

**BEFORE THE**  
**DEPARTMENT OF TRANSPORTATION**  
**WASHINGTON, D.C.**

Application of \_\_\_\_\_ :  
 :  
 SPIRIT AIRLINES, INC. : OST-2007-28057  
 :  
 for an exemption under 49 USC 40109 :  
 (U.S.-Colombia) \_\_\_\_\_ :

**ANSWER OF AMERICAN AIRLINES, INC.**  
**TO PETITION OF SPIRIT AIRLINES, INC.**  
**FOR REVIEW OF STAFF ACTION**

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July 17, 2007

**BEFORE THE**  
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**FOR REVIEW OF STAFF ACTION**

American Airlines, Inc., under 14 CFR 385.31(e), hereby answers in opposition to the petition for review of staff action filed by Spirit Airlines, Inc. on July 6, 2007.

The subject of Spirit's petition is the Notice of Action Taken issued in this docket on June 29, 2007, in which the Director of the Office of International Aviation, under assigned authority, dismissed Spirit's application for confiscation of 14 of American's U.S.-Colombia frequencies.

As we show below, Spirit's petition has no basis in fact, law, precedent, or policy under 14 CFR 385.31(b), and should be denied.

On May 15, 2007, American publicly announced firm plans to operate 14 additional U.S.-Colombia frequencies, effective December 13, 2007. American is re-establishing daily nonstop service between Miami and Barranquilla; is adding four nonstop flights a week between Miami and Bogota; and is adding three nonstop flights a week between Miami and Medellin. These flights were loaded in CRS systems on May 18, 2007, and have been open for reservations and sales since May 20, 2007.

Spirit's petition fails to demonstrate that any of the five review factors listed in 14 CFR 385.31(b) provide support for the relief it is seeking.

**(1) "A finding of material fact is clearly erroneous":** Spirit seems to be arguing that because the NOAT did not quote verbatim from Spirit's pleadings its claims of low-fare service or its recitation of American's past frequency usage, that constitutes an erroneous finding of material fact. Spirit cites no precedent for the extraordinary proposition that the Department's decisions must repeat in full (and cannot summarize) every allegation made in a party's pleadings. The NOAT explicitly referenced Spirit's self-serving claims to provide "low-fare service, which would substantially increase competition" (p. 2), and stated that "the 14 frequencies have been unused by American for an extended period" (p. 2). There is no erroneous finding of material fact in NOAT.

(2) **"A legal conclusion is contrary to law, Department rules, or precedent"**: Spirit cites Department precedent not "to permit valuable operating rights to remain unused, particularly when another carrier has plans to use them" (p. 2). Here, valuable operating rights are not to remain unused; American has publicly announced firm plans to use all of its U.S.-Colombia frequencies, and has been accepting reservations and selling its additional services for two months.

It is well-established that when a carrier holding frequencies announces firm plans for their use, bids by other carriers to confiscate those frequencies will be denied. See Order 2005-4-13, April 12, 2005, p. 3 n. 5 (declining to confiscate and reallocate to American five U.S.-Brazil frequencies held by United which had been dormant since "at least March 2003" where United announced on April 4, 2005 that it had firm plans to use them effective October 31, 2005); see also the precedents cited in the NOAT, p. 2 n. 2. Applicable precedent compels denial of Spirit's petition for review.

**(3) "A substantial and important question of policy is involved":** The policy at issue in this docket has long been settled - when a carrier has firm plans to use its authority, that authority will not be seized and turned over to someone else. This policy has been in place since at least 1995 (see NOAT, p. 2 n. 2), and indeed was invoked against American itself in the 2005 U.S.-Brazil case cited above. Spirit has provided no basis for the Department to change its policy, which has the clear result of serving the public interest by insuring the operation of a complete service pattern by incumbent carriers, as American has committed to do based on the plans it publicly announced on May 15 and the schedules it published on May 20.

**(4) "A prejudicial procedural error has occurred":** Spirit does not allege any procedural errors in the Department's action in this docket.

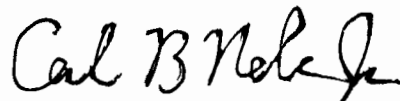
**(5) "The staff action is substantially deficient on its face":** In attempting to bring this factor into play, Spirit contends that the NOAT's reporting requirement constitutes "on-the-fly regulation" that is somehow contrary to the statute. Suffice it to say that the Department has wide discretion to condition its decisions, and indeed has imposed similar reporting requirements in other situations involving a carrier's announced use of authority in the future.

See Notice of Action Taken, OST-2003-14542, April 9, 2003, p. 2 ("[W]e will take certain steps to enhance the likelihood that Alaska's new service will indeed be introduced during the first half of July. Specifically, we will require Alaska to institute service in the Los Angeles-Guadalajara market no later than its proposed start-up date of July 10, 2003. We will also require Alaska to file a notice...no later than June 1, 2003, providing evidence of any public announcements of the inauguration of such service and placement of its schedules" in CRS systems). The NOAT here, including the reporting requirements imposed on American, is well-grounded in precedent, and is in no way "substantially deficient on its face."

**CONCLUSION**

For the foregoing reasons, Spirit's petition for review of staff action of the Notice of Action Taken issued in this docket on June 29, 2007 is without merit and should be denied.

Respectfully submitted,



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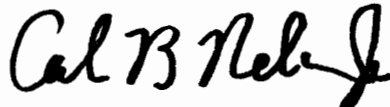
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July 17, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by email on the following persons:

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July 17, 2007