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Order 99-8-9

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**Issued by the Department of Transportation
on the 12th day of August, 1999**

Served: August 16, 1999

U.S.-CHINA AIR SERVICES

Docket OST-99-5539

FINAL ORDER

SUMMARY

By this order, we make final our tentative decision to allocate the 17 additional weekly frequencies available for the next two years (*i.e.*, until April 1, 2001) for U.S.-China scheduled air services as follows: six weekly frequencies to Federal Express Corporation, six weekly frequencies to Northwest Airlines, Inc., and five weekly frequencies to United Air Lines, Inc.

BACKGROUND

On April 8, 1999, representatives of the United States and the People's Republic of China (China) signed a Protocol that amends the U.S.-China Air Transport Services Agreement. The Protocol provides for the expansion of U.S.-carrier services in the market in phases beyond the 27 weekly frequencies authorized prior to the new agreement as follows:

- (a) effective April 1, 1999, designated U.S. airlines may operate a total of eight additional weekly frequencies;
- (b) effective April 1, 2000, designated U.S. airlines may operate a total of nine additional weekly frequencies; and
- (c) effective April 1, 2001, the U.S. may designate a fourth U.S. carrier and the designated U.S. carriers may operate a total of ten additional weekly frequencies. ¹

The additional frequencies may be operated by designated airlines on Routes A and B. ² On Route A, any designated U.S. airline may operate combination and all-cargo services with full

¹ The Department expects to announce shortly procedures for a proceeding to award the opportunities available on April 1, 2001.

traffic rights between any point or points in the United States, via Tokyo or another point in Japan, to Shanghai, Guangzhou, Beijing.³ The new agreement amends Route A to permit service from any point(s) in the United States rather than specific U.S. gateways as provided for under the old agreement and further provides that two additional points in China may be selected by the United States, from among Chinese airports open to scheduled international operations. On Route B, the designated U.S. airline may operate all-cargo services with full traffic rights between any point or points in the United States, via any intermediate points, to any point or points in China open to scheduled international operations, and beyond to points outside China. Under the terms of the new agreement, the frequency increases available April 1, 1999 (8 frequencies) and April 1, 2000 (9 frequencies) and the expansion of new gateways in China on Route A at this time are available only to the currently designated airlines—Northwest, United, and Federal Express.

By Order 99-6-17, we considered the proposals of Federal Express, Northwest, and United to use a combined total of 32 weekly frequencies. We tentatively decided to allocate the 17 available frequencies as equally as possible among the three carriers—six to Federal Express (four weekly frequencies that are available now and two weekly frequencies that become available April 1, 2000), six weekly frequencies to Northwest (four weekly frequencies that are available now and two weekly frequencies that become available April 1, 2000), and five weekly frequencies to United (all from the pool of frequencies that become available April 1, 2000). We required that objections to our tentative decision be filed by July 2 and that answers be filed by July 7.

RESPONSES TO ORDER 99-6-17

Objections or comments to the show-cause order were filed by Federal Express, Northwest, United, the City and County of San Francisco (San Francisco), and the City of Chicago (Chicago). Federal Express, Northwest, and United filed Replies.⁴

Federal Express argues that the Department should use this proceeding to reverse the historical imbalance in the allocation of passenger versus all-cargo frequencies in the U.S.-China market and also that it should reverse its proposed allocation of frequencies to the extent necessary to increase the number of new frequencies allocated to Federal Express from six to eight. Federal Express maintains that it needs eight new frequencies in order to provide a pattern of daily express freight service to both Beijing and Shanghai at times of the day dictated by its customers' business needs.⁵ Therefore, Federal Express argues that the Department should allocate the 17 available frequencies in a way that would allow each of the carriers to conduct, at a minimum, daily on-line operations to the two principal destinations in China—Beijing and Shanghai. Federal Express further argues that since the peak season for air express/freight service, due to heavy holiday shipping, is approaching soon all of the frequencies to be awarded to Federal Express should come from the pool of frequencies that are available now. Finally, Federal Express states

² The Agreement limits the number of U.S. carriers that may be designated on Route A to two and on Route B to one. Currently, Northwest and United are designated on Route A, and Federal Express is designated on Route B.

³ The new agreement consolidates two routes under the old agreement into Route A. With respect to flights operated via Japan on Route A, the new agreement limits the number of combination flights that may operate with fifth-freedom traffic rights between Japan and China to 39 weekly frequencies.

⁴ Northwest accompanied its reply with a motion for leave to file, which we will grant.

⁵ Federal Express uses daily express service to mean that flights would operate six days per week.

that it disagrees with the Department's tentative finding that all three of the carriers' service proposals are essentially equal, arguing that the record shows that every frequency awarded to Federal Express would be more valuable to the U.S. economy than a frequency awarded to either Northwest or United.

United argues that it needs the seven frequencies it requested for April 1, 2001, to implement its proposed daily nonstop services in the San Francisco-Shanghai market. In this regard, United argues that its proposed service would provide the maximum public benefits because only United would provide all new nonstop service in the U.S.-China market, that the widespread civic support for its proposed service demonstrates the need for it to receive all of the frequencies it requested, and that a pattern of only five weekly nonstop flights in the San Francisco-Shanghai market is not only less attractive to passengers, especially business passengers, it is also less efficient to operate than a pattern of daily service. United also argues that the other applicants do not need the full second-year allocations that they were tentatively awarded in order to implement the core elements of their proposals and that a reduction in one or both of those applicants' second-year allocations by a total of two weekly frequencies would enable the Department to grant United's request for seven weekly frequencies. Specifically, United argues that Northwest has not shown how it would efficiently use an allocation of a sixth new frequency and that any use to which Northwest might put this frequency would represent a relative waste of this valuable economic asset as compared to United's proposal to use it for daily nonstop San Francisco-Shanghai service. With respect to Federal Express, United argues that Federal Express needs only two additional frequencies to operate daily service to both Beijing and Shanghai—on a round-robin routing. Finally, United argues that at the very least it should be allocated six new weekly frequencies.

Northwest argues that unless it receives at least nine new frequencies, it would be unable to offer commercially viable service both to its passengers and its shippers. Specifically, Northwest argues that it needs five new frequencies in order to offer daily service in the Detroit-Shanghai market to compete with United's existing daily service to Shanghai and that it needs four new frequencies to make a viable entry into the heavy freight market with four weekly B747 freighter services. Northwest argues that if it was awarded three additional weekly frequencies it would be able to operate four weekly all-cargo flights that would allow other U.S. all-cargo carriers, especially Airborne, DHL and Emery, to use the capacity offered by Northwest to more effectively compete with Federal Express in the U.S.-China all-cargo market. Finally, in response to arguments made by United, Northwest states that although it believes it should be allocated all 11 of the new frequencies it requested, if it ultimately receives six new frequencies as proposed by the Department in the show-cause order, it would use all six of those frequencies.

San Francisco and Chicago filed in support of United's receiving seven new frequencies, stressing the importance that an award of seven weekly frequencies to United would have for improving service to China for their communities.

DECISION

We have decided to make final our tentative decision to award the 17 weekly frequencies at issue as follows: six weekly frequencies to Federal Express (four weekly frequencies that are available now and two weekly frequencies that become available April 1, 2000), six weekly frequencies to

Northwest (four weekly frequencies that are available now and two weekly frequencies that become available April 1, 2000), and five weekly frequencies to United (all from the pool of frequencies that become available April 1, 2000).

Services in the U.S.-China market historically have been very restricted. The United States has been limited in the number of U.S. carriers that can serve the market and the level of services that those carriers could provide. All of the carriers that now serve the market have long-sought the ability to expand their services to develop this major U.S.-Asia market. The 1999 agreement represents an important step toward achieving that objective and provides a significant opportunity for the incumbent U.S. carriers to expand their services.

It is in this context that we carefully reviewed the proposals of the three incumbent carriers to use the 17 new frequencies and recognized the benefits each would offer toward meeting the demand for passenger and all-cargo services. Indeed, in our show-cause order we tentatively found that each carrier had submitted a credible proposal for using the frequencies and upgrading its current services and that no proposal was markedly superior to the others with respect to the public benefits that would inure from its service. In light of these tentative findings, we tentatively determined that given the limited number of frequencies available over the next two years, the public interest was best served by ensuring that all three carriers were afforded a significant opportunity to expand their services. We also recognized that while none of the three carriers would receive all of the frequencies it requested, we tentatively concluded that our proposed allocation best balanced the combined needs for expansion of all-cargo and combination services and a more competitive market structure in the U.S.-China market.

We have carefully reviewed the objections and comments to our tentative decision and do not find in the record they constitute a persuasive basis to modify our tentative decision. In their objections and comments, each of the carriers supports the Department's decision to the extent that it allocated each carrier a portion of the 17 available frequencies. None of the carriers has presented any arguments that were not considered by the Department in reaching its tentative decision. Rather, each carrier has revisited the themes presented in support of its application, focusing its arguments now on why it should be awarded more new frequencies than we proposed to allocate to it—Federal Express for two more weekly frequencies, Northwest for three more weekly frequencies, and United for two more weekly frequencies. However, in order to grant any carrier's request for additional new frequencies above the level we proposed, we would have to reduce the new frequencies tentatively allocated to one or more of the other carriers.

Each of the applicants and the civic supporters has presented arguments based on its separate circumstances. However, we do not find, upon reviewing the record as a whole, that any party has made a convincing case that the overall public interest would be served better by increasing one applicant's allocation of new frequencies at the expense of reducing the allocation of additional new frequencies for the other carriers. In short, none of the proposed alterations would accomplish the result achieved by our tentative decision, namely, a result that "fairly balances the needs of the passenger and all-cargo segments of the market for additional services and also takes into consideration the needs of the three carriers for additional frequencies to expand their operations and to balance the competitive structure of the U.S.-China market." Order 99-6-17 at 7. There is no convincing justification for changing that approach; nor is there a convincing

demonstration of how that approach could be achieved were we to accept the modifications proposed by the objecting parties.

With the new frequencies we proposed to allocate to the carriers, each will be able to significantly expand its current services in the U.S.-China market and each will receive a majority of the new frequencies it indicates it needs. Federal Express will be able to double its existing all-cargo service in the U.S.-China market immediately and enhance its ability to provide express freight service to both Beijing and Shanghai. Northwest will be able to provide daily combination service to both Beijing and Shanghai from Detroit and offer new passenger service from Honolulu or new cargo service from Anchorage. United will be able to operate new nonstop combination service in the San Francisco-Shanghai market at least five days per week, in addition to its current 14 weekly combination flights in the U.S.-China market. These service enhancements will clearly make available a range of new benefits for passengers and shippers. Based on the above, we are not convinced that distributing the 17 available frequencies any way other than as we proposed would provide as many or superior public benefits across all categories of traffic in the U.S.-China market. Finally, we note that none of the carriers has stated that it would be unable to use the number of frequencies we tentatively awarded it. In view of these considerations, we make final our tentative allocations of new frequencies to Federal Express, Northwest, and United.

ECONOMIC AUTHORITY

As set forth in Order 99-6-17, and not opposed by any party, we will allocate the frequencies here for services in the U.S.-China market without restriction as to the type or routing of services operated, thereby affording the carriers the flexibility to respond to changes in the demands of the market.⁶ The frequency allocations will be of indefinite duration, but subject to the continued effectiveness of the carriers' underlying economic authority as well as to our standard condition that we may amend, modify, or revoke the allocations at any time and without hearing, at our discretion. In addition, the frequencies allocated are subject to our standard 90-day dormancy condition, wherein frequencies will be deemed dormant and will automatically revert to the Department for reallocation if they are not operated for 90 days, except where service in the market is seasonal. The dormancy period for the frequencies awarded to Federal Express and Northwest that are available now will begin on the date of service of this final order. The dormancy period for the frequencies awarded to Federal Express, Northwest, and United that are available April 1, 2000, will begin on that date.

ACCORDINGLY,

1. We make final our tentative findings and conclusions in Order 99-6-17;
2. We allocate 17 additional weekly frequencies for U.S.-China services as follows: (a) six frequencies to Federal Express Corporation for all-cargo services—four frequencies that are available now and two frequencies that become available April 1, 2000; (b) six frequencies to Northwest Airlines, Inc., for combination and/or all-cargo services—four frequencies that are

⁶ However, given the fact that the Agreement limits the number of combination service frequencies that may be operated via Japan with fifth-freedom traffic rights, the fact that United stated that it was willing to accept an allocation of frequencies that would be restricted to nonstop service, and the fact that United has reaffirmed its acceptance of such a condition, we will condition the frequencies awarded to United to operations on a nonstop basis only.

available now and two frequencies that become available April 1, 2000; and (c) five frequencies to United Air Lines, Inc., for nonstop combination services beginning April 1, 2000;

3. The frequencies allocated to United Air Lines, Inc., in paragraph 2, above, are limited to services operated on a nonstop basis only in the U.S.-China market;

4. The frequencies allocated here are effective as specified in ordering paragraph 2, above, and shall remain effective indefinitely, provided that the carriers continue to hold the necessary underlying economic authority to serve the U.S.-China market, and are subject to our standard condition that we may amend, modify, or revoke the allocations at any time and without hearing, at our discretion;

5. The frequencies allocated here are subject to the condition that the frequencies will expire automatically and will revert to the Department for reallocation if they are not used for a period of 90 days;⁷

6. We grant the motion of Northwest Airlines, Inc., for leave to file an otherwise unauthorized document in Docket OST-99-5539; and

7. We will serve this order on Federal Express Corporation; Northwest Airlines, Inc.; United Air Lines, Inc.; the City and County of San Francisco; the City of Chicago; the Ambassador of Peoples Republic of China in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

A. Bradley Mims

Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

⁷ The dormancy period for the frequencies allocated to Federal Express and Northwest that are available now will begin on the date of service of this final order. The dormancy period for the frequencies allocated to Federal Express, Northwest, and United that become available on April 1, 2000, will begin on that date.