another point in Japan, to any point or points in China and beyond to any points. In this proceeding, the use of the available frequencies is limited to specific points in China Zone 1 and China Zone 2 as outlined in the background portion of this Order. We are prepared to consider in this proceeding the award of intermediate and beyond authority as set forth in the amended agreement, provided that such proposals are consistent with, and may be implemented under, the relevant bilateral aviation agreement(s).

PROCEDURES AND EVIDENCE

Procedures and Evidence

We have decided to use written, non-oral, show-cause procedures under Rule 210 of our regulations (14 CFR 302.210) in deciding this case. We believe that such procedures are appropriate to establish an evidentiary record and to support a decision in the public interest. Consistent with the comments we received, we are simplifying our procedures and evidentiary requirements to ensure that the decisional record can be created with the least possible delay and without unnecessary cost to the applicants. We are eliminating separate exhibit stages, instead calling for applicants to provide supporting evidence as part of their applications. We specifically are not requiring applicants to submit traffic forecasts. Further, to enhance clarity for the parties and the Department, we are asking the applicants to rank their city-pair/frequency proposals by priority and preference. While applicants and other parties are of course free to submit additional information beyond that requested if they believe it would be useful to us in reaching a decision, we have conceived our scaled-back evidentiary requirements in the interest of securing an adequate record.^{15 16}

Consistent with our current practice, the frequencies allocated in this proceeding will be for an indefinite term, provided the carriers continue to hold the underlying economic authority to serve the market. The awarded frequencies will also be subject to our standard 90-day dormancy condition. For any frequency not used for a period of 90 days, the allocation with respect to that frequency will expire automatically and will either revert to the Department for reallocation, or to the backup carrier(s), if any are selected.

¹⁵ Any applicant not previously found fit by the Department to provide scheduled transoceanic foreign air transportation will be expected to comply with the evidentiary requirements of Section 204.3 of the Department's regulations (14 CFR Part 204), in addition to the evidentiary requirements set forth in this order.

¹⁶ Saying this, we nevertheless expect applicants to fully comply with those requirements that we have retained, and we put them on notice that non-compliance could be an element that weighs in our decision-making.

Procedural Timetable

The Agreement provides valuable new rights for U.S. carriers to serve China effective August 1, 2007, March 25, 2008, and March 25, 2009. We believe that it is in the public interest to select carriers on a timetable that will allow the selected carriers to enjoy the maximum benefit of these rights as soon as they become available. Furthermore, we believe that our procedural schedule should reflect our overall approach favoring a streamlined proceeding. To this end, we are establishing the following procedural schedule for submissions:

Petitions for Reconsideration:	7 calendar days after instituting order issued
Answers to Petitions:	3 days after petition ¹⁷
New Applications: ¹⁸	17 days after petitions for reconsideration (or 10 days after the instituting order is issued in the event no petition for reconsideration is filed)
Answers:	10 days after applications
Replies:	5 days after answers

All dates are delivery dates and all submissions must be filed in the docket assigned to this proceeding. An original and five copies of all submissions are to be received at the Department of Transportation, Dockets, no later than the dates indicated.¹⁹ Because of security screening procedures of all incoming mail to the Department, parties are encouraged to electronically submit documents to Dockets via the Docket Management System website in order to guarantee receipt of the pleadings in the necessary time limits. Electronic submissions can be completed by following the instructions at the website: <http://dms.dot.gov>. Additionally, service by facsimile or electronic mail is authorized. Parties should include their fax numbers and email addresses on their submissions and should indicate the method(s) of service used on their certificates of service.

ACCORDINGLY,

1. We institute the *2007/2008/2009 U.S.-China Air Services and Combination Frequency Allocation Proceeding* in Docket OST-2007-28567, to be decided by non-oral, show-cause procedures under Rule 210 of our regulations (14 CFR 302.210);
2. We consolidate the applications of Delta Air Lines, Inc., in Docket OST-2007-27019 and US Airways, Inc., in Docket OST-2006-25967 into the *2007/2008/2009 U.S.-China Air Services and Combination Frequency Allocation Proceeding*, Docket OST-2007-28567.

¹⁷ Applicants are reminded that, under 14 CFR § 302.8, a prescribed time period of seven or fewer days refers to business days, unless otherwise specified by the Department.

¹⁸ Delta (Docket OST-2007-27019) and US Airways (Docket OST-2006-25967) have each filed an application for the next available designation opportunity and frequencies. We will consolidate Delta's and US Airways' applications into the *2007/2008/2009 U.S.-China Air Services and Combination Frequency Allocation Proceeding*. Delta and US Airways are free to supplement or amend their applications by the date specified in this Order for new applications.

¹⁹ The original filing should be on 8½" x 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system.

3. The proceeding will consider the following issues:

2007

- (a) Which carrier should be selected for designation to provide scheduled combination service to points in China Zone 1 or China Zone 2 as set forth in the U.S.-China aviation agreement and as discussed in this order, along with seven combination frequencies for such service²⁰; and
- (b) What terms, conditions, and limitations, if any, should be placed on the seven combination frequencies awarded in this proceeding.

2008

- (a) Which carrier(s) should be allocated seven combination frequencies to provide nonstop service between the United States and Guangzhou; and
- (b) What terms, conditions, and limitations, if any, should be placed on the frequencies awarded in this proceeding.

2009

- (a) Which carrier should be selected for designation and seven frequencies to provide scheduled combination service available to serve points in China Zone 1 or China Zone 2 as set forth in the U.S.-China aviation agreement and as discussed in this order;
- (b) How should the remaining 21 combination frequencies be allocated;²¹ and
- (c) What terms, conditions, and limitations, if any, should be placed on the frequencies awarded in this proceeding.

4. Petitions for reconsideration of this order shall be filed no later than seven calendar days from the date of service of this order; answers to petitions shall be due no later than three business days thereafter;

5. Applications accompanied by evidentiary material should be filed in accordance with the procedural schedule set forth in this order; and

6. We will serve this order on all U.S. certificated air carriers operating large aircraft, the National Air Carrier Association, the Air Transport Association, the U.S. Department of State

²⁰ U.S. cargo and incumbent carriers may submit applications for the opportunities available in 2007; however, they are reminded of the rebuttable presumptions established in the Decision section of this order.

²¹ Incumbent carriers are free to submit applications based on the total pool of combination frequencies available for 2009; however, they are reminded of the rebuttable presumptions established in the Decision section of this order.

(Office of Aviation Negotiations), the Federal Aviation Administration (AFS-200), and the Ambassador of the Peoples Republic of China in Washington, DC.

By:

Andrew B. Steinberg
Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at:

http://dms.dot.gov/reports/reports_aviation.asp

EVIDENCE REQUEST

I. Procedures and Ground Rules

In the interest of a complete and adequate record, the parties should provide the following information. In responding to this evidence request, all parties are advised to heed the admonitions and notice regarding compliance contained in the attached order.

II. Request for Information and Evidence

Submit, at a minimum, the following:¹

1. Proposed date for instituting service in a given U.S.-China city-pair market, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated for the 12 months ending August 1, 2008, for the 2007 selection; March 25, 2009, for the 2008 selection; and March 25, 2010, for the 2009 selection. If a carrier intends to offer seasonal service, it must so specify and specify the period during which the seasonal services would be offered.

Proposed schedules should contain flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points and elapsed time for services), departure and arrival times in local time (with time difference between local time and time at point of origin), equipment types (including seat configuration by class of service and the cargo capacity available), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service or the cargo capacity available;

2. A brief description of the types of service the applicant currently provides, if any, between the United States and China, including the types of service (state whether the services are code-share operation, seasonal or year-round, charter, and/or scheduled) and include frequency levels by city-pair market;
3. A statement describing the benefits of the carrier's proposed service to the public interest;
4. A statement as to whether or not the aircraft to be used in the proposed schedules are on hand or on order. If on hand, indicate where and the extent to which those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate whether the aircraft to be used comply with FAR-36. If not, indicate plans for achieving compliance;

¹ The original filing should be on 8½" x 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, parties are encouraged to use the electronic submission capability available through the Dockets DMS Internet site (<http://dms.dot.gov>) by following the instructions on the web site. Additionally, service by facsimile or electronic mail is authorized. Parties should include their fax numbers and email addresses on their submissions and should indicate the method(s) of service used on their certificates of service.

5. Estimated number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed service, and indicate the availability and method of obtaining the necessary fuel; and,
6. A description of any code-sharing agreements with foreign carriers providing for the applicant's proposed service to be marketed under the foreign carrier's codes, or for U.S.-China service operated by the foreign carrier to be marketed under the applicant's code, including a description of integrated connecting services to be provided by the applicant's code-sharing partner(s). If there is an existing code-share relationship with a carrier(s) involving the U.S.-China market, provide in detail a description of whether the proposed services in this proceeding will replace, supplement, or decrease operations with said code-share partner(s). Any carrier operating under a code-share agreement that has not filed that agreement or any revisions thereto, with the Department should provide a copy of that agreement, and any revisions, in its direct exhibits. If both code-share and own aircraft operations will be conducted, the applicant's exhibits should clearly reflect the full scope of the carrier's operations, including the levels of service under each operational arrangement and the cities to be served.
7. Responses to the following interrogatories:
 - (a) If the carrier is selected for primary authority, will it accept a condition requiring institution of service by a date specified by the Department? What date should the Department specify?²
 - (b) If the carrier is selected for backup authority, will it accept a condition that (i) permits it to implement the authority within the first year should the primary carrier withdraw from the market, and (ii) the authority expires at the end of one year should the authority not be activated?
 - (c) If an applicant is not awarded all of the frequencies that it has requested, would the applicant accept partial grant of its frequency allocation? How would a partial allocation be used, and what would the start-up date be, if different than above? Also, what is the minimum number of frequencies that a carrier will accept?
 - (d) Rank, in order of priority and preference, the U.S.-China city-pair markets for which the carrier seeks combination frequencies in this proceeding, and if awarded, the number of frequencies needed for each city-pair market.

² As concerns carriers seeking the August 1, 2007 award, we will permit some flexibility in the inauguration of initial service. It is our expectation that the selected carrier will be in a position to begin service as soon as possible. However, we recognize that the carrier may require additional time to obtain the requisite operating authority from the Government of China, as well as needed airport slots, and therefore may not be in a position to institute service within the range of our standard 90-day start-up requirement.

8. Incumbent Carrier Data

- (a) Identify the number of currently authorized frequencies being utilized and specify the complete routing of those frequencies.
- (b) For each month of the twelve months ended May 2007, provide the number of flights and complete itinerary for all flights operated in each city-pair market where service was provided in the U.S.-China market. If service was seasonal, the markets and level of service should be clearly identified. Carriers should distinguish between flights operated under code-share arrangements and those that are not operated under code-share arrangements. In addition, specify whether there was a change of gauge over any segment of the routes for each flight.

Applicants are also free to submit any additional relevant information that they believe will help us in making our decision.