

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Motion of :
 :
 AMERICAN AIRLINES, INC. : Dockets DOT-OST-2004-19077
 : DOT-OST-2007-28567
 for U.S.-China route flexibility :

2019 U.S.-HANEDA COMBINATION SERVICES : Docket DOT-OST-2016-0048
ALLOCATION PROCEEDING :

CONSOLIDATED OBJECTION OF
UNITED AIRLINES, INC.

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January 14, 2019

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United¹ submits the following response² to correct American’s errors and mischaracterizations in its recent filings³ in the above-referenced dockets. United believes once the record is corrected the Department will find no reason to grant the relief requested by American in China. Further, after seeing American’s attempts to make hay out of Delta’s recent motion for gateway flexibility in U.S.-Haneda, United is on record for good cause objecting to the Haneda gateway flexibility request. Access to limited entry route rights should be about consumers and communities and if one route falters, the Department should have discretion in determining when and how the public benefits should be rebalanced. American, Delta, and Hawaiian have it wrong –

¹ Common names are used for airlines.

² United intends for this Consolidated Objection to serve as a response to: (1) American’s Motion for U.S.-China Route Flexibility; and (2) American’s Answer to Delta’s Motion for Gateway Flexibility in the U.S.-Haneda docket. To the extent it may be required, United respectfully requests leave from the Department of Transportation (“Department”) to respond to American’s Answer to Delta’s Motion for Gateway Flexibility. In addition, given that American’s statements in these filings raise issues related to American’s pending dormancy waiver application, United requests leave to address these issues herein. Good cause exists for the Department to accept and consider this response as it is necessary to respond to American to correct the record.

³ American Airlines, Inc., Motion of American Airlines, Inc. for U.S.-China Route Flexibility, Docket DOT-OST-2007-28567 (Jan. 7, 2019); American Airlines, Inc., Answer of American Airlines, Inc. in Conditional Support of the Motion of Delta Air Lines, Inc., Docket DOT-OST-2016-0048 (Jan. 7, 2019).

these carriers seek gateway flexibility for the betterment of their financial performance and give little or no attention to the consumers and communities that win or lose in limited entry route right proceedings. In this light, the Department should reject the requests for gateway flexibility at Tokyo Haneda and China – just as the Department did in reviewing the Havana gateway flexibility request – and continue its long-standing policy of allocating rights based upon its unbiased assessment of public benefits.

Further, United reiterates that American’s 14 Chicago-China frequencies should be withdrawn from American and allocated to Delta and United. Its request for gateway flexibility is nothing more than a last-ditch effort by American to hold 14 China frequencies it clearly has no ability to use.

A. American’s Mischaracterizations Distort the Historical Background in U.S.-China

American’s statement that it is the “only” carrier with frequencies that are restricted—without gateway flexibility—and that United has “many” frequencies with gateway flexibility is false.⁴ American currently holds 42 “restricted” U.S.-China Zone 1 frequencies. By comparison, United has **44 restricted** U.S.-China Zone 1 frequencies—*i.e.*, *more* than American. In total, United holds 63 U.S.-China Zone 1 frequencies and only 19 (not even 1/3rd of United’s holdings) can technically be considered “unrestricted.”⁵ And while these 19 frequencies are technically not gateway restricted, United uses them in such a manner that it could not commercially and economically move them without serious detriment to its U.S.–China franchise. Accordingly, for

⁴ American’s Motion for U.S.-China Route Flexibility at 3.

⁵ *See, e.g.*, Order 94-12-7, as renewed by Notice of Action Taken dated Nov. 13, 1998, Docket DOT-OST-1996-1915 at 1 (confirming/renewing United’s 14 U.S.-China frequencies and describing the authority as “scheduled combination service in the U.S.-China market” without reference to any restrictions placed on the frequencies); *see also* Order to Show Cause, Show Cause Order 1999-6-17 at 9 (Jun. 22, 1999) and Final Order, Order 99-8-9 at 6, Docket DOT-OST-99-5539-452 (Aug. 16, 1999) (awarding United five weekly combination frequencies “on a nonstop basis in the U.S.-China market” and “without restriction as to the type or routing of services operated, thereby affording the carriers the flexibility to respond to changes in demands of the market.”)

all intents and purposes, United has zero frequencies that can be freely moved. Of the 19 “unrestricted” frequencies in question, seven are used for daily Chicago–Beijing service, a route United has long operated.⁶ Seven more are used at United’s prime Asia/Pacific gateway of San Francisco for daily service to Beijing and the remaining five are used for United’s long operated San Francisco–Shanghai #1 service.⁷ The remaining 44 frequencies are allocated accordingly:

- Two weekly frequencies allocated to United **specifically** for SFO-PVG⁸
- Seven weekly frequencies allocated to United **specifically** for ORD-PVG service⁹
- Seven weekly frequencies allocated to Continental **specifically** for EWR-PEK service¹⁰
- Seven weekly frequencies allocated to United **specifically** for IAD-PEK service¹¹
- Seven weekly frequencies allocated to Continental **specifically** for EWR-PVG service¹²
- Seven weekly frequencies allocated to Continental/United **specifically** for LAX-PVG service¹³
- Seven weekly frequencies allocated to United **specifically** for SFO-PVG¹⁴

The Department has operated consistently in carrier selection proceedings to restrict new entrant certificate authority and frequency allocations to the markets for which carriers proposed service on the basis of which they were selected. In the early 2000s, there were two U.S.-China

⁶ Order to Show Cause, Order 94-12-7, Docket 49760 (Dec. 6, 1994) (as renewed by Notice of Action Taken dated Nov. 13, 1998).

⁷ Show Cause Order, Order 1999-6-17 at 9 (aff’d by Final Order, Order 1999-8-9 at 5).

⁸ Final Order, Order 2001-1-6, Docket DOT-OST-1999-6323 (Jan. 10, 2001).

⁹ Order, Order 2004-7-23, Docket DOT-OST-2004-18469 (Jul. 23, 2004).

¹⁰ Final Order, Order 2005-3-24, Docket DOT-OST-2004-19077 (Mar. 17, 2005); Orders 2013-4-11 (reissuing United/Continental authorities to United), 2011-3-14 (United/Continental route transfer).

¹¹ Final Order, Order 2007-2-10, Docket DOT-OST-2006-25275 (Feb. 8, 2007).

¹² Final Order, Order 2007-12-26, Docket DOT-OST-2007-28567 (Dec. 28, 2007); Orders 2013-4-11 (reissuing United/Continental authorities to United), 2011-3-14 (United/Continental route transfer).

¹³ Notice of Action Taken, Docket DOT-OST-2010-0256 (Oct. 13, 2010); Orders 2013-4-11 (reissuing United/Continental authorities to United), 2011-3-14 (United/Continental route transfer).

¹⁴ Notice of Action Taken, Docket DOT-OST-2014-0196 (Nov. 21, 2014).

proceedings¹⁵ in which American made similar arguments that it is making today – that the restrictions placed on new frequencies were in contrast to the freedom given to U.S.-China incumbents and that a new entrant should be granted the same operating flexibility as the incumbents to move their services to other city-pair markets.¹⁶ However, both times, the Department elected not to grant American’s request, deferred and ultimately never reached a decision on the issue, and imposed gateway restrictions on the frequencies it allocated anyway.¹⁷ The Department should reach the same conclusion now. Notably, to date, the Department has not been compelled to deviate from its long-standing process and all frequencies in the U.S.-China market since the historical bilateral agreement designating specific airlines have been subject to a comparative selection process and restricted to specific gateways based on the Department’s public benefits determinations.

Blanket gateway flexibility is an extraordinary request that deviates from long-standing Department precedent. American and Delta rely on U.S.-Brazil as the sole precedent to support their request for gateway flexibility. However, that Department decision was made in June 2004, long after the Department first decided to not act on American’s earlier gateway flexibility request in China in 2000.¹⁸ And, importantly, in July 2004, only *one* month after granting the Brazil flexibility, the Department stated that it did “not see a need to address American’s broader concern on flexibility to change city-pairs at this time” in China and has maintained that position to this

¹⁵ U.S.-China Air Services (2001) Proceeding, Docket DOT-OST-99-6323 and 2004 Combination Frequencies (U.S.-China) proceeding, Docket DOT-OST-2004-18469.

¹⁶ See Petition of American Airlines, Inc. for Reconsideration of Order 2000-1-21, Docket DOT-OST-99-6323 (Feb. 2, 2000); see also Objections of American Airlines, Inc. to Notice Inviting Applications, Docket DOT-OST-2004-18469 (Jun. 22, 2004).

¹⁷ See Order on Reconsideration, Order 2000-2-29, Docket DOT-OST-1999-6323 (Feb. 25, 2000); see also Final Order, Order 2001-1-6, Docket DOT-OST-1999-6323 (Jan. 10, 2001); see also Order, Order 2004-7-23, Docket DOT-OST-2004-18469 (Jul. 23, 2004).

¹⁸ Order, Order 2004-6-25, Dockets DOT-OST-2003-15021 and DOT-OST-1998-6284 (Jun. 28, 2004).

day.¹⁹ The crux of the matter is that the Department did not find it compelling in 2000, 2004, or at any time since then, to allocate frequencies on an unrestricted basis in China just because it did so one time 15 years ago in Brazil. Further, the Brazil situation was distinguishable since there carriers of focus may have held truly unrestricted frequencies, but as United has corrected the record above, that is not at all the case in China where United for all intents and purposes has zero unrestricted frequencies.

Given that American's attempts to exaggerate and distort the facts have been dispelled and because American has not presented any reasons for the necessity to overturn decades of Department precedent, the Department should not be persuaded to change its long-standing processes in allocating frequencies.

B. American's Filings Confirm it Has No Plans to Reinstate its Chicago Frequencies and the Department Should Deny its Dormancy Waiver Application

While American has stated its intentions to revive its dormant Chicago-China services hinges on "enhanced support from China Southern," its previous claims now clearly fall flat in light of its request for route flexibility.²⁰ Recently, American has been touting its burgeoning relationship with China Southern as a panacea for the financial problems on its Chicago-China routes. In defense of its dormancy waiver application for the Chicago-China slots, American has cited a key reason to be the lack of a Chinese alliance partner.²¹ American has consistently stated that greater cooperation with China Southern "will enable American to revive its dormant U.S.-China services and make them commercially sustainable," that it is "unable to sustain" Chicago-

¹⁹ Order, Order 2004-7-23 at 3, fn. 6, Docket DOT-OST-2004-18469 (Jul. 23, 2004).

²⁰ Response of American Airlines, Inc. at 3, Dockets DOT-OST-2004-19011 and DOT-OST-2007-28567 (Dec. 11, 2018).

²¹ See Consolidated Objection and Response of American Airlines, Inc., Docket DOT-OST-2004-19077 (Nov. 19, 2018).

China service “without assistance from a Chinese partner”²² and that it only needs until June 28, 2019—five months from now—to make this possible. To further this narrative, American recently applied for²³ and obtained²⁴ approval for reciprocal code-sharing operations with China Southern and has boasted that this enhanced codesharing will provide it “robust connectivity” similar to the partnerships that Delta and United have long enjoyed, and that it is “confident” that this expanded relationship will offer American “the same critical support” for its U.S.-China services.²⁵

However, merely weeks after these assured statements, American now says that its relationship with China Southern “is only in its infancy” and given its lack of a China based alliance partner it now needs a grant of flexibility as the “only” remedy for its purported disadvantage in the U.S.-China market.²⁶

American’s claims that its relationship with China Southern is in its “infancy” and its claim that it will somehow save its Chicago-China service are mutually exclusive. American cannot have it both ways. Taking American’s latest statements at their face value, the logical conclusion is that American’s “infant” relationship with China Southern will *not* save its Chicago-China flights and that American has no plans or ability to relaunch these flights. This is further evidenced by the fact that American has not made the Chicago-China flights available for sale or taken any other actions typical of a carrier that is planning to relaunch long-haul service. Accordingly, to ensure these valuable frequencies are not squandered and that the greatest number of passengers and communities continue to have access to the market, the Department should deny American’s

²² *Id.* at 4.

²³ *See* Application of American Airlines, Inc. for an Amendment to Exemption Authority (United States – China Points), Docket DOT-OST-2017-0133 (Nov. 30, 2018); *see also* Joint Application of American Airlines, Inc. and China Southern Airlines Company Limited for Amendment of Statements of Authorization, Docket DOT-OST-2017-0134 (Nov. 30, 2018).

²⁴ Notice of Action Taken, Docket DOT-OST-2017-0133 (Dec. 20, 2018).

²⁵ American’s Motion for U.S.-China Route Flexibility at 2.

²⁶ *Id.* at 4.

dormancy waiver request and grant United and Delta's pending applications for U.S.-China Zone 1 frequencies.

As mentioned above, this is not American's first bite at the apple. American made a similar unsuccessful request for route flexibility. As United stated then, which still applies today, nearly 20 years later, "the conclusion is inescapable that American is looking for another alternative since, otherwise, it would not require the relief it has requested."²⁷ Indeed, in seeking gateway flexibility, American casts even further doubt that the flights will ever return to Chicago. American cannot be permitted to move these frequencies freely in the highly competitive and restrictive China market without giving the Department an opportunity to consider the public benefits to passengers and communities or the public benefits of other carriers' existing proposals for the same frequencies. United and Delta have pending applications to make good use of the dormant U.S.-China Zone 1 frequencies. The Department should grant those applications and deny American's requests for a dormancy waiver for its Chicago-China frequencies and route flexibility.

C. The Department's Focus Should Be Benefits to Passengers and Communities—Not Self-interested Carrier Gateway Preferences

American bemoans the Department's existing process for allocating frequencies referring to it as an "additional step," and complains about having to deal with the "risk of opposition" and that "the existing licensing regime governing U.S.-China Zone 1 frequencies impairs American's ability to compete."²⁸ In seeking blanket gateway flexibility in U.S.-China and U.S.-Japan, Delta, American and Hawaiian have it backwards. Their requests for gateway flexibility rely on benefits to the carriers.

²⁷ Answer of United Airlines, Inc. at 3-4, Docket DOT-OST-99-6323 (Feb. 7, 2000).

²⁸ American's Motion for U.S.-China Route Flexibility at 1.

In contrast, United fully supports the Department’s long-standing focus on ensuring maximum public benefits are being recognized and that the greatest number of passengers and communities, who should be the central focus of any route proceeding, are provided access to service to limited entry markets such as China and Haneda. The Department’s principal objective in route allocation proceedings has always been to maximize public benefits—i.e., which applicants will be most likely to offer and maintain the best service for the traveling and shipping public. The Department has, through a succession of route allocation proceedings, made a number of public interest determinations – whether that is related to China, Haneda, or even Cuba routes. In Haneda for example, these determinations were based upon a “careful public interest analysis,”²⁹ sought to provide “the most effective access to Haneda,”³⁰ and included a consideration of public interest factors such as the U.S.-Tokyo market demand, geographic diversity, and connecting opportunities for consumers, among others.³¹ In considering carrier requests to change gateways from what they were originally awarded, the Department has consistently stated that “the public interest would be best served by our considering such a request on the basis of a fresh record and in light of the circumstances presented at that time.”³²

The Department has also emphasized that competitive proceedings require the “expending of carrier and Department resources, time lost, uncertainty for both communities and consumers, and winners and losers” and that the Department “would not look favorably on future conduct that undermined the Department’s process or the selections it made.”³³ And just a few months ago, in denying American’s request for gateway flexibility in U.S.-Cuba, the Department stated that

²⁹ DOT Order 2016-7-14, Order to Show Cause at 8, Docket DOT-OST-2016-0048 (Jul. 20, 2016).

³⁰ DOT Order 2010-5-7, Order to Show Cause at 8, Docket DOT-OST-2010-0018 (May 7, 2010).

³¹ *Id.*

³² DOT Order 2010-5-7 at 10; DOT Order 2018-11-5 at 4

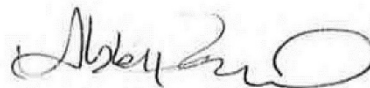
³³ DOT Order 2016-7-14 at 9.

“[a]llowing carriers to now select at their discretion a different U.S. gateway would defeat the Department’s rationale for selection of the existing carriers and gateways over other competing applicants, and would undermine the Department’s public interest determinations.”³⁴

Just as in Cuba, the recent requests for gateway flexibility in U.S.-China and U.S.-Haneda risk undermining the Department’s process and past selections. Putting passengers and communities first, the public interest supports the existing manner of allocating valuable and restricted frequencies, not carrier-focused gateway flexibility.

WHEREFORE, United respectfully requests that the Department (1) deny American’s motion for gateway flexibility for all carriers holding U.S.-China Zone 1 frequencies, (2) deny Delta’s motion for gateway flexibility in U.S.-Haneda, (3) deny American’s dormancy waiver application for its 14 weekly frequencies from Chicago-China; and 2) allocate seven U.S.-China Zone 1 frequencies to United to commence additional daily nonstop service from Newark Liberty to Shanghai.

Respectfully Submitted,



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January 14, 2019

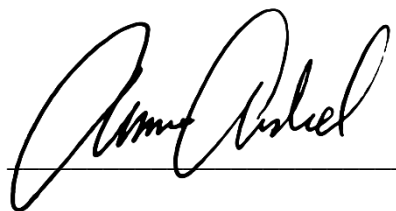
³⁴ DOT Order 2018-11-5 at 4.

CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on the following persons in accordance with the Department's Rules of Practice:

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A handwritten signature in black ink, appearing to read "Robert Wirick", is written over a horizontal line.

January 14, 2019