



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

Order 2016-2-12

Issued by the Department of Transportation
on the 16th day of February, 2016

Served: February 16, 2016

2016 U.S.-CUBA FREQUENCY ALLOCATION PROCEEDING

DOCKET DOT-OST-2016-0021

ORDER INSTITUTING PROCEEDING AND INVITING APPLICATIONS

Summary

By this order the Department (1) institutes the *2016 U.S.-Cuba Frequency Allocation Proceeding*; and (2) invites U.S. carriers to apply for exemption authority and allocation of newly available frequencies to provide scheduled services between the United States and Cuba.

Background

On February 16, 2016, the United States and Cuba signed a Memorandum of Understanding (MOU) that will allow for the resumption of scheduled air services between the United States and Cuba. For scheduled combination or all-cargo services to and from Havana, under the terms of the MOU, U.S. carriers may operate up to twenty (20) daily round-trip frequencies. 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.¹ The MOU also allows for unlimited charter services to and from any point in Cuba, in accordance with the regulations of each country.² This proceeding accordingly will not address charter services. Its sole focus will be on the allocation of scheduled service frequencies.

¹ The nine airports, other than Havana's José Martí International Airport (HAV), that are authorized for international services are: the Ignacio Agramonte International Airport in Camagüey (CMW); the Jardines del Rey Airport in Cayo Coco (CCC); the Vilo Acuña Airport in Cayo Largo (CYO); the Jaime González Airport in Cienfuegos (CFG); the Frank País Airport in Holguín (HOG); the Sierra Maestra Airport in Manzanillo (MZO); the Juan Gualberto Gómez Airport in Matanzas (VRA); the Abel Santamaría Airport in Santa Clara (SNU); and the Antonio Maceo Airport in Santiago de Cuba (SCU).

² 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.

Proceeding

In light of the expected U.S.-carrier interest in beginning new U.S.-Cuba scheduled services, the Department is instituting the *2016 U.S.-Cuba Frequency Allocation Proceeding* to allocate the 20 daily round-trip frequencies that may be used for scheduled combination or all-cargo services between the United States and Havana, Cuba to the carrier or carriers selected, and to allocate the 10 daily round-trip frequencies that are available for scheduled combination or all-cargo service at each other point in Cuba to the carrier or carriers selected. The Department intends to award carriers that receive allocations underlying exemption authority to support their services. Thus, all applicants for allocation should also file corresponding requests for exemption authority.³ The Department recognizes the eagerness of U.S. carriers to take advantage of these new Cuba opportunities and the benefits to the traveling and shipping public of enabling them to do so. The Department accordingly intends to reach a final decision in this matter as promptly as possible.⁴

The Department's principal objective in this proceeding will be to maximize public benefits. In this regard, the Department will consider which applicants 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.

The Department expects to allocate the frequencies for an indefinite term, subject to a start-up condition and the Department's standard 90-day dormancy condition. For any frequency 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 timely awards with the least possible delay and without unnecessary costs to the applicants. In the interest of expediting the award of these valuable route rights, the Department may proceed directly to a final order for some or all of the markets at issue 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.

³ In light of the new aviation regime being established by the MOU, all carrier applicants, including those previously holding economic authority to serve Cuba, should file for exemption authority in this proceeding.

⁴ 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

In light of the immediate availability of the new U.S.-Cuba frequencies, 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 *2016 U.S.-Cuba Frequency Allocation Proceeding*, and should include, at a minimum, the following information for each frequency requested.^{5 6}

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 March 31, 2017, as the reference period. Identify days of the week the proposed service would be offered. 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 points⁷ 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. Carriers should be specific in listing preferences for their proposed services. For example, for each city-pair proposal, carriers should indicate their order of preference for days of the week proposed, and they should indicate the minimum number of frequencies that the carrier would accept to institute service for each city pair (including the specific days of the week those frequencies would be used). Similarly, if the carrier seeks authority to serve more than one city-pair market and/or multiple frequencies in any city-pair market, indicate the carrier's order of preference for selection amongst those city-pair proposals;⁸

⁵ 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. In the alternative, parties are encouraged to use the electronic submission capability available through the Dockets FDMS Internet site (<http://www.regulations.gov>) by following the instructions on the web site. Additionally, service by facsimile or electronic mail is authorized.

⁶ 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.

⁷ The Department notes that the MOU does not contemplate fifth-freedom operations.

⁸ The MOU provides for a cap on the number of daily flights, rather than a cap on the number of weekly flights that has been commonly used in other limited-entry markets. Therefore, in this proceeding, the Department will allocate daily frequencies rather than weekly frequencies. In this regard, the record of

3. A brief description of the charter service lift the applicant currently provides, if any, between the United States and Cuba, including frequency levels (including 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) pertaining to their existing charter service lift. Carriers are asked that any such data be provided for the period beginning January 1, 2014, through the most recent date for which such data is available ; and
4. Should the Department decide to make backup awards 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:

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| Petitions for Reconsideration: | February 23, 2016 |
| Answers to Petitions: | February 26, 2016 |
| Applications: | March 2, 2016 |
| Answers: | March 14, 2016 |
| Replies: | March 21, 2016 |

In consideration of the accelerated 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.

the proceeding might ultimately warrant that certain frequency awards be made on the basis that the service be operated on specific days of the week. Carriers are, therefore, instructed to provide enough specificity in their proposals, including days of the week proposed and their order of preference for selection of those days of the week, so that the Department can best maximize use of the limited frequencies.

ACCORDINGLY,

1. The Department institutes the *2016 U.S.-Cuba 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 or carriers should be selected (1) to operate the twenty (20) daily round-trip frequencies that may be used to serve Havana, Cuba; and (2) to operate the ten (10) daily round-trip frequencies for each airport that are available for use at other points in Cuba (as described in the text of this order); and 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:

SUSAN L. KURLAND
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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<http://www.regulations.gov>