

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

_____)	
Application of)	
)	
VIRGIN BLUE INTERNATIONAL)	Docket OST-07-28705
AIRLINES PTY LTD)	
)	
for an exemption pursuant to 49 U.S.C. §40109)	
and for a foreign carrier permit pursuant to)	
49 U.S.C. § 41301 (U.S.-Australia))	
_____)	

ANSWER OF UNITED AIR LINES, INC.

Communications with respect to this document should be sent to:

MARY BARNICLE
Manager – International & Regulatory Affairs
UNITED AIR LINES, INC.
77 West Wacker Drive, HDQIZ
Chicago, IL 60601
(312) 997-8350 (Phone/Fax)
mary.barnicle@united.com

JULIE OETTINGER
Managing Director – International &
Regulatory Affairs
UNITED AIR LINES, INC.
1025 Connecticut Avenue, N.W.
Suite 1210
Washington, D.C. 20036
(202) 296-2370 (Phone)
(202) 296-2873 (Fax)
julie.oettinger@united.com

Dated: July 23, 2007

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

Application of)	
)	
VIRGIN BLUE INTERNATIONAL)	Docket OST-07-28705
AIRLINES PTY LTD)	
)	
for an exemption pursuant to 49 U.S.C. §40109)	
and for a foreign carrier permit pursuant to)	
49 U.S.C. § 41301 (U.S.-Australia))	
)	

Dated: July 23, 2007

ANSWER OF UNITED AIR LINES, INC.

United Air Lines, Inc. (United”) submits the following answer to the above-captioned Application of Virgin Blue International Airlines Pty. Ltd. (“Virgin Blue”) for an exemption and a foreign air carrier permit authority to operate scheduled and charter air services between the United States and Australia via intermediate and beyond points:

1. United has no objection to the issuance of operating authority to Virgin Blue consistent with the U.S.-Australia Air Services Agreement (“U.S.-Australia Agreement”). United is a code-share partner of Virgin Blue with respect to services operated by the latter in Australia and can readily testify as to Virgin Blue’s qualifications to operate.

2. In proposing to fly to the United States, however, Virgin Blue announces that it will begin operating 10 weekly frequencies between Australia and the United States over the South Pacific Route, as defined in the U.S.-Australia Agreement. The

capacity MOUs of the U.S.-Australia Agreement, on the other hand, limit a new carrier to no more than four weekly frequencies as an initial schedule with growth limited to annual increments governed by detailed formulas of the capacity MOUs.

As the Department is aware, these capacity MOUs contain limits that were imposed at the insistence of the Government of Australia, which sought to protect its carriers from U.S. carrier competition. Australia has not hesitated to enforce these capacity limits when doing so suits its interest. For example, when United in the early 1990s proposed daily services over the North Pacific Route between the United States and Australia via Japan, the Government of Australia insisted upon strict adherence to the frequency limits of the U.S.-Australia Agreement, rendering United's proposed schedule uneconomical, and protecting Australian carriers from additional competition by United for U.S.-Australia and U.S.-Asia traffic.

3. Virgin Blue expresses its support for open competition on U.S.-Australia routes, but the actions of the Government of Australia suggest that it does not share their views, rather Australia prefers maintaining one of the most restrictive bilateral air-service regimes still in existence now that the infamous Bermuda II Agreement will sunset next year. Virgin Blue would be able to operate the 10-weekly frequency schedule it proposes if Australia were to sign an open-skies agreement, which the United States has consistently announced to be its goal. Until, however, Australia is prepared to eliminate the restrictive capacity limits and numerous other vestiges of protectionism under the current U.S.-Australia Agreement, the United States should not unilaterally waive those restrictions when Australian carriers propose new or expanded services that exceed the limits imposed at their own government's behest. Should the United States choose to

waive existing capacity limitations in the U.S.-Australia Agreement, there is simply no guarantee that Australia will reciprocate. Indeed, based on experience, United fully expects the Government of Australia to hold it to the strict limits of the capacity MOUs were United again to propose services over the North Pacific Route.

4. The Department has previously extended extra-bilateral authorizations to Australian carriers but, to date, can cite no advance toward open skies resulting from its efforts. For example, in 2002, the Department authorized Qantas to offer code-share service to U.S. points in excess of those allowed under the U.S.-Australia Agreement. *See*, Notice of Action Taken, dated July 25, 2002, in Docket OST-02-11962. More recently, the Department allowed a Qantas subsidiary, JetStar, to start Australia-Hawaii service with schedules that slightly exceeded the frequencies for initial services under the capacity MOUs. In those cases, the Department found extra-bilateral authorizations consistent with the public interest because of its general perception that “in the context of our overall aviation relationship with Australia, withholding [such] limited extra-bilateral authority will [not] further our achievement of [open skies].” *See*, Notice of Action Taken, dated July 25, 2002, *supra*. The Department, however, has nothing to show for its unilateral extensions of relief except the continued domination of the U.S.-Australia market by Australian carriers. Indeed, as noted previously, United fully expects the Government of Australia to continue enforcing the capacity limits of the MOUs where doing so would suit its purpose, for example, on services over the North Pacific Route.

Here, Virgin Blue proposes even more frequencies in excess of the agreed limits than was the case of JetStar. Indeed, in the JetStar case the Department was willing to

approve a schedule that exceeded the limit of four weekly set by the MOU at least in part because it exceeded the limit by only one frequency, “the least possible additional capacity.”¹ See, Letter of Paul Gretch, dated August 14, 2006, to Jane McKeon of Qantas Airways on behalf of JetStar. In this case, Virgin Blue is proposing over twice as many frequencies as are allowed by the capacity MOUs for initial service.²

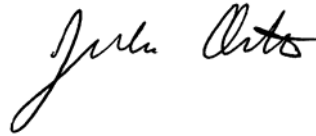
5. The Department, in issuing Virgin Blue its operating authority, should inform it that Virgin Blue will be expected to conform to the capacity regimes in the present U.S.-Australia Agreement until an open-skies agreement has been concluded, removing capacity and other restrictions from all services by carriers of both sides on all routes. If the Government of Australia agrees with Virgin Blue that open competition is good for the marketplace, it should agree to amend the U.S.-Australia Agreement accordingly. Otherwise, Australia and its carriers should not expect the Department to waive the very protectionist limits the Government of Australia sought each time a new Australian carrier seeks to enter the market while maintaining a regime under which they can continue to enforce restrictions against U.S. carrier introduction of new services when it suits their purposes to do so. An open-skies agreement (such as that which Australia has for all-cargo services, having no all-cargo industry to protect from competition) will enable Virgin Blue as well as United to offer services commensurate with marketplace demand without reference to protectionistic formulas.

¹ In approving JetStar’s extra-bilateral frequency, the Department also noted that Australia had not “recently” disapproved any U.S. carrier schedule but apparently forgot Australia’s refusal in the 1990s to allow United to operate extra-bilateral schedules on the North Pacific Route.

² An additional factor worth noting about JetStar is that it was proposing services on a route to be operated in conjunction with Qantas, which owned JetStar. Qantas had been operating over the route served by JetStar for many years and would presumably have been entitled to increase frequencies in its own name under the terms of the MOU.

6. In conclusion, United has no objection to the issuance of authority to Virgin Blue consistent with the terms of the present restrictive U.S.-Australia Agreement. If, however, Virgin Blue and its government expect to offer services in excess of those terms, the Government of Australia should agree to conclude an open-skies agreement for services over all routes before the Department allows an Australian carrier any operating flexibility beyond what is allowed in the current U.S.-Australia Agreement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Julie Oettinger". The signature is written in a cursive, flowing style.

JULIE OETTINGER
Managing Director – International &
Regulatory Affairs
UNITED AIR LINES, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing document on all persons named below by causing a copy to be sent via email or regular mail:

anita.mosner@hklaw.com
anbird@fedex.com
benjamin.slocum@usairways.com
brubinst@panynj.gov
byerlyjr@state.gov
carl.nelson@aa.com
donald.creston@geminiaircargo.com
dvaughan@kelleydrye.com
gmlindsey@lawa.org
hkamen@coair.com
howard_kass@usairways.com
jhill@dowlohnes.com
jim.ballough@faa.gov
john.palo@evergreenairlines.com
john.riggs@evergreenairlines.com
jrichardson@johnrichardson.com
kandace.bender@flysfo.com
lachter@starpower.net
lhalloway@crowell.com
ldwasko@erols.com
matwood@sherblackwell.com
mcmillin@woa.com
mlbenge@zsrllaw.com
mthorpe@lawa.org
prashanth.athreya@evergreenairlines.com
prrizzi@hhlaw.com

recohn@hhlaw.com
rbkeiner@crowell.com
rpommer@atlasair.com
rsilverberg@sbgdc.com
sascha.vanderbellen@nwa.com
shannon.edwards@evergreenaviation.com
slunsford@fedex.com
sophy.chen@hklaw.com
tom.lydon@evergreen.com

McCarran International Airport
Clark County Department of Aviation
P.O.Box 11005
Las Vegas, Nevada 89111-1005

Seattle-Tacoma International Airport
P.O.Box 68727
Seattle, Washington 98168

Remo Moretta
Counsellor (Trade)
Embassy of Australia
1601 Massachusetts Ave., NW
Washington, DC 20036



Annalei Avanceña
Advisor—Regulatory Affairs

Dated: July 23, 2007