

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

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))
U.S. FRANCE FREQUENCY ALLOCATION))
PROCEEDING))
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Docket No. OST-00-7628

**CONSOLIDATED ANSWER OF THE CITY OF CHICAGO IN SUPPORT OF THE
MOTIONS OF AMERICAN AIRLINES, INC. AND UNITED AIR LINES, INC. TO
STRIKE THE LATE-FILED AMENDMENT OF DELTA AIR LINES, INC.**

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July 21, 2000

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The City of Chicago (“Chicago”), owner and operator of O’Hare International Airport (“O’Hare”), hereby files this Consolidated Answer in support of the motions of American Airlines, Inc. (“American”) and United Air Lines, Inc. (“United”) to strike the late-filed amended application of Delta Air Lines, Inc. (“Delta”) in this proceeding.

Delta has failed to demonstrate any good cause justifying its late-filed amended application, which fundamentally changes its proposal from seven frequencies for New York (JFK)-Paris (CDG) beginning October 29, 2000, to seven frequencies for Atlanta-Paris with different aircraft beginning October 29, 2000, and another seven frequencies for a second daily JFK-CDG flight beginning in April 1, 2000.

Delta’s two pleadings in support of its motion for leave to file are telling in their absence of any demonstrable basis for its failure to adhere to the Department’s deadline. Delta in a footnote to its original motion states that its late filing was due to the “short procedural timeframe involved and internal difficulties in coordinating the revisions to Delta’s proposal with

work and travel schedules.” Motion at p. 1. Delta’s Consolidated Answer filed today simply refers to its prior footnote.

Yet, like other applicants that filed in a timely manner, Delta had almost three weeks to determine its final response to the Department’s Instituting Order. On July 11, 2000, the Department issued Order 00-7-13, which initiated a proceeding to allocate fifteen U.S.-France combination service frequencies. In that order, the Department consolidated, into Docket OST-00-7628, the applications of Delta, United, and American. The order requested certain information from the three applicant carriers to supplement their applications. The Department set July 18, 2000 (seven days from the date of service of the order) as the deadline for these carriers to supplement their applications and for any other carriers to submit applications.

Although United and American timely filed the requested information, Delta allowed the deadline to pass before acting on the Department’s request. On July 19, 2000, at 5:22p.m., Delta served the Chicago (which was not listed in Delta’s Certificate of Service) with a copy of its motion for leave to file and amended application dated July 19, 2000. Contrary to its pleadings, it is quite evident that Delta took the day to review all timely filed applications, and decided to change its proposal based on the final applications of those that had complied with the Department’s Order. In doing so, Delta no doubt hoped it would increase its chances of gaining favorable Departmental action, because two applicants had competing requests for New York-Paris service.

To avoid prejudice to the other parties that filed timely applications and supplements in this proceeding, and to deter in the future parties from employing such gamesmanship in frequency allocation proceedings, the Department should strike Delta’s late-filed amendment. To do otherwise, or to simply extend the time for filing answers, would unduly prejudice

interested parties in this proceeding which, like Chicago, have been devoting resources in an expedited manner to analyze and respond to the current applications. More importantly, extending the deadline for answers, as Delta's most recent pleading suggests is standard Departmental practice, would send the wrong signal about the need for adherence to Department deadlines and the importance of avoiding gamesmanship in frequency allocation proceedings.

The Department ought not to tolerate in an expedited proceeding, where valuable rights are at stake, one party to in effect "game" the proceeding by waiting to see what other parties apply for in terms of routes and aircraft. Delta's protestation about the "short procedural timeframe" is not accurate, and its excuse of unsubstantiated "internal difficulties" is not credible. From all appearances, Delta simply chose to take what it apparently viewed as a low risk that the Department would adhere to an important deadline. This course of conduct is evident not only in the timing of Delta's filing, but in the pleading itself, which attempts to extol the virtues of its B777 aircraft as being "larger than any other aircraft proposed for use in this case." (Amendment, p. 1). How could Delta have known the definitive plans of competing carriers unless they unfairly sought to circumvent the Department's Order and review the final state-of-play after the deadline? Of course, Delta would have possessed such knowledge only after reviewing the timely filings by other applicants' proposals.

The Department should require Delta to rest on its original application, which was for seven U.S.-France frequencies to serve the New York-Paris market starting in October 2000. The Department's deadline for filing applications and amendments in this expedited proceeding was July 18, 2000, not 5:00 p.m. July 19, 2000, with service to other parties later.

WHEREFORE, for the foregoing reasons, Chicago respectfully requests that the Department dismiss Delta's Motion for Leave to File and Amendment No. 1 to its Application, and grant the Motions of American and United to Strike Delta's Amended Application.

Respectfully submitted,

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Dated: July 21, 2000

Certificate of Service

I hereby certify that I have served a copy of the foregoing Consolidate Answer in Support of the Motions of American and United to Strike Delta's Amended Application on all persons on the attached service list by facsimile this 21st day of July, 2000.

Sophy Chen

Washington, D.C.

July 20, 2000

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