

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

**U.S. – FRANCE FREQUENCY
ALLOCATION PROCEEDING**

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) **Docket OST-2000-7628**
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Application of

**DELTA AIR LINES
for allocation of U.S.-France frequencies**

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) **Docket OST-2000-7433**
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**CONSOLIDATED ANSWER OF DELTA AIR LINES, INC.
TO MOTION OF AMERICAN AIRLINES, INC.
AND ANSWER AND MOTION OF UNITED AIR LINES, INC.**

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July 21, 2000

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
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U.S. – FRANCE FREQUENCY ALLOCATION PROCEEDING)))))	Docket OST-2000-7628
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**CONSOLIDATED ANSWER OF DELTA AIR LINES, INC.
TO MOTION OF AMERICAN AIRLINES, INC.
AND ANSWER AND MOTION OF UNITED AIR LINES, INC.**

Delta Air Lines, Inc. (“Delta”) hereby submits this Consolidated Answer in opposition to the Motion of American Airlines, Inc. (“American”) to strike Delta’s amended application for U.S.-France frequencies, and to United’s Motion and Answer in support of American’s pleading.

Delta regrets any inconvenience its late-filed amendment may have caused the Department or other applicants. However, the Department has in the past allowed other carriers to make similar amendments to their route case proposals at the outset of proceedings, and it is in the public interest for the Department to consider and choose between the best proposals that carriers are able to put forward. The action urged by American and United to strike Delta’s amended application is unjustified and would not be in the public interest. Furthermore, the allegations of nefarious “gamesmanship” or “irreparable harm” that would

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allegedly be suffered by American and United as a consequence of Delta's amendment are completely without merit.

The Department has historically allowed carriers flexibility in amending their route case proposals after applications have been filed. For example, in traditional route case proceedings, the Department has typically allowed carriers the flexibility to amend proposals for several weeks after applications are due, up until the submission date for direct exhibits. See, e.g. Order 99-2-27 at 7 ("All applicants are free to make revisions to their initial proposals in their direct exhibits . . .").

In less formal expedited route case proceedings such as this one, the Department has also afforded carriers considerable latitude in amending their applications and frequency requests. See, e.g., March 24, 1998 Supplement Number One to Application of American Airlines, Docket OST-98-3419 (1998 Japan Combination Service Case) (Amending American's request for U.S.-Tokyo frequencies after the Department had issued a Show Cause Order in that proceeding).

Contrary to American's and United's assertions, Delta did not attempt to "game" the proceeding by measuring its proposal against the competing applications, and accepting Delta's amendment one day late will not prejudice any

party.¹ The initial applications of all parties were already on file, and Delta did not hope to (nor did it in fact) gain any advantage by filing its amendment one day late. Delta's amendment here is no different in form or substance to the Department's standard practice of allowing amendments to applications after the filing of initial applications and until the direct exhibit stage, where other carriers will have ample opportunity to address the amended application in rebuttal exhibits and responsive pleadings.

Delta would have no objection to the Department allowing the other applicants a modest period of additional time to respond to Delta's amendment, which is the standard remedy used by the Department in similar instances to address changes to carrier route case applications or substantive exhibits. The unwarranted and extraordinary remedy urged by American and United is plainly unjustified and inconsistent with the Department's past practices.

Delta's late filed amendment was inadvertent, in good faith, and for the reasons stated in Delta's motion -- not for the nefarious reasons alleged by

¹ Contrary to the assertions made by American in its Motion, Delta's amendment was filed with the Department electronically at 5 pm on June 19, just one day after applications were due. Counsel for Delta experienced some difficulties with the DMS system, resulting in duplicate filings, which were resolved with the Dockets Clerk early on the morning of June 20th. As stated, Counsel for American received Delta's amended filing by early evening on March 19. Due to a clerical error stemming from the recent change in law firm affiliation of United's counsel, counsel for Delta inadvertently sent United's service copy to the wrong facsimile number the evening of June 19, but corrected that error the morning of March 20 after a request by United's counsel (who was apparently aware of the Delta filing).

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American and United. Delta did not “benefit” from the other parties’ applications, and, consistent with fairness and past practice, Delta’s amendment should be accepted. For example, in the recent 1999 U.S.-Argentina Combination Service Case, the Department allowed United to amend its traffic forecast *three times* after direct exhibits were due and after United had the benefit of reviewing the other carriers’ traffic forecasts. Delta did not accuse United of any malevolent intent in attempting to correct its forecast, and it is disingenuous for United to do so here.

Virtually all carriers, (including American and United) participating in the Department’s route case proceedings have, at one time or another, experienced minor timing difficulties with their route case proposals or exhibits, which the Department has generally accommodated so as to achieve the best public-benefits maximizing result on the merits. If the Department deems that any remedy is necessary here, it should, as it has in numerous similar instances, grant a modest extension of time to the answer period to accommodate Delta’s amendment.

WHEREFORE, Delta urges that American's and United's Motions be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Consolidated Answer of Delta Air Lines, Inc., has been served this 21st day of July, 2000, upon each of the following persons, by facsimile.

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