



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, 2008

Served: February 8, 2008

**2008 LOS ANGELES-SAN JOSE DEL CABO EXEMPTION PROCEEDING  
DOCKET DOT-OST-2008-0056**

Application of

**UNITED AIR LINES, INC. (United)**

For an exemption pursuant to 49 U.S.C. §40109  
(Los Angeles-San Jose del Cabo)

**Docket: DOT-OST-2008-0023**

**INSTITUTING ORDER**

**Summary**

By this order we institute a proceeding to select one primary carrier and one backup carrier to provide direct carrier (own-aircraft), scheduled combination air services in the Los Angeles-San Jose del Cabo market.

**Background**

Under the U.S.-Mexico aviation agreement, three U.S. carriers may be designated to provide foreign scheduled air transportation services of persons, property, and mail between Los Angeles, California, and San Jose del Cabo, Mexico. Currently, American Airlines, Inc. (American), Alaska Airlines, Inc. (Alaska), and Frontier Airlines, Inc. (Frontier), are designated to provide these services. On February 4, 2008, however, Frontier notified the Department that it will cease service on this route after April 13, 2008. Thus, one designation opportunity will become available for U.S. carrier combination service as of April 14, 2008.

We have already received an application from United for the subject route authority (see captioned application, above).<sup>1</sup> Delta Air Lines, Inc. (Delta), filed an answer opposing the application, stating that both United and Delta seek the available designation. Both Delta and United urge the Department to promptly institute a comparative selection proceeding in this matter.

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<sup>1</sup> United proposes to start service on April 14, 2008, initially at the level of service currently operated by Frontier. United states that it will provide full details of its level of proposed service, should that be required by the Department for purposes of carrier selection.

## **Proceedings**

In view of the upcoming availability of a U.S. carrier designation for combination services on the Los Angeles-San Jose del Cabo route and the already-expressed U.S. carrier interest, we have decided to invite applications from interested U.S. carriers and to institute expedited carrier selection proceedings to select one primary carrier and one backup carrier to provide scheduled foreign air transportation services of persons, property, and mail in the Los Angeles-San Jose del Cabo market.<sup>2</sup>

Not at issue is whether it is in the public interest to grant the available U.S.-Mexico authority for the subject combination services. The rights involved constitute a valuable resource obtained in exchange for granting Mexico route opportunities for its airlines to serve the United States. The public interest clearly calls for use of these rights.

Our principal objective in awarding the available authority will be to maximize public benefits. In this regard, we will consider which applicant will be most likely to offer and maintain the best service for the traveling and shipping public. We will also consider the effects of each applicant's service proposals on the overall competitive environment, including the market structure and the level of competition in the U.S.-Mexico market, and on any other market shown to be relevant. In addition, we will consider other factors historically used for carrier selection where they are relevant.

We intend to issue the Los Angeles-San Jose del Cabo exemption authority for a two-year period to the primary carrier, subject to a 90-day startup condition and subject also to certain dormancy requirements routinely imposed on U.S.-Mexico air transportation services.<sup>3</sup> Services will be deemed dormant if they are not operated for 90 days, except where service in the market is seasonal or intermittent. In this regard, we will require the applicants, as part of their applications in this proceeding, to state whether or not the market will be served on a seasonal or intermittent basis; otherwise, dormancy conditions will apply as specified above. In light of the U.S.-Mexico dormancy conditions, and consistent with our standard policy, we will only grant U.S.-Mexico route authority where an applicant presents firm plans to start service.

In order to assure that the subject combination authority is used, we intend to issue backup exemption authority, which could be implemented if the selected primary carrier does not operate the proposed

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<sup>2</sup> We will consolidate United's application, in Docket DOT-OST-2008-0023, into the *Los Angeles-San Jose del Cabo Proceeding* instituted here.

<sup>3</sup> Under the dormancy conditions, if, once service has been instituted, a city-pair market is not served for 90 days, the authority to serve that city-pair market becomes dormant and cannot be used. The exemption authority will also contain a notice provision whereby the carrier will be required to notify the Department if it fails to meet the 90-day startup condition, if it discontinues service in the market(s), or if the market(s) remain dormant for 90 days.

services. Thus, if the primary carrier does not institute service in the market or, after commencement of service, the market subsequently becomes dormant, we will be in a position to activate the backup authority (which will then become subject to the same dormancy conditions described in the paragraph, above). The backup authority awarded will expire after one year, unless that authority is activated, in which case it will continue in effect for two years from the issuance of a final order in this matter, subject to the conditions described above.

We believe that written, non-oral procedures under Part 302 of our regulations (14 CFR Part 302) are appropriate for adjudicating this case, and that by using these procedures we can establish a complete evidentiary record and make our selections with the least possible delay and without unnecessary costs to the applicants. In the interest of expediting the award of these valuable route rights, we will reserve the right to go directly to a final order, should the complete record in this proceeding justify such action. We find no material issues of fact that would warrant an oral evidentiary hearing. We intend to resolve issues and award the subject authority on the basis of pleadings filed in the subject proceeding. If, however, upon review of the record, we determine that additional information is required and/or modified procedures are necessary for the adjudication of this case, we reserve the right to request such additional information and/or to modify our proceeding in this matter.

### **Evidentiary Requirements**

In view of the soon to be available route authority and in the interest of replacing carrier services currently offered by Frontier, and in light of the need for carriers to engage in advance planning, we will expedite the schedule for this proceeding. New applicants should file applications, and United should amend and/or supplement its application, as directed by the schedule set out below, with the information requested in this section. Applicants should ensure that their submissions include requests both for exemption authority and for designation.

Except for procedural dates, all submissions should conform to Part 302, Subpart C of our regulations (14 CFR Part 302). All pleadings should be filed with the Department of Transportation, Dockets, 1200 New Jersey Avenue, SE, Washington, DC 20590, in the captioned route proceeding and should include, at a minimum, the following information for the forecast year, defined as the twelve months ending **May 31, 2009**.<sup>4 5</sup>

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<sup>4</sup> Applications and responsive pleadings should contain sufficient detail, including sources, bases, assumptions and methodologies, so that, without further clarification, any party can derive the final results from the basic data.

<sup>5</sup> Filers are encouraged to use the electronic submission capability available through the Dockets FDMS system following the instructions on the web site: [www.regulations.gov](http://www.regulations.gov). Filers may also provide courtesy e-mail copies of the submissions to the Chief, U.S. Carrier Licensing Division at: [Esta.Rosenberg@dot.gov](mailto:Esta.Rosenberg@dot.gov). In the alternative, all filings should be on 8-1/2" X 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system.

1. Firm date for instituting service in the market, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the forecast year with a break down for peak and off-peak seasons. If an applicant proposes seasonal service, 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 total elapsed time for all services, including services involving stops and/or connections), airports served, departure and arrival times, equipment types (including seat configuration by class of service), and days scheduled.

2. A brief description of the service the applicant currently provides, if any, between the United States and Mexico. For each U.S.-Mexico city-pair market, include the type of service (code-share or own-aircraft); seasonal or year-round; charter or scheduled; and include the number of weekly frequencies offered (both for peak and off-peak seasons, as applicable).
3. 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.
4. 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.
5. A statement as to whether or not the applicant, if selected as a backup, will accept conditions in its backup exemption authority which will (1) permit it to implement the backup authority within the first year should the primary carrier withdraw from the market or the primary carrier's authority otherwise becomes dormant (as discussed in the text of this order); and (2) cause the backup authority to expire at the end of one year should the backup authority not be activated.

Applicants are also free to submit any additional relevant information that they believe will help us in making our decision, including officially noticeable traffic data.

### **Procedural Timetable**

The subject combination authority will become available on April 14, 2008. In light of the requests of both United and Delta to promptly institute this case, and the public benefit of facilitating the timely introduction of replacement service on the route, we accordingly intend to process this case on an expedited procedural schedule. That schedule is as follows:

Petition for reconsideration:	<b>February 13, 2008</b>
Replies to Petitions for Reconsideration:	<b>February 15, 2008</b>
Applications/Supplements/Amendments: <sup>6</sup>	<b>February 19, 2008</b>
Answers:	<b>February 26, 2008</b>
Replies:	<b>February 29, 2008</b>

All dates are delivery dates. An original and four copies of all submissions are to be received by the Department of Transportation, Dockets, no later than the dates indicated. Due to the expedited nature of this case, we will authorize service of documents by facsimile and by electronic mail. Carriers that are interested in such service, however, should state if they want service by fax or email and should provide interested parties with their fax number and/or email address, and indicate on their certificates of service the methods of service used.

**ACCORDINGLY,**

1. We institute the *2008 Los Angeles-San Jose del Cabo Exemption Proceeding* (Docket DOT-OST-2008-0056), to be decided by non-oral evidentiary procedures under Part 302 of our regulations (14 CFR Part 302);
2. The proceeding listed in ordering paragraph one, above, is instituted to select one primary carrier and one backup carrier to provide direct carrier (own-aircraft) scheduled combination air services in the Los Angeles-San Jose del Cabo market;
3. We consolidate the application filed by United Air Lines, Inc., in Docket DOT-OST-2008-0023, into the *2008 Los Angeles-San Jose del Cabo Exemption Proceeding* established herein; and
4. We will serve this order on all U.S. certificated carriers; the U.S. Department of State (Office of Aviation Negotiations); the Federal Aviation Administration (AFS-200); and the Ambassador of Mexico in Washington, D.C.

By:

**Michael W. Reynolds**  
**Acting Assistant Secretary**  
**for Aviation and International Affairs**

(SEAL)

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<sup>6</sup> All applicants are expected to set out their firm proposals at this stage in this proceeding.