



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

**Order 2018-7-3**

Issued by the Department of Transportation  
on the 6<sup>th</sup> day of July, 2018

**Served: July 6, 2018**

Applications of

**AMERICAN AIRLINES, INC.**

**JETBLUE AIRWAYS CORPORATION**

**SOUTHWEST AIRLINES CO.**

for allocation of one weekly U.S.-Havana  
frequency

**Docket DOT-OST-2016-0021**

**ORDER INSTITUTING PROCEEDING**

**Summary**

By this order, the U.S. Department of Transportation institutes the *2018 U.S.-Havana Frequency Allocation Proceeding* to allocate one available weekly frequency for Saturday-only scheduled service between the United States and Havana, Cuba.

**Background**

Under the terms of the Memorandum of Understanding (MOU) between the United States and Cuba, signed February 16, 2016, U.S. carriers may operate up to twenty (20) daily combination or all-cargo scheduled round-trip frequencies between the United States and Havana, Cuba.<sup>1</sup> By Orders 2016-8-38 and 2018-4-17, the Department has allocated the 20 available U.S.-Havana daily frequencies as shown in the chart below:

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<sup>1</sup> The MOU also provides that, for scheduled combination or all-cargo services to and from each of the other nine (9) international airports in Cuba, U.S. carriers may operate up to ten (10) daily round-trip frequencies, for a total of ninety (90) daily non-Havana U.S.-Cuba round-trip frequencies. The MOU also allows for unlimited charter services to and from any point in Cuba, in accordance with the regulations of each country. The MOU does not place limits on the number of carriers that may provide U.S.-Cuba services, nor does it limit aircraft capacity for scheduled or charter services.

<b>Carrier</b>	<b>Routing</b>	<b>Frequency</b>
American Airlines, Inc. (American) <sup>2</sup>	Miami-Havana	Five times daily
	Charlotte-Havana	Once daily
Delta Air Lines, Inc. (Delta)	New York (JFK) – Havana	Once weekly (Saturday)
	Atlanta- Havana	Once daily
	Miami-Havana	Twice daily
JetBlue Airways Corporation (JetBlue)	Boston – Havana	Once weekly (Saturday)
	Fort Lauderdale – Havana	Three times daily (except once on Saturdays)
	New York (JFK) – Havana	Once daily
	Orlando-Havana	Once daily
Southwest Airlines Co. (Southwest)	Fort Lauderdale-Havana	Three times daily
	Tampa-Havana	Once daily
United Airlines, Inc. (United) <sup>3</sup>	Newark – Havana	Once daily
	Houston-Havana	Once daily

On May 25, 2018, Delta informed the Department that it will terminate its Saturday service to Havana, Cuba from New York (JFK) on Saturday, September 1, 2018, and return the frequency to the Department.<sup>4</sup>

### **Applications and Responsive Pleadings**

Between June 4 and July 3, 2018, three U.S. carriers - American, JetBlue, and Southwest - filed applications and other responsive pleadings seeking allocation of the one weekly frequency being returned by Delta, to support additional scheduled Saturday-only service between the United States and Havana.

American proposes an additional weekly Saturday-only Miami-Havana flight using 160-seat Boeing 737-800 aircraft, beginning no later than December 22, 2018. JetBlue proposes an additional weekly Saturday-only Fort Lauderdale-Havana flight using 162-seat Airbus A320 aircraft, beginning on November 10, 2018. Southwest proposes an additional weekly Saturday-only Tampa-Havana flight using 175-seat Boeing 737-800 aircraft, beginning within 90 days after the Department issues a Final Order granting authority.

<sup>2</sup> The Department granted American flexibility to use either its own mainline aircraft or regional aircraft operated by American’s wholly-owned subsidiaries, Envoy, Piedmont, or PSA, under the “American Eagle” brand name on American’s nonstop U.S.-Cuba routes. *See* Notice of Action Taken dated June 4, 2018, in this docket.

<sup>3</sup> The Department granted United flexibility to use either its own mainline aircraft or regional aircraft operated by its partner carriers under the “United Express” brand name on United’s U.S.-Havana routes. *See* Order 2018-4-17 and Notice of Action Taken dated May 4, 2018, in this docket.

<sup>4</sup> *See* letter from Delta dated May 25, 2018, in this docket.

Among the responsive pleadings submitted, JetBlue filed a motion stating that American's and Southwest's applications are mutually exclusive with JetBlue's application, and JetBlue requests that the Department institute a frequency allocation proceeding, in accordance the *Ashbacker* doctrine.<sup>5</sup> American also submitted a motion requesting that the Department conduct a proceeding on an expedited procedural schedule and on the basis of updated traffic and load factor data.

### **Proceeding**

In light of the competing applications and responsive pleadings filed, and taking note of the motions of JetBlue and American that we institute a frequency allocation proceeding, the Department has decided to institute the *2018 U.S.-Havana Frequency Allocation Proceeding* to allocate the one available weekly frequency that may be used for scheduled combination or all-cargo services between the United States and Havana, Cuba on Saturdays.

The Department's principal objective in this proceeding will be to maximize public benefits. In this regard, the Department will consider which applicant will be most likely to offer and maintain the best service for the traveling and shipping public. The Department will also consider the effects of the applicants' service proposals on the overall competitive environment, including effects on market structure and competition in the U.S.- Cuba market, and any other market(s) shown to be relevant. In addition, where relevant, the Department will consider other factors historically used for carrier selection.<sup>6</sup>

The Department expects to allocate the frequency for an indefinite term, subject to a start-up condition and the Department's standard 90-day dormancy condition. If not used for a period of 90 days, the allocation with respect to that frequency would expire automatically and revert to the Department for reallocation.

The Department believes that written, non-oral procedures under Part 302 of the Department's regulations (14 CFR 302) are appropriate and that, by using these procedures, the Department can establish a complete evidentiary record and make a timely award with the least possible delay and without unnecessary costs to the applicants. In the interest of expediting the award of this valuable route right, the Department may proceed directly to a final order where the record in this proceeding justifies such action. The Department finds no material issues of fact that would warrant an oral evidentiary hearing. The Department intends to resolve issues and award the subject authority on the basis of pleadings filed in this proceeding. If, however, upon review of the record, the Department determines that additional information is required and/or modified procedures are necessary for the adjudication of this case, the Department reserves the right to request additional information and/or to modify the procedures used in this matter.

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<sup>5</sup> *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

<sup>6</sup> Carriers are reminded that a number of significant limitations and requirements remain in place concerning air transportation between Cuba and the United States. Nothing in the Department's award of authority in this proceeding will relieve parties from complying with all applicable regulations and requirements of other U.S. agencies and with all applicable laws of the United States.

## **Evidentiary Requirements**

The Department intends to conduct this proceeding in a manner that will facilitate the Department's reaching a prompt final decision.

Except for procedural dates, applications should conform to Part 302, Subpart C of the Department's regulations (14 CFR Part 302). All pleadings should be filed with the Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, D.C. 20590, in the captioned Docket for the *2018 U.S.-Havana Frequency Allocation Proceeding*, and should include, at a minimum, the following information.<sup>7 8</sup>

1. Provide a firm date for instituting service, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the applicable year, with a break-down for peak and off-peak seasons. When responding to this evidence request, use the 12 months ending December 31, 2019, as the reference period. Confirm that the only day of the week the proposed service would be offered is Saturday.<sup>9</sup> Identify all seasonal service, if any, and 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<sup>10</sup> and elapsed time for services), airports served, departure and arrival times, equipment types (including seat configuration by class of service and the available cargo capacity in U.S. pounds), days scheduled, and classes of service offered;

Should parties seek to justify a proposed service based on forecast traffic, they should provide as much detail as possible, including data sources and methodologies, on how they arrived at their forecast traffic levels;

2. A brief description of the scheduled and charter service the applicant currently provides, if any, between the United States and Cuba, including frequency levels (and seasonality) by city-pair market. To the extent that such information is available, carriers should also provide traffic data (*e.g.*, Origin and Destination information) and load factors pertaining to their existing services. Carriers are asked that any such data be provided for the period beginning January 1, 2016, through the most recent date for which such data is available; and

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<sup>7</sup> The original filing should be on 8½" x 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of the Department's docket imaging system. Alternatively, parties are encouraged to use the electronic submission capability available through the Dockets FDMS web site (<http://www.regulations.gov>) by following the instructions on the web site. Additionally, service by facsimile or electronic mail is authorized.

<sup>8</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. To the extent necessary, applicants for frequency allocations should also file corresponding requests for exemption authority.

<sup>9</sup> The frequency being returned by Delta is limited to service only on Saturday.

<sup>10</sup> The Department notes that the MOU does not contemplate fifth-freedom operations.

3. Should the Department decide to award backup authority in this proceeding, provide a statement as to whether the carrier will accept backup authority with a condition that (a) permits it to implement the authority within the first year should the primary carrier withdraw from the market; and (b) should the authority not be activated, the authority expires at the end of one year.

Applicants may submit any additional information beyond that requested if they believe it would be useful to the Department in reaching a decision.

The Department views adherence to these directives as critical to its consideration of the proposals in carrier selection cases. The Department puts the applicants in this case on notice that it expects full compliance with the evidence request in this order. Any carrier not in full compliance in any material respect with the Department's request will be subject to elimination from consideration for an award in this case.

### **Procedural Timetable**

In light of our stated goal of reaching a prompt final decision, the Department intends to process this case on an accelerated procedural schedule. Therefore, the Department is establishing the following procedural schedule for submissions:

Petitions for Reconsideration:	July 13, 2018
Answers to Petitions:	July 18, 2018
Applications:	July 20, 2018
Answers:	July 27, 2018
Replies:	August 3, 2018

In consideration of the procedural schedule, as discussed above, the Department authorizes service by facsimile or electronic mail. Parties should include their fax numbers and/or e-mail addresses on their submissions and should indicate on their certificates of service the methods of service used. Applicants not using facsimile or electronic mail must provide an original and five copies of all submissions to the Department of Transportation, Dockets, no later than the dates indicated. Please also provide an electronic copy of all responsive pleadings to [Brett.Kruger@dot.gov](mailto:Brett.Kruger@dot.gov) and [Darren.Jaffe@dot.gov](mailto:Darren.Jaffe@dot.gov).

### **ACCORDINGLY,**

1. The Department institutes the *2018 U.S.-Havana Frequency Allocation Proceeding* in Docket DOT-OST-2016-0021, to be decided by written, non-oral procedures under Part 302 of the Department's regulations (14 CFR Part 302);
2. This proceeding will consider which carrier should be selected to operate the one (1) available weekly frequency that may be used to serve Havana, Cuba on Saturdays, and, to the extent necessary, for underlying exemption authority to provide the service;

3. Applications and responsive pleadings should be filed in accordance with the procedural schedule set forth in the body of this order; and

4. The Department will serve this order on all certificated U.S. carriers operating large aircraft; the U.S. Department of State (Office of Aviation Negotiations); the Federal Aviation Administration; and the Ambassador of Cuba in Washington, D.C.

By:

**JOEL SZABAT**  
Deputy Assistant Secretary  
for Aviation and International Affairs

(SEAL)

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