



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

**Order 2018-3-16**

Issued by the Department of Transportation  
on the 30<sup>th</sup> day of March, 2018

**Served: March 30, 2018**

***2017 U.S.-CUBA FREQUENCY ALLOCATION PROCEEDING***

**DOCKET DOT-OST-2016-0021**

**ORDER TO SHOW CAUSE**

**Summary**

By this order the Department tentatively allocates the four daily and six weekly available frequencies to provide scheduled services between the United States and Havana, Cuba. The Department also tentatively approves the request of United Airlines, Inc. (United) and Mesa Airlines, Inc. (Mesa) for flexibility to use either carrier's aircraft in the Houston-Havana market.

**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 Order 2016-8-38, issued August 31, 2016, the Department allocated the 20 available U.S.-Havana daily frequencies as shown in the chart below:

| <b>Carrier</b>                     | <b>Routing</b>        | <b>Frequency</b> |
|------------------------------------|-----------------------|------------------|
| Alaska Airlines, Inc. (Alaska)     | Los Angeles-Havana    | Once daily       |
| American Airlines, Inc. (American) | Miami-Havana          | 4 times daily    |
|                                    | Charlotte-Havana      | Once daily       |
| Delta Air Lines, Inc. (Delta)      | New York (JFK)-Havana | Once daily       |
|                                    | Atlanta-Havana        | Once daily       |
|                                    | Miami-Havana          | Once daily       |

<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.

|                                       |                        |                                       |
|---------------------------------------|------------------------|---------------------------------------|
| Frontier Airlines, Inc. (Frontier)    | Miami-Havana           | Once daily                            |
| JetBlue Airways Corporation (JetBlue) | Fort Lauderdale-Havana | Twice daily (except once on Saturday) |
|                                       | New York (JFK)-Havana  | Once daily                            |
|                                       | Orlando-Havana         | Once daily                            |
| Southwest Airlines Co. (Southwest)    | Fort Lauderdale-Havana | Twice daily                           |
|                                       | Tampa-Havana           | Once daily                            |
| Spirit Airlines, Inc. (Spirit)        | Fort Lauderdale-Havana | Twice daily                           |
| United Airlines, Inc. (United)        | Newark-Havana          | Once daily                            |
|                                       | Houston-Havana         | Once weekly (Saturday)                |

### **Current Proceeding**

By Order 2017-8-26 (the “Instituting Order”), the Department instituted the *2017 U.S.-Cuba Frequency Allocation Proceeding* to allocate three available daily round-trip frequencies that may be used for scheduled combination or all-cargo services between the United States and Havana, Cuba. The three daily frequencies became available as a result of Frontier’s decision to terminate its once daily Miami-Havana service and Spirit’s decision to terminate its twice-daily Fort Lauderdale-Havana service. Seven U.S. carriers applied to provide U.S.-Havana services and those carriers, along with other interested parties, filed answers to the applications, replies to those answers, and other responsive pleadings.

The Department subsequently issued two orders expanding the scope of the proceeding. On November 17, 2017, the Department issued Order 2017-11-11 (the “November Order”), expanding the scope of the proceeding to include the reallocation of a fourth daily frequency that became available as a result of Alaska’s decision to terminate its daily Los Angeles-Havana service effective January 22, 2018.<sup>2</sup> The Department stated that, in the interest of administrative efficiency, it would reallocate this fourth daily frequency along with the three frequencies already under consideration in the proceeding. The November Order invited interested parties to file new submissions for the Department’s consideration in the proceeding, including, for example, new applications, new or amended service proposals, or supplemental responsive material.<sup>3</sup>

On December 13, 2017, the Department issued Order 2017-12-9 (the “December Order”), again expanding the scope of the proceeding in light of recent developments, to include the six weekly frequencies (Sunday through Friday) made available in light of Delta’s decision to terminate its New York (JFK)-Havana service on those days effective February 1, 2018.<sup>4</sup> The December Order revised the

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<sup>2</sup> By letter dated November 14, 2017, Alaska notified the Department that it would operate its last Los Angeles-Havana daily flight on January 22, 2018, stating that it has no plans to resume service to Havana and that it has no objection to the Department’s reallocation of the frequencies after January 22, 2018.

<sup>3</sup> By Order 2017-12-3, the Department addressed a petition for reconsideration of Order 2017-11-11, filed by American.

<sup>4</sup> On December 8, 2017, Delta submitted a letter to the Department stating that, effective February 1, 2018, it would terminate New York (JFK)-Havana service on Sunday to Friday, and would continue to maintain and operate once-weekly Saturday round-trip service between New York (JFK) and Havana.

procedural schedule for the proceeding and invited interested parties to file new submissions, answers to any such new submissions, and replies to answers.

Each of these orders set forth a procedural schedule and instructed applicants with new or amended service proposals to adhere to the evidentiary requirements set forth in the Instituting Order. Pursuant to the procedural schedule, as most recently revised by the December Order, Petitions for Reconsideration were due December 15, 2017; and Answers to Petitions were due December 19, 2017. New Submissions for the Department's consideration in the proceeding were due December 22, 2017; Answers to any such new submissions were due January 5, 2018; and Replies to Answers were due January 10, 2018. The case now stands ready for decision.<sup>5</sup>

### **Applications**

American, Delta, Federal Express Corporation (FedEx), JetBlue, Southwest, and United and Mesa (jointly) filed applications for consideration in this proceeding. The proposals are summarized below and, where applicants submitted multiple proposals, the requests are listed in the applicants' order of preference for selection. The Department summarizes all the pleadings in Appendix A.

| <b>Carrier</b> | <b>Proposed Routing</b> | <b>Proposed Frequency</b> |
|----------------|-------------------------|---------------------------|
| American       | Miami-Havana            | Once daily                |
|                | Miami-Havana            | Saturday & Sunday Only    |
|                | Miami-Havana            | Saturday Only             |
|                | Miami-Havana            | Daily                     |
| Delta          | Miami-Havana            | Daily                     |
| FedEx          | Miami-Havana            | Monday-Friday             |
| JetBlue        | Fort Lauderdale-Havana  | Sunday-Friday             |
|                | Boston-Havana           | Saturday Only             |
|                | Tampa-Havana            | Daily                     |
|                | New York (JFK)-Havana   | Daily                     |
|                | Newark-Havana           | Daily                     |
| Southwest      | Fort Lauderdale-Havana  | Daily                     |
| United/Mesa    | Houston-Havana          | Sunday-Friday             |

**American** requests an allocation of 17 weekly U.S.-Havana frequencies to operate between Miami and Havana, beginning within 90 days of a final order. Specifically, American proposes to operate (1) daily service between Miami and Havana, using 160-seat B737-800 aircraft; (2) weekend-only service between Miami and Havana, using 160-seat B737-800 aircraft, using one Saturday frequency and one Sunday frequency; (3) Saturday-only service between Miami and

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<sup>5</sup> On June 16, 2017, the President announced a change in the United States' policy toward Cuba. On November 9, 2017, the Department of Treasury's Office of Foreign Assets Control (OFAC) and other U.S. Government agencies took steps to implement changes to the Cuba sanctions program announced by the President. This policy change does not alter the ability of the Department of Transportation to authorize U.S. airlines to provide scheduled services between the United States and Cuba.

Havana, using 160-seat B737-800 aircraft; and (4) a second additional daily service between Miami and Havana, using 160-seat B737-800 aircraft.<sup>6</sup>

**Delta** requests allocation of one daily frequency to provide a second daily Miami-Havana flight beginning within 90 days of a final order, with both flights operated with 160-seat Airbus A320 aircraft.<sup>7</sup>

**FedEx** requests allocation of one daily scheduled all-cargo frequency, to be operated five days per week (*i.e.*, Monday-Friday), using Cessna 208 aircraft, beginning July 15, 2018. FedEx also requests underlying exemption authority to support its proposed services.

**JetBlue** requests allocation of 28 weekly U.S.-Havana frequencies, all using 162-seat Airbus A320 aircraft, to operate (1) six days per week (Sunday through Friday) between Fort Lauderdale and Havana, beginning June 14, 2018; (2) Saturday-only service between Boston and Havana, beginning June 16, 2018; (3) daily service between Tampa and Havana, beginning June 14, 2018; (4) daily service between New York (JFK) and Havana, beginning June 14, 2018; and (5) daily service between Newark and Havana, beginning June 14, 2018.<sup>8</sup> JetBlue also requests underlying exemption authority to support its requests to provide Boston-Havana, Tampa-Havana, and Newark-Havana service.<sup>9</sup>

**Southwest** requests one daily U.S.-Havana frequency to provide additional Fort Lauderdale-Havana service, beginning within 90 days of a Final Order in this proceeding, using 143-seat B737-700 aircraft or 175-seat B737-800 aircraft.<sup>10</sup>

**United** requests six weekly U.S.-Havana frequencies to expand its Saturday-only Houston-Havana service to daily service, and Mesa requests underlying exemption authority to operate United's Houston-Havana service as a United Express carrier. United and Mesa propose to

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<sup>6</sup> By Order 2016-8-38, American was allocated four daily frequencies for Miami-Havana service and one daily frequency for Charlotte-Havana service. American initially requested 10 weekly frequencies in this proceeding, but revised its application upwards in light of the additional frequencies made available by Alaska's decision to terminate its Los Angeles-Havana service.

<sup>7</sup> By Order 2016-8-38, Delta was allocated one daily frequency for Miami-Havana service, one daily frequency for Atlanta-Havana service, and one daily frequency for New York (JFK)-Havana service. On December 8, 2017, Delta filed a letter in the docket stating that, effective February 1, 2018, Delta would terminate New York (JFK)-Havana service on Sunday to Friday and return those frequencies to the Department.

<sup>8</sup> JetBlue initially requested an allocation of 21 weekly frequencies to operate (1) six weekly flights (Sunday through Friday) between Fort Lauderdale and Havana; (2) Saturday-only service between Boston and Havana; (3) daily service between Newark and Havana; and (4) daily service between New York (JFK) and Havana. In light of the Department's request for new submissions, on December 8, 2017, JetBlue supplemented its application to apply for seven additional frequencies to provide nonstop service between Tampa and Havana.

<sup>9</sup> By Order 2016-8-38, JetBlue was allocated (1) one daily frequency for Fort Lauderdale-Havana service, and six weekly frequencies for Fort Lauderdale-Havana service on Sundays through Fridays; (2) one daily frequency for New York (JFK)-Havana service; and (3) one daily frequency for Orlando-Havana service.

<sup>10</sup> By Order 2016-8-38, Southwest was allocated (1) two daily frequencies for Fort Lauderdale-Havana service; and (2) one daily frequency for Tampa-Havana service.

begin their expanded service on March 25, 2018, or 90 days after the issuance of a Final Order in this proceeding, whichever is later.<sup>11</sup>

United and Mesa request operational flexibility to use either 154-seat Boeing B737-800 aircraft from United's existing fleet or 76-seat Embraer E175 aircraft from Mesa's existing fleet as economic conditions warrant. United also requests flexibility to use its B737 aircraft or Mesa's E175 aircraft on United's existing Saturday-only Houston-Havana flight to tailor capacity to meet demand on this route.

### **Tentative Decision**

The Department has tentatively decided to allocate the available frequencies as shown in the chart below.<sup>12</sup>

| <b>Carrier</b> | <b>Proposed Routing</b> | <b>Frequency</b> |
|----------------|-------------------------|------------------|
| American       | Miami-Havana            | Daily            |
| Delta          | Miami-Havana            | Daily            |
| JetBlue        | Fort Lauderdale-Havana  | Sunday-Friday    |
|                | Boston-Havana           | Saturday-only    |
| Southwest      | Fort Lauderdale-Havana  | Daily            |
| United/Mesa    | Houston-Havana          | Sunday-Friday    |

When the Department made its initial allocations for Havana in the *2016 U.S.-Cuba Frequency Allocation Proceeding*, it recognized that the U.S.-Cuba scheduled service market was at a developmental stage having been devoid of scheduled air services for over 50 years. The Department concluded that, to the extent possible and within the constraints presented, it would seek to address a variety of public interest needs by giving a range of U.S. carriers the chance to develop the market consistent with the public interest. The Department found, based on the record, that its top priority in addressing service needs in the market should be to maximize opportunities for the major Cuban-American population centers in the United States. Beyond focusing on the service needs of the major Cuban-American population centers, the Department found that the proceeding also provided an opportunity to establish a framework for promoting competition in the overall U.S.-Havana market.

It was on that basis that the Department allocated frequencies for service at airports serving major Cuban-American population centers like Florida (particularly South Florida); the New York City/Newark, New Jersey metropolitan area; and the Los Angeles, California metropolitan area. The Department also allocated frequencies for service from certain aviation hub cities, including daily service from American's Charlotte hub, daily service from Delta's Atlanta hub, and once weekly Saturday-only service from United's Houston hub. In short, the Department recognized that the U.S.-Havana scheduled service market was at a developmental stage and

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<sup>11</sup> By Order 2016-8-38, United was allocated (1) one weekly frequency for Saturday-only Houston-Havana service; and (2) one daily frequency for Newark-Havana service.

<sup>12</sup> In addition to the tentative frequency awards, the Department also tentatively grants the exemption authority that JetBlue needs to operate its Boston-Havana service, and Mesa needs to operate its Houston-Havana service. The respective carriers already hold exemption authority for the remaining routes tentatively authorized here.

decided to present the public with a wide array of travel choices, including choices of type of carrier (*i.e.*, network, low-cost, ultra-low-cost), choices of airport, and choices of nonstop or connecting service.

Having reviewed the record in the current proceeding, as well as other factors of which the Department can take official notice, the Department tentatively finds that the market is still in this developmental period. Carriers have been adjusting schedules and capacity, and some have left the market altogether. Adding to the still evolving nature of the market, the Administration announced a change in its policy toward Cuba and implemented regulations that, among other things, ended the widely-used authorization for “individual people-to-people” travel to Cuba.<sup>13</sup>

Taking into consideration the shifting circumstances that have affected air travel in the U.S.-Cuba market and the varying carrier reactions to those changes, it is the Department’s tentative view that the available traffic data and limited service history at Havana are not sufficient to draw specific conclusions as to the likelihood of future success or failure for any given service proposal. On that basis, the Department has tentatively decided that the public interest would be best served by following the Department’s usual approach to allocating limited rights in developmental markets, *i.e.*, allocating the available frequencies to a variety of carriers and allowing them to seek to develop the market.

As was the case in the 2016 proceeding, the applicants to this proceeding have concentrated their service proposals on South Florida. Every applicant, with the exception of United, has proposed service from either Miami or Fort Lauderdale as their first-ranked choice for selection in this proceeding, thereby demonstrating their expectation that the South Florida market will support additional Havana services.

In this regard, the Department tentatively allocates one daily frequency each to American and Delta at Miami; one daily frequency to Southwest at Fort Lauderdale; and the six-weekly frequencies requested by JetBlue at Fort Lauderdale.<sup>14</sup> The record amply supports the allocation of substantial frequencies for service between South Florida and Havana, and the Department has tentatively decided to allocate the frequencies in a manner that promotes both additional service options and competition. The Department tentatively finds that making multiple selections at both Miami and Fort Lauderdale would provide consumers in the critical South Florida area with a maximum choice of carriers and airports, and would best achieve the Department’s goals of promoting a competitive market structure and maximizing public benefits.

The Department also tentatively believes that this proceeding provides an opportunity to promote, to the degree possible, a competitive market structure in the overall U.S.-Havana market. In this connection, the Department tentatively awards six weekly frequencies to United, to facilitate the expansion of its once-weekly Houston-Havana service to a daily service. Selection of United will give consumers in the central and western United States a daily one-stop

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<sup>13</sup> See note 5 above.

<sup>14</sup> American filed a motion on September 13, 2017, arguing that JetBlue and Southwest should be disqualified from the proceeding on the basis that those carriers did not include their most recent traffic data with their initial applications filed in September 2017. The Department notes that JetBlue and Southwest subsequently submitted the traffic data in question, providing all parties to the proceeding an opportunity to consider the data in their analyses in responsive pleadings. The Department has therefore decided to dismiss American’s motion.

connecting option to Havana over United's strong hub at Houston, and would be consistent with the Department's goal of providing maximum choices for the traveling public. The Department tentatively finds that the benefits of this outcome could prove even more significant given the withdrawal of Alaska from the Los Angeles-Havana route, leaving Houston as the only U.S. point west of the Mississippi with nonstop service to Havana.

The Department also tentatively allocates one weekly frequency to JetBlue for its proposed Boston-Havana service on Saturdays. Unlike the other proposals in this proceeding, Boston does not have any nonstop scheduled Havana service and JetBlue's Boston proposal would establish a new gateway to Havana at a major northeastern city that is home to healthcare, biotechnology, and educational institutions that JetBlue and the Massachusetts Port Authority (Massport) assert could support authorized travel to Cuba outside of the "family visits" category.

The Department's tentative approach for this proceeding also affords significant weight to the applicants' own judgment as to how best to continue to develop the U.S.-Cuba market, as each passenger-carrier applicant would receive an award for its highest-ranked priority request in this proceeding. The Department tentatively finds that this approach would maintain our goal of promoting a competitive market structure by providing maximum options for consumers, and allowing the traveling public to make its own choices in the marketplace. The Department tentatively believes that these allocations would better serve the public interest than would selection of the other proposals submitted in this proceeding.

In this regard, the Department has tentatively decided not to allocate any frequencies to FedEx. The Department recognizes that all-cargo services provide valuable public benefits and FedEx would be the first carrier to offer scheduled all-cargo flights between the United States and Havana. The Department notes, however, that FedEx has delayed by 17 months the inauguration of its all-cargo service between Miami and Matanzas, citing operational challenges and heightened regulatory uncertainty. The Department also notes that FedEx proposes to use Cessna 208 aircraft with limited cargo capacity on the route. In this limited frequency market, the Department tentatively believes that an allocation to FedEx for all-cargo services would not be an efficient use of the limited frequencies available.<sup>15</sup>

The Department has also tentatively decided not to select American's second through fourth-ranked proposals for additional Miami-Havana service. American already has four daily Miami-Havana flights and would add a fifth daily flight if this tentative decision is made final. In those circumstances, the Department tentatively finds that the selections tentatively made here would better promote a competitive market structure than would an allocation of still more Miami-Havana frequencies to American.

The Department also does not tentatively select JetBlue's proposals for additional Havana service from Tampa, New York (JFK), and Newark. Each of these markets already has daily Havana service, and the Department does not tentatively find that the record persuasively demonstrates a compelling need for additional service in these city-pair markets. As noted above, the Department's tentative allocation in this case places significant weight on each passenger carrier's own judgment as to which services they most confidently believe they can

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<sup>15</sup> Some parties suggest FedEx could achieve its goals in Havana by operating charter flights, which are unlimited under the U.S.-Cuba arrangement. September 19, 2017 Answer of United and Mesa, at 19.

offer and maintain, and JetBlue itself ranked these markets below its Fort Lauderdale and Boston proposals. Selecting JetBlue's lower-ranked proposals would mean forgoing a first-ranked proposal submitted by JetBlue or another carrier tentatively selected here. The Department believes that, on balance, the approach tentatively taken here best promotes public benefits.

As a final matter, and consistent with the Department's approach of deferring to carrier judgment of how best to develop the market, the Department has tentatively decided to approve United's and Mesa's request for flexibility. United and Mesa request authorization to use either carrier's aircraft on (1) United's existing Saturday-only Houston-Havana flight; and (2) on any Houston-Havana services tentatively allocated in this proceeding. The Department tentatively finds that the United/Mesa cooperative marketing arrangement is specifically permitted under the U.S.-Cuba MOU and would be consistent with the Department's long-standing policy of allowing carriers to make their own operational decisions concerning aircraft capacity.<sup>16</sup>

The Department tentatively disagrees with JetBlue's assertions that the proposed arrangement is improper and that the Department should deny United and Mesa the requested flexibility. JetBlue has argued that the request would conflict with Department precedent, citing several Department licensing actions for U.S.-Mexico services under the previous U.S.-Mexico aviation agreement.<sup>17</sup> The Department tentatively does not find these precedents dispositive in this case. To the contrary, the U.S.-Mexico bilateral agreement then in effect had strict limits on the number of carriers that could serve individual city-pair markets, whereas the U.S.-Cuba MOU does not place limits on the number of carriers that may provide U.S.-Cuba services.

Nor does the Department tentatively find merit in JetBlue's assertions that approval would violate due process constraints of U.S. administrative law, such as the *Ashbacker* doctrine.<sup>18</sup> The Department specifically included the United/Mesa proposal as an issue to be considered in this proceeding, thereby giving all parties, including JetBlue, the opportunity to comment on the merits of the request and submit competing service proposals. JetBlue has availed itself of the opportunity to state its position at multiple stages in the process. The Department has thoroughly reviewed all of JetBlue's arguments in this matter, and tentatively does not find anything to suggest that according United and Mesa the flexibility they seek would be harmful to the public interest. It has also comparatively considered all of the competing service proposals and stated the basis for its tentative decision above.

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<sup>16</sup> American states that it supports United's request for flexibility, and asserts that this flexibility should be afforded to all carriers providing U.S.-Cuba scheduled services. January 5, 2018 Answer of American, at 4. JetBlue argues that American is formally requesting flexibility, which JetBlue opposes. The Department, however, does not regard American's statements in support of the United/Mesa arrangement as a fully defined proposal. Saying that, the Department would be prepared to consider comparable requests for flexibility in the context of a formal application, and based on the specific facts and circumstances presented at the time of such application.

<sup>17</sup> See e.g., January 5, 2018 Answer of JetBlue, at 6, citing Dockets DOT-OST-2014-0058, DOT-OST-2014-0059, DOT-OST-2014-0100, DOT-OST-2014-0101, DOT-OST-2014-0129, DOT-OST-2014-0130, DOT-OST-2014-0158, DOT-OST-2014-0159, and DOT-OST-2014-0222.

<sup>18</sup> January 5, 2018 Answer of JetBlue, at 2, citing *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).



## **Terms, Conditions, and Limitations**

The Department has tentatively decided to impose a startup condition for each award of U.S.-Havana frequencies. In this regard, if the Department's tentative decision is made final, it will require the carriers to institute their proposed services within 90 days of the issue date of a final order in this proceeding.

In addition, consistent with the Department's standard practice, the frequencies tentatively allocated here will be subject to the Department's standard 90-day dormancy condition, wherein any frequency not utilized for a period of 90 days (once inaugurated) would be deemed dormant and that allocation with respect to each such frequency would expire automatically and the frequency would revert to the Department for reallocation.<sup>19</sup>

Finally, the frequency allocations and exemption authority tentatively granted here will also be subject to the standard condition that the Department may amend, modify, or revoke the authority at any time and without hearing, at our discretion.<sup>20</sup>

### **ACCORDINGLY,**

1. The Department tentatively allocates to American Airlines, Inc. one daily frequency for its proposed Miami-Havana service;
2. The Department tentatively allocates to Delta Air Lines, Inc. one daily frequency for its proposed Miami-Havana service;
3. The Department tentatively allocates to JetBlue Airways Corporation (1) six weekly frequencies for its proposed Fort Lauderdale-Havana service on Sundays through Fridays; and (2) one weekly frequency for its proposed Boston-Havana service on Saturdays;
4. The Department tentatively allocates to Southwest Airlines Co. one daily frequency for its proposed Fort Lauderdale-Havana service;
5. The Department tentatively allocates to United Airlines, Inc. six weekly frequencies for its proposed Houston-Havana service on Sundays through Fridays;
6. The Department tentatively approves the request of United Airlines, Inc. for flexibility to use its aircraft or Mesa Airlines, Inc.'s aircraft on the Saturday-only Houston-Havana frequency

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<sup>19</sup> JetBlue asserts that the Department should clarify the legal status of Delta's Monday and Wednesday New York (JFK)-Havana frequencies, arguing that after those frequencies reverted to the Department in early December 2017, Delta resumed operating Monday and Wednesday JFK-Havana flights later that month. January 5, 2018 Answer of JetBlue, at 12. The Department views this as a matter best addressed by the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, and we will refer this matter to that office for whatever action it deems appropriate.

<sup>20</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 tentative award of authority in this proceeding relieves parties from complying with all applicable regulations and requirements of other U.S. agencies and with all applicable laws of the United States.

allocated to United by Order 2016-8-38, and the six weekly Houston-Havana frequencies tentatively allocated by ordering paragraph 5 above;

7. The frequencies tentatively allocated by ordering paragraphs 1 through 5 above would be effective immediately and would not expire, *provided that* the holder continues to hold the necessary underlying authority to serve the markets authorized; that the holder begins service with the allocated frequencies within 90 days of the issuance of a final order in this proceeding; and also *provided further* that any frequency will become dormant and will revert automatically to the Department if not used for a period of 90 days (once inaugurated);

8. The frequencies tentatively allocated by ordering paragraphs 1 through 5 above would be subject to the Department's standard condition that the Department may amend, modify or revoke the allocation at any time and without hearing, at its discretion;

9. The Department tentatively grants exemption authority under 49 U.S.C. § 40109 to JetBlue Airways Corporation to provide scheduled foreign air transportation of persons, property, and mail between Boston, Massachusetts, and Havana, Cuba;

10. The Department tentatively grants exemption authority under 49 U.S.C. § 40109 to Mesa Airlines, Inc. to provide scheduled foreign air transportation of persons, property, and mail between Houston, Texas, and Havana, Cuba;

11. The exemption authority tentatively granted by ordering paragraphs 9 and 10 above would be effective immediately upon issuance of a final order and would remain in effect for two years, subject to the Department's standard exemption conditions, and subject also to the standard condition that the Department may amend, modify or revoke the authority at any time and without hearing, at its discretion;<sup>21</sup>

12. To the extent not granted, the Department tentatively denies the remaining applications in this proceeding;

13. The Department dismisses the September 13, 2017 motion of American Airlines, Inc. to disqualify JetBlue and Southwest;

14. The Department directs any interested parties having objections to the tentative findings and conclusions set forth in this order and in ordering paragraphs 1 through 12 above, to file their objections in the above-captioned docket, with the Department's Docket Section, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C., 20590, no later than 15 calendar days from the date of service of this order; answers thereto shall be filed no later than seven (7) calendar days thereafter;<sup>22</sup>

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<sup>21</sup> The Department tentatively finds that its action would not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined by section 313.4(a)(1) of the Department's regulations.

<sup>22</sup> The original filing should be on 8½" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of the Department's docket imaging system. In the alternative, filers are encouraged to use the electronic filing submission capability available through the Dockets/FDMS Internet site (<http://www.regulations.gov>) by following the instructions at the web site.

15. If timely and properly supported objections are filed, the Department will afford full consideration to the matters or issues raised by the objections before it takes further action;<sup>23</sup> if no objections are filed, the Department will deem all further procedural steps to be waived and will proceed to enter a final order awarding the authority proposed in this order; and

16. The Department will serve this order on the parties to the proceeding; 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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<sup>23</sup> As the Department is providing for the filing of objections to this tentative decision, it will not entertain petitions for reconsideration of this order.

## POSITION OF THE PARTIES

**American** requests an allocation 17 weekly U.S.-Havana frequencies to operate between Miami and Havana, beginning within 90 days of a final order. Specifically, American proposes to operate, in ranked order of preference (1) daily service between Miami and Havana, using 160-seat B737-800 aircraft; (2) weekend-only service between Miami and Havana, using 160-seat B737-800 aircraft, using one Saturday frequency and one Sunday frequency; (3) Saturday-only service between Miami and Havana, using 160-seat B737-800 aircraft; and (4) a second additional daily service between Miami and Havana, using 160-seat B737-800 aircraft.<sup>1</sup>

American states that only Miami International Airport (MIA) has sustainable demand for additional U.S.-Havana service, and that demand for U.S.-Havana services at all other gateways proved to be woefully insufficient to support the capacity initially allocated for those services by the Department. For example, American states that Fort Lauderdale (FLL) lost nearly 40 percent of its Havana capacity, New York (JFK) lost approximately a third of its total allocated capacity, Atlanta lost over a third of its capacity, Orlando lost half of its capacity, and Los Angeles will lose all of its capacity following Alaska's withdrawal in January.<sup>2</sup> American states that its Miami-Havana services have outperformed all other U.S.-Havana services and have not suffered any loss in capacity.

American asserts that its services best serve the passengers with the greatest demand for U.S.-Havana travel: Cuban American's residing in Miami-Dade County. American notes the Department's findings in the initial allocation proceeding that "Cuban American's traveling to visit relatives will generate the majority of U.S.-Cuba travel demand," and American states that this demand is concentrated in Miami-Dade County, where half the nation's Cuban-American population resides.<sup>3</sup> American states that average monthly load factors on its Miami-Havana service have remained above 80 percent in every month through October 2017, despite the Caribbean hurricanes and new restrictions on U.S.-Cuba travel, while every other U.S.-Havana service at a gateway other than MIA has trailed significantly.<sup>4</sup> American states that for the foreseeable future, Cuban Americans flying to visit friends and relatives are the principle source of demand, and their favored gateway is MIA.<sup>5</sup>

American also asserts that the United States Government's new policy toward Cuba and its effects on U.S.-Havana travel should further dissuade the Department from selecting any of the competing proposals over American's. American asserts that the elimination of the license for

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<sup>1</sup> December 8, 2017 Amended Application of American, at 1-2. American currently holds four daily frequencies for Miami-Havana service and one daily frequency for Charlotte-Havana service. *See* Order 2016-8-38. American initially requested 10 weekly frequencies in this proceeding, but revised its application upwards in light of the additional frequencies made available by Alaska's decision to terminate its Los Angeles-Havana service.

<sup>2</sup> December 8, 2017 Amended Application of American, at 4-5, and Exhibits AA-402, 403.

<sup>3</sup> December 8, 2017 Amended Application of American, at 7, citing Order 2016-7-4.

<sup>4</sup> *Id.*, at 10.

<sup>5</sup> January 10, 2018 Reply of American, at 5.

individual people-to-people nonacademic travel to Cuba for non-familial reasons, will further reduce demand at gateways other than MIA.<sup>6</sup>

American states that its Miami-Havana service not only best serves local demand, but it also best fills the void left by Alaska's Los Angeles-Havana termination. American states that it will use additional U.S.-Havana frequencies to enhance connections between cities across the country and Havana – especially Los Angeles and cities in the Western United States that will lose connections when Alaska's Los Angeles-Havana service ends.<sup>7</sup>

American contends that the experiment of dispersing the limited U.S.-Havana frequencies across a range of gateways and carriers failed, while demand remained centered at MIA. American states that this proceeding presents an opportunity to correct the misalignment created in 2016 by allocating additional U.S.-Havana frequencies to American's Miami-Havana service.<sup>8</sup>

In its responsive pleadings, American asserts that updated data shows that passenger traffic and load factors have plummeted to levels that range from bad to abysmal. American argues that the drop in demand, due in large part to the new U.S.-Cuba travel restrictions, caused Alaska's daily LAX-HAV service and Delta's daily JFK-HAV service to fail.<sup>9</sup> American states that between July 2017 and October 2017, the average load factors from gateways other than MIA collapsed, as FLL-HAV load factors fell from 83 percent in July to 45 percent in October, JFK-HAV load factors fell from 75 percent in July to 37 percent in October, and TPA-HAV load factors fell from 87 percent in July to 62 percent in October.<sup>10</sup> In sharp contrast, American argues that during this same period its average monthly load factor on MIA-HAV services never dipped below 79 percent.

American further maintains that Fort Lauderdale is no substitute for Miami, as proven by JetBlue's 45 percent load factor for October 2017.<sup>11</sup> As the evolving U.S.-Cuba travel restrictions force carriers to rely increasingly on Cuban Americans visiting friends and family, American argues that the disparity between MIA and FLL has only increased.

Between the two proposals to expand MIA-HAV passenger service – American's proposal and Delta's proposal – American asserts that the traveling public's strong preference is for American's services. American argues that it is uniquely capable of serving both the strongest source of local demand along with the widespread demand across the United States. American states that its Miami-Havana service provides comprehensive connectivity throughout the United States by connecting nearly fifty U.S. cities, While Delta's existing Miami-Havana service links just two additional cities.<sup>12</sup>

American also argues that Delta has shown poor stewardship of its U.S.-Havana frequencies by using smaller aircraft than it proposed for its New York (JFK)-Havana and Atlanta-Havana services. American asserts that it commenced its U.S.-Havana services with the same aircraft it

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<sup>6</sup> December 8, 2017 Amended Application of American, at 11.

<sup>7</sup> *Id.*, at 15.

<sup>8</sup> *Id.*, at 16.

<sup>9</sup> January 10, 2018 Reply of American, at 1-2.

<sup>10</sup> January 5, 2018 Answer of American, at 6.

<sup>11</sup> *Id.*, at 8.

<sup>12</sup> *Id.*, at 25.

proposed, and the Department need not question American's commitment to operating 160-seat B-737 aircraft between Miami and Havana on every day it is awarded new service.<sup>13</sup>

American argues that JetBlue flew more empty seats than passengers to Havana in October, yet believes it deserves 28 new weekly U.S.-Havana flights which would more than double its current number of flights. American argues that JetBlue's insistence that it "deserves" additional U.S.-Havana frequencies misses the mark, as American asserts that frequencies are deserved by the traveling public for services it favors most, not by specific carriers for reasons unrelated to passenger demand.<sup>14</sup> American also asserts that JetBlue down-gauged aircraft on every one of its U.S.-Havana services, which cost the traveling public more than four thousand weekly U.S.-Havana seats.<sup>15</sup> American argues that JetBlue's Fort Lauderdale-Havana proposal would merely restore its capacity on the route to approximately the same level as before JetBlue cut capacity by downgauging its aircraft. American asserts that if demand for JetBlue's services is sufficient to justify more capacity, then JetBlue should up-gauge its aircraft to the A321s it promised just over a year ago.<sup>16</sup>

Given the restrictions on people-to-people educational travel and other changes in the United States' policy toward Cuba, American argues that the case for JetBlue's Boston-Havana service proposal is even weaker today than it was when it was not selected during the 2016 proceeding.<sup>17</sup> American argues that JetBlue's reliance on the presence of colleges, businesses, and hospitals in Boston, New York, and Newark – a common characteristic of large U.S. cities – is not evidence of demand for U.S.-Havana travel sufficient to support nonstop scheduled service.<sup>18</sup> American also argues that JetBlue provides no evidence that demand exists for its Tampa-Havana service proposal.<sup>19</sup>

American asserts that the Department should disregard Southwest's misleading fare comparisons. American states that Southwest's own data shows Southwest's FLL-HAV fares and American's MIA-HAV fares were identical for travel two weeks out. American argues that Southwest is deceptive in claiming that American's (and other carriers') fares are higher by adding charges for optional services, even though many customers do not pay these charges.<sup>20</sup> Rather than focus on Southwest's fare comparisons, American argues that the Department should base its decision on consumer behavior as reflected in traffic data and load factors, which show that American's MIA-HAV service is superior.<sup>21</sup> American also argues that the weakness in Southwest's FLL-HAV proposal is amplified by its poor connectivity, as it offers no direct service from FLL to any West Coast gateways, such as Los Angeles and San Francisco.<sup>22</sup>

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<sup>13</sup> September 19, 2017 Answer of American, at 26.

<sup>14</sup> January 10, 2018 Reply of American, at 7.

<sup>15</sup> January 5, 2018 Answer of American, at 17-18.

<sup>16</sup> September 19, 2017 Answer of American, at 14.

<sup>17</sup> *Id.*, at 18.

<sup>18</sup> September 26, 2017 Reply of American, at 15.

<sup>19</sup> January 5, 2018 Answer of American, at 19.

<sup>20</sup> September 19, 2017 Answer of American, at 20.

<sup>21</sup> September 19, 2017 Answer of American, at 21-22; and September 26, 2017 Reply of American, at 15-17.

<sup>22</sup> January 5, 2018 Answer of American, at 21.

American asserts that United's proposed Houston-Havana service is not warranted by existing and foreseeable demand. American argues that Alaska's withdrawal from the Los Angeles-Havana market highlights the shortcoming of United's Houston proposal, since Los Angeles has a Cuban-American population more than twice as large as Houston, yet Alaska could not sustain daily service in the Los Angeles-Havana market.<sup>23</sup> American also argues that the connectivity claimed by United and Mesa is miniscule and superfluous, stating that United connecting schedules show no daily southbound connectivity with Los Angeles in the winter season and no daily southbound connections with Las Vegas in either summer or winter traffic seasons.<sup>24</sup>

American asserts that United and Mesa's proposed E-175 "commuter aircraft" are only half the size of the mainline aircraft proposed by other applicants, and that allocation to United over American would not be an efficient use of these limited rights.<sup>25</sup>

American states, however, that should the Department award United's service, American supports United's request for flexibility to use its regional partner Mesa to provide U.S.-Havana service, and that the Department should provide all carriers with the opportunity to use their regional partnerships to operate U.S.-Havana services.<sup>26</sup>

American states that it has no objection to FedEx's proposal to launch Miami-Havana service on Monday through Friday, and that American's second-ranked weekend-only Miami-Havana service proposal rounds out FedEx's request.<sup>27</sup>

**Delta** requests allocation of one daily frequency to provide a second daily Miami-Havana flight beginning within 90 days of a final order, with both flights operated using 160-seat Airbus A320 aircraft.<sup>28</sup> Delta states that the additional Miami-Havana frequency will enable it to offer enhanced time of day coverage through the addition of evening departures from both MIA and Havana to complement Delta's currently scheduled morning departures.<sup>29</sup>

Delta states that the Department should allocate at least one of the available frequencies to MIA to maintain the geographic distribution ordered in the 2016 U.S.-Cuba Allocation Proceeding. Delta asserts that traffic data shows MIA is the most important, most highly demanded U.S.-Cuba route. Delta states that data shows MIA-Havana flights face significantly higher demand than FLL-Havana flights, despite the fact that both MIA and FLL are located in South Florida. Delta asserts that MIA's load factor is 78%, while FLL's is only 60%, which Delta argues reveals that South Florida travelers greatly prefer MIA-Havana to FLL-Havana.<sup>30</sup>

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<sup>23</sup> *Id.*, at 23.

<sup>24</sup> January 10, 2018 Reply of American, at 12-13.

<sup>25</sup> September 19, 2017 Answer of American, at 23-24.

<sup>26</sup> January 5, 2018 Answer of American, at 24-25; and January 10, 2018 Reply of American, at 14-15.

<sup>27</sup> September 19, 2017 Answer of American, at 27; and January 5, 2018 Answer of American, at 27.

<sup>28</sup> By Order 2016-8-38, Delta was allocated one daily frequency for Miami-Havana service, one daily frequency for Atlanta-Havana service, and one daily frequency for New York (JFK)-Havana service. On December 8, 2017, Delta filed a letter in the docket stating that, effective February 1, 2018, Delta would terminate New York (JFK)-Havana service on Sunday to Friday and return those frequencies to the Department.

<sup>29</sup> September 12, 2017 Application of Delta, at 3.

<sup>30</sup> *Id.*, at 5.

Delta states that its proposal would fulfill the Department's goal of providing a variety of options for travelers in terms of product choice, airport choice, and carrier choice and will increase Delta's ability to compete on MIA-Havana and for connecting traffic. Delta asserts that an additional MIA-Havana flight will allow Delta to offer better time of day coverage across its U.S.-Havana service, its proposed route will open connections to traffic from 33 flights to the 12 U.S. destinations that Delta serves from MIA.<sup>31</sup> Delta states that its second daily flight would also create an option for a same day round trip from MIA.<sup>32</sup>

Delta asserts that granting it an additional Miami frequency is necessary to ensure meaningful competition against American's four daily scheduled round-trip flights and charter flights already serving Havana. Delta states that, as the second largest carrier at MIA, it is the only carrier that can offer meaningful competition to American. Delta also states that it is the only carrier serving South Florida with only one daily frequency, asserting the its proposal would enhance the overall competitive environment in air travel to Cuba.<sup>33</sup>

In its responsive pleadings, Delta notes that following Frontier's exit, only Delta and American currently serve Miami-Havana, and that a competitive imbalance currently exists in this largest, most highly demanded U.S.-Cuba route. Delta further notes that only Delta and American have sought to replace Frontier's Miami-Havana service, and Delta contends that only its proposal would replace the competition otherwise lost on the Miami-Havana route.<sup>34</sup>

Delta states that it agrees with American that traffic data unequivocally shows that Miami-Havana services maximize public benefits by serving the gateway where the demand for U.S.-Cuba travel is greatest.<sup>35</sup> Delta further agrees with American that the elimination of the authorization for individual people-to-people nonacademic educational travel will likely return demand to pre-2016 levels with further concentration at MIA.<sup>36</sup> Delta argues, however, that granting additional frequencies to American, which currently operates four of the five daily Miami-Havana frequencies, would forgo the opportunity to enhance competition on this heavily traveled route.<sup>37</sup> Delta asserts that American's four daily flights from Miami are twice the amount of the next closest carrier in the region (Southwest), and four times that of Delta. Delta submits that consumers would benefit much more from a second daily Delta flight at Miami than from a fifth daily American flight.<sup>38</sup>

Delta asserts that JetBlue's proposal for all of the available weekly Havana frequencies would significantly upset the geographic allocations ordered by the Department in the 2016 proceeding and would deprive MIA of the additional competition that only Delta has proposed to provide.<sup>39</sup> Delta states that JetBlue has reduced capacity on all three of its current U.S.-Havana routes, and

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<sup>31</sup> *Id.*, at 8.

<sup>32</sup> *Id.*, at 6.

<sup>33</sup> December 8, 2017 Supplemental Submission of Delta, at 2.

<sup>34</sup> September 19, 2017 Answer of Delta, at 1-2; and September 26, 2017 Reply of Delta, at 2-3.

<sup>35</sup> September 19, 2017 Answer of Delta, at 6.

<sup>36</sup> January 5, 2018 Answer of Delta, at 3.

<sup>37</sup> September 19, 2017 Answer of Delta, at 3.

<sup>38</sup> September 26, 2017 Reply of Delta, at 4.

<sup>39</sup> September 19, 2017 Answer of Delta, at 3.



despite that decreased capacity, JetBlue's load factors are below average and trail those of its nonstop competitors on JFK-HAV and FLL-HAV services.<sup>40</sup>

Delta asserts that Southwest would add less competition than Delta to the South Florida regions, as Southwest already has 14 frequencies, second to American's 35 in the region. Delta contends that it is better positioned than Southwest or JetBlue to discipline the prices of American at Miami, by providing additional service from Miami.<sup>41</sup> Delta also argues that Southwest's claim that it offers lower fares than Delta is not conclusive, as other data samples show price parity between the two carriers. Delta asserts that in addition to offering competitive economy fares for price-sensitive customers, Delta also offers comfort plus and first class service, in contrast to Southwest's one-size-fits-all approach.<sup>42</sup>

Delta asserts that United's application to expand service from Houston would not maximize consumer benefits, as Houston's Cuban-American population is far smaller than the population that resides in South Florida. Delta further asserts that the connectivity that United proposes to add at Houston would serve only a tiny proportion of actual demand for Havana travel that does not already have connecting options through established gateways.<sup>43</sup> Delta states that of the 44 markets United said it would connect over Houston, 11 have shorter elapsed times over Atlanta, and 17 have no discernable Cuban-American population.<sup>44</sup> Delta argues that the Department should favor intra-gateway competition at Miami, over inter-gateway competition in this frequency allocation.<sup>45</sup>

Delta states that it does not object to United's proposal for operational flexibility for its existing service.<sup>46</sup>

With respect to FedEx's proposal, Delta states that allocating frequencies for an all-cargo flight, using a Cessna 208 with an available cargo volume of 340 cubic feet, would not be a beneficial use of a scarce resource, and that Delta's larger airplane would generate significantly greater public benefits by transporting more people and cargo than FedEx.<sup>47</sup> Delta notes that FedEx recently sought an additional extension of time to start operations of its awarded frequencies for Miami-Matanzas/Varadero, citing operational challenges and heightened regulatory uncertainty. Delta argues, in contrast, that it and other carriers have faced and overcome these obstacles through investments and determination over the last year.<sup>48</sup>

**FedEx** requests allocation of one daily scheduled all-cargo frequency, to be operated five days per week (*i.e.*, Monday-Friday), using Cessna 208 aircraft, beginning July 15, 2018. FedEx states that it is the only all-cargo carrier applicant in this proceeding, and asserts that FedEx is

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<sup>40</sup> September 26, 2017 Reply of Delta, at 8.

<sup>41</sup> September 19, 2017 Answer of Delta, at 9.

<sup>42</sup> September 26, 2017 Reply of Delta, at 11.

<sup>43</sup> *Id.*, at 12.

<sup>44</sup> *Id.*, at 12.

<sup>45</sup> *Id.*, at 14.

<sup>46</sup> September 12, 2017 Application of Delta, at 10.

<sup>47</sup> September 19, 2017 Answer of Delta, at 11.

<sup>48</sup> September 26, 2017 Reply of Delta, at 14.

singularly positioned to appropriately fulfill the shipping public component of this proceeding's overall "maximize public benefits" objective.<sup>49</sup>

FedEx notes that it has requested startup extensions for its Miami-Matanzas service, stating that an express air cargo carrier's operation has specialized unique requirements that rely upon consistently available and unencumbered access to critical operational elements such as customs clearance and warehousing facility space and airport ground-related services and functions.<sup>50</sup> FedEx believes that operating from Havana, the Cuban capital and a leading commercial location in the country, will provide the necessary certainty of access and commercial partnerships.<sup>51</sup>

In its responsive pleadings, FedEx states that it found no proposed cargo offerings in its review of other applications, and that while some applicants acknowledge the need to balance requests for cargo and combination services, other applicants overlook the needs of the shipping public.<sup>52</sup> FedEx asserts that much of the cargo capacity on combination carrier aircraft would not be available to shippers given the extensive passenger baggage frequently carried to and from Cuba.<sup>53</sup>

FedEx states that the Department is mandated by statute to address U.S. shippers' needs in the air transportation consumer context, and that it is a cargo specialist offering a wide range of integrated express air cargo transportation and logistics services.<sup>54</sup> FedEx asserts that its all-cargo services are more than an offer of capacity, as they also include operational components such as customs clearance and pick-up and delivery.<sup>55</sup>

Regarding United/Mesa's query as to why FedEx could not use charter rights for its Miami-Havana services, FedEx states that it wants scheduled rights for the same reasons United/Mesa and other applicants want them: certainty and security of rights without possible limitation by local regulation.<sup>56</sup> In response to other carriers' mentioning of FedEx's smaller aircraft size, FedEx points out that many of these same carriers have down-gauged their Cuba routes, and FedEx's proposal is due to the same factors and considerations, and assuredly not a lack of interest or commitment to U.S.-Cuba air services.<sup>57</sup>

**JetBlue** requests allocation of 28 weekly U.S.-Havana frequencies, all using 162-seat Airbus A320 aircraft, to operate (1) between Fort Lauderdale and Havana, six days per week (Sunday through Friday), beginning June 14, 2018; (2) Saturday-only service between Boston and Havana, beginning June 16, 2018; (3) daily service between Tampa and Havana, beginning June

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<sup>49</sup> September 12, 2017 Application of FedEx, at 4.

<sup>50</sup> *Id.*, at 5.

<sup>51</sup> *Id.*, at 5.

<sup>52</sup> September 26, 2017 Reply of FedEx, at 2.

<sup>53</sup> September 19, 2017 Answer of FedEx, at 2.

<sup>54</sup> *Id.*; and September 26, 2017 Reply of FedEx, at 2.

<sup>55</sup> September 26, 2017 Reply of FedEx, at 3.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

14, 2018; (4) daily service between New York (JFK) and Havana, beginning June 14, 2018; and (5) daily service between Newark and Havana, beginning June 14, 2018.<sup>58 59</sup>

JetBlue asserts that it is committed to serving Cuba for the long-term and is the most deserving applicant for an award of additional Havana frequencies.<sup>60</sup> JetBlue states that as the first carrier in more than 50 years to inaugurate scheduled passengers service between the United States and Cuba, and the first carrier to request re-allocation of the frequencies at issue in this proceeding, JetBlue is eager to bring additional low-fare, high-frills, scheduled service to new and existing markets.<sup>61</sup>

JetBlue states that it will offer direct service behind and beyond Fort Lauderdale to, among others, Los Angeles, New York (LGA) and Washington National. JetBlue asserts that Fort Lauderdale/Hollywood is at the epicenter of one of the most important cities in JetBlue's network, and that it is the largest carrier at Fort Lauderdale/Hollywood International Airport (FLL), where JetBlue currently operates up to 113 flights per day.<sup>62</sup> JetBlue states that FLL is South Florida's leading low fare airport, and that a strong nexus between this region and Cuba has resulted in significant demand for travel between Fort Lauderdale and Cuba. JetBlue asserts that its service from FLL has been the most successful of any route, and JetBlue operated more than 130,000 segments from FLL in the first year of service, more than any competitor.<sup>63</sup> JetBlue contends that an award of six additional frequencies for service from Fort Lauderdale will allow JetBlue to build on the success of its current operation, ensure competitive dynamics remain intact in the South Florida-Havana market, and offer more service options to the traveling public.<sup>64</sup>

Regarding its Boston-Havana proposal, JetBlue states that it has been extremely interested in serving Havana from Boston since the Department announced the initial Cuban frequency proceeding in 2016. JetBlue asserts that Boston is a Northeastern hub, deserving of a direct connection to Cuba, as Boston is a gateway to all of New England which has a population of nearly 15 million, including more than one million students, and that Boston perfectly embodies the educational and cultural travel categories that will be the focus of scheduled services under the current sanctions regime.<sup>65</sup> JetBlue states that Boston is host to a robust local economy anchored by healthcare, biotechnology and some of the most prestigious educational institutions in the world, all of which, JetBlue asserts, drive current demand in the OFAC-approved travel

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<sup>58</sup> JetBlue currently holds (1) one daily frequency for Fort Lauderdale-Havana service, and six weekly frequencies for Fort Lauderdale-Havana service on Sundays through Fridays; (2) one daily frequency for New York (JFK)-Havana service; and (3) one daily frequency for Orlando-Havana service.

<sup>59</sup> JetBlue initially requested an allocation of 21 weekly frequencies to operate (1) six weekly flights (Sunday through Friday) between Fort Lauderdale and Havana; (2) Saturday-only service between Boston and Havana; (3) daily service between Newark and Havana; and (4) daily service between New York (JFK) and Havana. In light of the Department's request for new submissions, JetBlue supplemented its application on December 8, 2017 to apply for seven additional frequencies to provide nonstop service between Tampa and Havana.

<sup>60</sup> January 10, 2018 Reply of JetBlue, at 1.

<sup>61</sup> September 12, 2017 Application of JetBlue, at 1.

<sup>62</sup> *Id.*, at 12.

<sup>63</sup> *Id.*, at 14.

<sup>64</sup> *Id.*, at 15.

<sup>65</sup> *Id.*, at 16.

categories. JetBlue further states that the larger Boston/New England catchment area boasts a Cuban-American population of more than 15,000, which is significantly larger than that of certain cities that were previously granted Havana frequencies.<sup>66</sup> JetBlue states that Boston is one of JetBlue's fastest growing focus cities where it operated an extensive network to 42 domestic and 18 international destinations.<sup>67</sup> JetBlue believes that an allocation of one frequency to fund Saturday-only service to Havana is in the public interest.

JetBlue asserts that an award for Tampa-Havana service is particularly compelling as it would provide much-needed price competition to Southwest's monopoly non-stop service in that market.<sup>68</sup> JetBlue states Tampa has a Cuban-American community numbering approximately 170,000, most of whom live within the catchment area of Tampa International Airport.<sup>69</sup>

With respect to its Newark proposal, JetBlue states that the Newark/New York City market is the nation's largest metropolitan area and home to the second largest Cuban-American population.<sup>70</sup> JetBlue asserts that numerous sports, cultural, educational and economic organizations are located in Newark, all factors that will drive U.S.-Havana demand under the current travel restrictions. JetBlue states that it has a proven success record in Newark, operating up to 30 daily flights to nine destinations in three countries.<sup>71</sup>

Regarding JetBlue's request for one daily New York (JFK)-Havana frequency, JetBlue notes that it received one daily frequency in the 2016 U.S.-Cuba Frequency Allocation Proceeding, and it has operated nearly 70,000 segments in the first year, more than any other competitor, and has been very well received.<sup>72</sup> JetBlue asserts that, unlike the other recipient of JFK-HAV frequencies (Delta), JetBlue has not eliminated any daily flights to Havana.<sup>73</sup> JetBlue states that the catchment area for its proposed service far exceeds 100,000 Cuban-Americans and that New York is the epicenter of fashion, finance, media, and other important industries.<sup>74</sup>

In its responsive pleadings, JetBlue states that, in the 2016 Proceeding, the Department reached two important decisions about the Cuba market -- first that South Florida markets deserved the majority of frequencies due to their significant Cuban-American populations, and second, that the public interest would be best served by offering a wide range of travel options, from different gateways, carriers, and at different service levels.<sup>75</sup> JetBlue states that the Department should use a similar methodology in this proceeding, and asserts that its proposal, more than any other, satisfies these goals.

JetBlue states that it agrees with Delta, Southwest, and American that additional frequencies should be awarded to carriers operating from South Florida, but disagrees with these carriers that South Florida is the only important market. JetBlue asserts that to best promote public benefits,

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<sup>66</sup> *Id.*, at 18.

<sup>67</sup> *Id.*, at 19.

<sup>68</sup> December 8, 2017 Amended Service Proposal and Supplemental Application of JetBlue, at 3.

<sup>69</sup> *Id.*, at 4.

<sup>70</sup> September 12, 2017 Application of JetBlue, at 20.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*, at 21.

<sup>73</sup> *Id.*, at 22.

<sup>74</sup> *Id.*, at 21.

<sup>75</sup> September 26, 2017 Reply of JetBlue, at 1-2.

the Department should re-allocate South Florida frequencies to low-cost carriers offering Fort Lauderdale-Havana service and consider service from new routes before awarding flights to a legacy carrier from Miami.<sup>76</sup>

With respect to Fort Lauderdale, JetBlue asserts that it is uncontested that MIA and FLL are virtually equal in terms of local traveler preference. JetBlue contends that many consumers prefer FLL, which enjoys a higher volume of passengers per flight than MIA, with a larger average gauge (189, compared to 159 at MIA) and a greater average number of passengers per departure (128.6, compared to 127.6 at MIA).<sup>77</sup>

JetBlue argues that awarding additional frequencies to American would inhibit competition, lead to higher fares and further monopolization of the South Florida-Havana market.<sup>78</sup> JetBlue asserts that it has a long history of disciplining legacy carrier airfares when it enters a new market, and that low fares between South Florida and Cuba continue to exist in large part because of JetBlue's presence in the Fort Lauderdale market.<sup>79</sup>

JetBlue asserts that its Fort Lauderdale-Havana service would generate far superior public benefits than Southwest, arguing that Southwest's proposed new service with 143-seat Boeing 737 aircraft offers less seating on a per-frequency basis than JetBlue's upgraded 162-seat Airbus A320 fleet.<sup>80</sup> JetBlue also notes that Southwest is the only carrier operating to Havana that does not operate a split fleet, which prohibits Southwest from making the operational changes that are sometimes necessary in a developing market, and can result in the termination of air service due to poor load factors.<sup>81</sup>

JetBlue also argues that Southwest is the only applicant seeking frequencies for passenger service that has not established a ticket office in Cuba, which calls into question Southwest's commitment to the market.<sup>82</sup> JetBlue argues that Southwest is not deserving of additional Havana frequencies because it has not taken any meaningful steps to develop its presence in the Cuba market.<sup>83</sup> JetBlue contends that any award to Southwest will likely be returned within two years, just as Southwest ceased service at the Cuban cities of Varadero and Santa Clara.<sup>84</sup> JetBlue further argues that Southwest does not present a reliable data set in its fare argument, and that Southwest is cherry-picking its data.<sup>85</sup> JetBlue asserts that its fare comparison reveals JetBlue fares approximately 40% less than those of Southwest.<sup>86</sup> JetBlue also asserts that it has a more favorable baggage policy than Southwest, allowing for three checked bags and boxes.<sup>87</sup>

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<sup>76</sup> September 19, 2017 Answer of JetBlue, at 4.

<sup>77</sup> September 26, 2017 Reply of JetBlue, at 3.

<sup>78</sup> *Id.*, at 5.

<sup>79</sup> *Id.*, at 8.

<sup>80</sup> September 19, 2017 Answer of JetBlue, at 14.

<sup>81</sup> *Id.*, at 14.

<sup>82</sup> *Id.*, at 15.

<sup>83</sup> January 5, 2018 Answer of JetBlue, at 13-14.

<sup>84</sup> *Id.*, at 16.

<sup>85</sup> September 19, 2017 Answer of JetBlue, at 15; and September 26, 2017 Reply of JetBlue, at 15.

<sup>86</sup> September 26, 2017 Reply of JetBlue, at 15-16.

<sup>87</sup> *Id.*, at 15.

JetBlue asserts that awarding additional frequencies to Delta, another legacy carrier, for service from Miami would support and strengthen the duopoly that currently exists at MIA to the detriment of the traveling public. JetBlue also questions Delta's commitment to the Havana market, stating that Delta's quick entry and exit from the New York (JFK)-Havana market is an example of Delta's "dart-board" route planning strategy.<sup>88</sup> JetBlue argues that its service would offer connections to more than 40 U.S. cities, while Delta's proposed second Miami-Havana flight will not offer any meaningful connecting service.<sup>89</sup>

JetBlue also urges the Department to clarify the legal status of Delta's Monday and Wednesday New York (JFK)-Havana frequencies. JetBlue states that, despite Delta's Monday and Wednesday frequencies reverting to the Department in early December 2017, Delta resumed operating Monday and Wednesday flights later that month. JetBlue states that the Department should address Delta's actions so that other carriers are aware of the regulatory risk of cancelling frequencies for such long stretches of time.<sup>90</sup>

JetBlue argues that an award of frequencies to FedEx would be a waste of limited resources, noting that FedEx has been unable to initiate its service between Miami and Varadero.<sup>91</sup> JetBlue asserts that FedEx' choice of aircraft, the Cessna 208 with just 340 cubic feet of cargo capacity, illustrates FedEx's lack of confidence in its ability to develop and maintain a profitable service between the United States and Cuba.<sup>92</sup>

In responding to other carrier claims about JetBlue's decision to down-gauge certain Cuba flights, JetBlue acknowledges that it did so like several of its competitors, including American and Delta. JetBlue asserts that its decision to down-gauge certain flights did not in any way impact the customer experience, and was necessary to right-size operational parameters and ensure future viability of the service. JetBlue contends that down-gauging is not an indicator of weak demand, nor is it permanent. JetBlue asserts that adjustments to gauge are common industry practice, and that it has the ability to up-gauge to 200-seat Airbus A321 aircraft as the market continues to develop.<sup>93</sup> JetBlue furthermore notes that it is one of the few airlines that has not eliminated any service to Cuba.<sup>94</sup>

With respect to United and Mesa's request for "operational flexibility," JetBlue contends that the fact that United cannot fill a mainline B737 from Houston one day a week is not in and of itself a justification to down-gauge to a smaller aircraft and is certainly no justification to award frequencies to an entirely different airline, Mesa, that has not received a frequency allocation from the Department. JetBlue argues that Department precedent clearly indicates that Mesa is not entitled to these frequencies under the circumstances.<sup>95</sup>

JetBlue states that in evaluating United and Mesa's request, the Department must address whether two separate U.S. carriers can unilaterally freely swap frequencies between one another

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<sup>88</sup> January 5, 2018 Answer of JetBlue, at 9; and September 19, 2017 Answer of JetBlue, at 22-24.

<sup>89</sup> September 26, 2017 Reply of JetBlue, at 16

<sup>90</sup> January 5, 2018 Answer of JetBlue, at 12-13.

<sup>91</sup> September 19, 2017 Answer of JetBlue, at 24-25.

<sup>92</sup> *Id.*, at 25-27.

<sup>93</sup> September 26, 2017 Reply of JetBlue, at 9-10.

<sup>94</sup> *Id.*, at 11.

<sup>95</sup> September 12, 2017 Application of JetBlue, at 23.

with no restriction, when those frequencies are being actively sought by competing carriers, without prior Departmental approval or oversight and without violating due process constraints of U.S. administrative law such as the *Ashbacker* doctrine.<sup>96</sup> JetBlue argues that allowing two separate carriers to share a frequency as conditions warrant, conflicts with years of Departmental licensing precedent, both in this docket and elsewhere.<sup>97</sup>

JetBlue also argues that United and Mesa are mischaracterizing the MOU provision regarding cooperative marketing arrangements. JetBlue asserts that Section 7 of the MOU would allow United to place the code of another carrier on Houston-Havana flights, but it would not be appropriate for an entirely different carrier to operate those flights unless that airline held its own frequency to do so.<sup>98</sup>

In its January 10 Reply, JetBlue asserts that American has now also formally requested flexibility. JetBlue contends that if the Department were to approve the proposed flexibility, all three legacy carriers – American, Delta, and United – could immediately transfer frequencies to regional partner carriers and down-gauge to 50-seat regional jets, to the detriment of consumers and low-cost carriers like JetBlue that have committed to the Cuba market.<sup>99</sup>

**Southwest** requests one daily U.S.-Havana frequency to provide additional Fort Lauderdale-Havana service, beginning within 90 days of a Final Order in this proceeding, using 143-seat B737-700 aircraft or 175-seat B737-800 aircraft. Southwest seeks to provide an additional daily flight between Fort Lauderdale and Havana, for a total of three daily flights in this market.<sup>100</sup>

Southwest states that it has the largest average aircraft size of any carrier in the FLL/MIA-Havana market, with 175 seats on all of its FLL-Havana flights versus 160 seats for both Delta and American, and 150 seats for JetBlue.<sup>101</sup> Southwest states that its unique value proposition of consumer-friendly service – including two free checked bags, no reservation change fees, and no booking cancellation fees – is especially appealing to Cuban-American travelers visiting friends and family. As such, Southwest asserts that its service not only provides convenient flight options to South Florida travelers, but also serves to discipline fares on the Miami-Havana route, thereby furthering a competitive U.S.-Havana marketplace.<sup>102</sup> Southwest asserts that when considering the fees that other carriers charge for first and second checked bags, it becomes clear that Southwest has an overwhelming cost advantage vis-à-vis all other carriers providing service from South Florida to Havana.<sup>103</sup>

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<sup>96</sup> January 5, 2018 Answer of JetBlue, at 2, citing *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

<sup>97</sup> September 19, 2017 Answer of JetBlue, at 20. In support of its arguments, JetBlue states that while United and Mesa have a close relationship, Mesa holds its own Open-Skies Certificate issued by Order 2008-4-26. JetBlue also notes that American's regional partner Republic holds separate exemption authority and frequencies to serve Cienfuegos and Camaguey, Cuba.

<sup>98</sup> September 19, 2017 Answer of JetBlue, at 21.

<sup>99</sup> January 10, 2018 Reply of JetBlue, at 1-2.

<sup>100</sup> Southwest currently holds (1) two daily frequencies for Fort Lauderdale-Havana service; and (2) one daily frequency for Tampa-Havana service. See Order 2016-8-38.

<sup>101</sup> September 12, 2017 Application of Southwest, at 2.

<sup>102</sup> *Id.*, at 3.

<sup>103</sup> Reply of Southwest, at 2.

Southwest states that its additional Fort Lauderdale-Havana flight will connect with 23 domestic airports, and enable Southwest to offer more convenient choices to and from Havana, thereby producing significant public benefits and robust competition.<sup>104</sup>

Southwest asserts that the Department's original decision to allocate a majority of Havana frequencies to South Florida continues to be justified, noting that the South Florida market has far more Cuban Americans than any other metro area in the country. Southwest states that South Florida's Cuba-American population is nearly seven times as large as the second largest gateway proposed in this proceeding (New York/Newark), 37 times as large as Houston, and 84 times as large as Boston.<sup>105</sup> Southwest states that the elimination of independent "People-to-People" travel will mean fewer U.S. passengers traveling to Cuba without a "Visiting Friends and Relatives" justification.<sup>106</sup>

Southwest also asserts that it makes good sense for the Department to ensure that FLL has at least as many frequencies as MIA, given that FLL is served by low-cost carriers that discipline the high fares of legacy carriers at MIA. Southwest asserts that the airlines' costs of operation at the two airports are dramatically different, and that FLL fares are significantly lower than MIA fares in markets with nonstop service from both airports.<sup>107</sup>

Southwest argues that American already has double the number of frequencies of any other carrier in the South Florida-Havana market, and that it does not merit an additional award. Southwest asserts that American is a high-fare legacy carrier that requires price discipline from a low-cost carrier like Southwest at FLL, and that American's fares would be even higher without Southwest's competition.<sup>108</sup> Southwest takes issue with American's claim that MIA is the only viable Cuba gateway, as Southwest argues that the South Florida-Havana market is nearly equally split between passengers beginning their trips in MIA versus originating in FLL.<sup>109</sup> Southwest further argues that American's selective performance metrics are highly misleading, and that complete market data contradicts American's claims.<sup>110</sup>

Southwest asserts that with Delta's high fares and limited network from MIA, its service warrants no more than the once daily service it has in the market today. Southwest states that Delta's proposed additional MIA-HAV roundtrip would connect to zero U.S. cities in both directions, compared to 15 cities for Southwest.<sup>111</sup> Southwest further asserts that Delta's current lowest available web fares, plus average per passenger fees paid on Delta, are 43% higher than Southwest in the South Florida-HAV market.<sup>112</sup>

Southwest argues that JetBlue does not warrant additional frequencies after cutting the number of seats available for passengers on its Havana services and deviating from the service proposal on which the Department premised its 2016 award to JetBlue. Southwest states that

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<sup>104</sup> September 12, 2017 Application of Southwest, at 4.

<sup>105</sup> September 19, 2017 Answer of Southwest, at 2.

<sup>106</sup> *Id.*, at 2-3.

<sup>107</sup> *Id.*, at 4-7.

<sup>108</sup> *Id.*, at 8-9.

<sup>109</sup> September 26, 2017 Reply of Southwest, at 8.

<sup>110</sup> *Id.*, at 10-12.

<sup>111</sup> September 19, 2017 Answer of Southwest, at 17.

<sup>112</sup> *Id.*, at 16.



combining all three of JetBlue's Havana routes, JetBlue is now offering 1,700 fewer weekly seat-departures than it proposed in the 2016 case.<sup>113</sup> In contrast, Southwest states that it has continued to operate its largest aircraft, the 175-seat B737-800, on all of its Havana flights from FLL and TPA, while achieving load factors that are 5-9 percentage points higher than JetBlue.<sup>114</sup> Furthermore, Southwest states that looking at all months beyond March 2017, Southwest has carried 11% more FLL-HAV passengers per flight than JetBlue (132 vs. 119).<sup>115</sup>

Southwest states that if JetBlue were to receive all these requests, it would have more HAV frequencies than any other carrier despite having the smallest network of any applicant in this proceeding. Southwest asserts that JetBlue can increase its capacity in the Fort Lauderdale-Havana market by simply up-gauging its aircraft back to the size it originally proposed.<sup>116</sup>

Southwest asserts that United's proposal to serve Havana with a 76-seat aircraft would be a poor use of such a scarce resource, and would not maximize public benefits compared to an award to Southwest. Southwest also states that Houston's Cuban-American population is only 3% the size of the Cuban-American population in South Florida, and that the geography of South Florida is convenient for Eastern and Western U.S. residents to connect to Havana via FLL or MIA.<sup>117</sup> Southwest contends that, in light of the extensive travel restrictions for Cuba, the Department should resist requests to allocate limited Havana frequencies to gateways around the country for the sake of geographical diversity, as U.S. cities with minimal Cuban-American populations will not maximize public benefits in this unique case.<sup>118</sup>

Southwest argues that FedEx's proposal would be a waste of a scarce resource and that FedEx could achieve the same delivery standards without taking up a scarce Havana frequency by consolidating its Havana traffic on its Matanzas flights, when its Matanzas service is initiated.<sup>119</sup>

**United** requests six weekly U.S.-Havana frequencies to expand its Saturday-only Houston-Havana service to daily service, and Mesa requests underlying exemption authority to operate United's Houston-Havana service as a United Express carrier as economic conditions warrant. United and Mesa propose to begin their expanded service on March 25, 2018, or 90 days after the issuance of a Final Order in this proceeding, whichever is later. United/Mesa state that United's daily Houston-Havana flight will serve a key population center that is home to the fourth largest city in the United States, and offer on-line roundtrip connections between 44 points served via United's hub at Houston Intercontinental.<sup>120</sup>

United/Mesa state that United's current Saturday-only service to Havana from Houston continues to develop and show strong enough demand to support an expansion to daily service using the appropriately sized capacity that Mesa's 76-seat Embraer E175 aircraft offer.<sup>121</sup> United/Mesa state that Houston's Cuban-American population ranks eighth nationally, and that

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<sup>113</sup> *Id.*, at 11.

<sup>114</sup> *Id.*, at 13.

<sup>115</sup> September 26, 2017 Reply of Southwest, at 14.

<sup>116</sup> September 19, 2017 Answer of Southwest, at 12.

<sup>117</sup> *Id.*, at 18-19.

<sup>118</sup> September 26, 2017 Reply of Southwest, at 17.

<sup>119</sup> September 19, 2017 Answer of Southwest, at 20-21.

<sup>120</sup> September 12, 2017 Joint Application of United and Mesa, at 4.

<sup>121</sup> *Id.*, at 7.

United's Houston-Havana service will facilitate roundtrip connections to the fourth, sixth, and seventh largest Cuban-American populations in the nation in Los Angeles, Chicago, and Las Vegas, respectively.<sup>122</sup> United/Mesa further state that the synergy potential between Houston and Havana is substantial, as Houston is a large exporter of many raw materials that are in high demand in Cuba, including building materials, drainage and water supply systems, and parts and services related to the oil and gas industry.<sup>123</sup> United/Mesa assert that the potential for trade and investment between Houston and Cuba is significant, and the proposed Houston-Havana service will help enhance these economic opportunities.<sup>124</sup>

United/Mesa state that the Houston-Havana service would combine Houston's Cuban-American population of almost 19,000, with 179,000 connecting Cuban-American passengers, allowing United's Houston-Havana service to reach almost 200,000 Cuban Americans throughout the country.<sup>125</sup> United/Mesa also state that United at Houston offers a compelling and attractive alternative to east coast flights proposed by other carriers by maximizing connectivity, fulfilling the Department's interest in promoting diversity of gateways, and offering a solution to the oversaturation of flight options from South Florida that caused Spirit and Frontier to return their Havana frequencies to the Department less than one year after the award.<sup>126</sup>

United/Mesa do not dispute that South Florida encompasses a large number of Cuban Americans or that the area deserves a disproportionate number of frequencies, but United/Mesa argue that the size of the Cuban-American population should not be the only metric that the Department considers when evaluating service proposals in this proceeding.<sup>127</sup> United/Mesa assert that the Houston-Havana proposal would provide inter-carrier competition, as United has the smallest portfolio of Havana frequencies compared to other carriers participating in this proceeding.<sup>128</sup> United states that it offers a well-rounded and disciplined proposal, and that its request for six of 34 weekly frequencies is modest. United asserts that selection of United at Houston will conveniently leave 28 weekly frequencies available for reallocation to other carriers.<sup>129</sup>

United asserts that by using different aircraft types it offers the best chance of sustained, long-term success and growth in the market. In this regard, United states that it will use either Boeing B737 aircraft from its existing fleet or Embraer E175 aircraft from Mesa's existing fleet as conditions warrant. United states that its request for operational flexibility is grounded in reality, and intended to address the fact that several U.S. carriers have already made downward adjustments to their Havana capacity and/or other Cuba service.<sup>130</sup> United asserts that flexibility in aircraft fleet utilization is key to maintaining service levels and driving long term success. United states that, while it is asking for flexibility to use smaller aircraft as conditions warrant, United would be using that smaller aircraft six more times per week, increasing capacity on the route by at least 532 seats per week.<sup>131</sup>

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<sup>122</sup> *Id.*, at 5.

<sup>123</sup> September 19, 2017 Joint Answer of United and Mesa, at 10-11.

<sup>124</sup> September 12, 2017 Joint Application of United and Mesa, at 6.

<sup>125</sup> *Id.*, at 8.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*, at 9.

<sup>128</sup> January 5, 2018 Joint Answer of United and Mesa, at 3.

<sup>129</sup> *Id.*, at 1.

<sup>130</sup> September 12, 2017 Joint Application of United and Mesa, at 11.

<sup>131</sup> September 26, 2017 Joint Reply of United and Mesa, at 12-13.

United contends that “the biggest aircraft should always win” argument is dated thinking.<sup>132</sup> United notes that the Department’s principal objective in this proceeding is to maximize public benefits by considering which applicants will be most likely to offer and maintain the best service for the traveling and shipping public. United contends that offering the best service is relatively easy; the challenge lies in delivering and maintaining the service – particularly in light of the recent cessations of service.<sup>133</sup>

In its responsive pleadings, United asserts that compared to other proposals, United offers substantially superior convenience and connectivity, which would provide geographic diversity in underserved communities.<sup>134</sup> United asserts that JetBlue, American, Delta, and Southwest offer inferior connectivity and these carriers should not receive any frequency awards ahead of 200,000 Cuban Americans residing across a huge portion of the United States.<sup>135</sup>

United argues that JetBlue’s proposal is unrealistic and excessive, and that by seeking all frequencies available, JetBlue apparently is not an advocate for competition.<sup>136</sup> United gives Southwest and Delta credit for submitting realistic service proposals that would not necessarily prevent other carriers from obtaining additional Havana frequencies; however, United asserts these proposals are flawed because they are duplicative of existing daily service.<sup>137</sup>

United argues that FedEx’s proposal is by far the weakest. United questions what demand FedEx estimates for its service, what traffic patterns are for Cuba-bound shipments, and why FedEx believes it can only achieve its goals in Havana with scheduled service as opposed to charter service.<sup>138</sup>

In response to JetBlue’s arguments against the United/Mesa request for flexibility, United/Mesa state that there is nothing extraordinary or extralegal about the proposal. Under the arrangement, United states that United may operate its own aircraft; and, during portions of the year, as economic conditions warrant, Mesa may operate the service on United’s behalf. United/Mesa maintains that at no time will Mesa market this Houston-Havana service – only United will do so – and at no time will the carriers operate in excess of United’s seven weekly frequencies.<sup>139</sup>

United asserts that its request for flexibility is fully consistent with the terms of the MOU, which states in pertinent part, that “for scheduled service to and from Havana, airlines of each Country may operate up to twenty (20) daily frequencies,” and defines a “frequency” as “one operation to and from one or more points in the territory of the other Country.”<sup>140</sup> United further asserts that the MOU expressly permits a U.S. airline to enter into “cooperative marketing arrangements,

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<sup>132</sup> *Id.*, at 14.

<sup>133</sup> *Id.*, at 15.

<sup>134</sup> *Id.*, at 5.

<sup>135</sup> September 19, 2017 Joint Answer of United and Mesa, at 10.

<sup>136</sup> *Id.*, at 17.

<sup>137</sup> *Id.*, at 18.

<sup>138</sup> *Id.*, at 18 - 19.

<sup>139</sup> January 10, 2018 Joint Reply of United and Mesa, at 1-2.

<sup>140</sup> *Id.*, at 2, citing MOU Annex.

such as blocked-space, code-sharing or leasing arrangements” with another U.S. airline, and that the United/Mesa arrangement fits this description.<sup>141</sup>

United argues that the Department’s overall posture with respect to the commercial air service rights available to U.S. carriers under the MOU has been permissive, not restrictive, and that JetBlue’s intransigence on this issue is nothing more than a thinly veiled effort to derail United’s proposal on a meritless technicality. United asserts that if it is granted the ability to interchange B737 aircraft with E175 aircraft, it can more nimbly and effectively respond to consumer demand fluctuations to ensure that its growing Houston-Havana service is sustainable.<sup>142</sup>

**The City of Houston (Houston)** filed an answer and reply in support of United’s proposal, and a subsequent answer and reply supporting United after the Department’s November and December Orders expanding the scope of the proceeding.

Houston states that the Department has long recognized the value of daily service in limited-entry markets, and that selecting United would enable the first scheduled daily nonstop service to Havana from Texas in over fifty years. Houston states that it supports United’s approach of utilizing its regional partner Mesa when appropriate, asserting that a carrier should not be penalized for utilizing its resources (including fuel) in the most efficient and effective manner.<sup>143</sup> Houston asserts that all of the current applicants, except United, have scaled back their existing Cuba services, and Houston argues that it is disingenuous for such carriers to now argue that United and Houston should be deprived of the same market flexibility opportunity.<sup>144</sup>

The City of Houston asserts that Houston is a key driver of the nation’s economy, with a population of 6.7 million for its nine-county metropolitan statistical area (MSA), the fifth most populous MSA in the country.<sup>145</sup> Houston states that the diversity of its economy is remarkable, noting its well-known strengths as the “world energy capital” and that it is home to over 6,000 manufacturers, more than 400 software development companies, Space Center Houston, a large aviation and aerospace community, and the world’s largest medical facility.<sup>146</sup>

Houston states that United’s expanded service would more than double the connectivity from Houston to over forty behind-gateway points, and will draw support on, and provide public benefits to, the powerhouse economy of the State of Texas<sup>147</sup> Houston asserts that United’s service would support low-circuity, efficient Havana service from a regional Cuban-American population of nearly 200,000.<sup>148</sup>

Houston asserts that Texas and the central/western United States are significantly underserved to Cuba, noting that the East Coast and Florida are already the recipients of an abundance of Havana service. Houston states that an award to United is the only way to introduce greater

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<sup>141</sup> *Id.*, at 2, citing MOU Section 7.

<sup>142</sup> *Id.*, at 4.

<sup>143</sup> September 19, 2017 Answer of Houston, at 3-4.

<sup>144</sup> September 26, 2017 Reply of Houston, at 6-7.

<sup>145</sup> September 19, 2017 Answer of Houston, at 6.

<sup>146</sup> *Id.*, at 7.

<sup>147</sup> *Id.*, at 10-11.

<sup>148</sup> *Id.*, at 15-16.

inter-carrier and inter-gateway competition in the U.S.-Havana market,<sup>149</sup> and with the withdrawal of Alaska, now only Houston is uniquely positioned to ensure the availability of daily connecting services from west of the Mississippi.<sup>150</sup>

**The Massachusetts Port Authority (Massport)** filed an answer in the proceeding in support of JetBlue's request for at least one Boston-Havana frequency. Massport asserts that there is a demonstrated need for service from Boston and New England, as Boston's combined metro area is the sixth largest in the United States with a Cuban-American population exceeding 15,000.<sup>151</sup> Moreover, Massport states that Boston is the gateway to New England and enjoys a flourishing economy anchored by biotechnology, healthcare, financial services and educational institutions, all of which have current or potential ties to Cuba which will drive demand under the existing categories of approved travel.<sup>152</sup> Massport asserts that Boston has nearly 1 million undergraduate and graduate students who would be eligible to travel for educational purposes under the current restrictions, as well as thousands of individuals in the healthcare sector who would be similarly authorized to go to Cuba for research or educational purposes.<sup>153</sup>

Massport asserts that Boston is an equal, if not superior, alternative to cities that were awarded Havana frequencies such as Atlanta, Houston, Charlotte, and Los Angeles. Massport states that Boston's Logan International Airport currently offers non-stop domestic service to 75 destinations and non-stop international service to 54 destinations, and that since 2009, the total number of passengers traveling to or from Boston has increased by over one million passengers per year.<sup>154</sup>

Lastly, Massport notes that broad community support exists to justify an award to Boston, noting that JetBlue's proposal has been lauded by a wide variety of interests and individuals including federal and state elected officials and many local organizations, associations, and universities.<sup>155</sup>

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<sup>149</sup> September 26, 2017 Reply of Houston, at 9-10.

<sup>150</sup> January 5, 2018 Answer of Houston, at 5.

<sup>151</sup> September 18, 2017 Answer of Massport, at 3.

<sup>152</sup> *Id.*, at 3-5.

<sup>153</sup> *Id.*, at 7.

<sup>154</sup> *Id.*, at 5.

<sup>155</sup> *Id.*, at 7.