



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

Order 2018-4-17

Issued by the Department of Transportation
on the 20th day of April, 2018

Served: April 20, 2018

2017 U.S.-CUBA FREQUENCY ALLOCATION PROCEEDING

DOCKET DOT-OST-2016-0021

FINAL ORDER

By Order 2018-3-16 the Department tentatively allocated the four daily and six weekly available frequencies to provide scheduled services between the United States and Havana, Cuba, as shown in the chart below.

Carrier	Proposed Routing	Frequency
American Airlines, Inc. (American)	Miami-Havana	Daily
Delta Air Lines, Inc. (Delta)	Miami-Havana	Daily
JetBlue Airways Corporation (JetBlue)	Fort Lauderdale-Havana	Sunday-Friday
	Boston-Havana	Saturday-only
Southwest Airlines, Co. (Southwest)	Fort Lauderdale-Havana	Daily
United Airlines, Inc. (United) / Mesa Airlines, Inc. (Mesa)	Houston-Havana	Sunday-Friday

In addition to the tentative frequency awards, the Department also tentatively granted exemption authority under 49 U.S.C. § 40109 to JetBlue to operate its Boston-Havana service, and to Mesa to operate its Houston-Havana service. The Department also tentatively approved the request of United and Mesa for flexibility to use either carrier's aircraft in the Houston-Havana market.

Objections to the Department's tentative decision were due on April 16, 2018, with answers due April 23, 2018. No objections were filed. In light of the fact that no objections were filed and for the reasons set forth in Order 2018-3-16, the Department has decided to finalize its tentative decision.

Terms, Conditions, and Limitations

Consistent with the Department's tentative decision, the Department will impose a startup condition for each award of U.S.-Havana frequencies. In this regard, the Department will require the carriers to institute their proposed services within 90 days of the issue date of this order.

In addition, consistent with the Department's standard practice, the frequencies 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 the allocation with respect to each such frequency would expire automatically and the frequency would revert to the Department for reallocation.

Finally, the frequency allocations and exemption authority 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.¹

ACCORDINGLY,

1. The Department allocates to American Airlines, Inc. one daily frequency for its proposed Miami-Havana service;
2. The Department allocates to Delta Air Lines, Inc. one daily frequency for its proposed Miami-Havana service;
3. The Department 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 allocates to Southwest Airlines Co. one daily frequency for its proposed Fort Lauderdale-Havana service;
5. The Department allocates to United Airlines, Inc. six weekly frequencies for its proposed Houston-Havana service on Sundays through Fridays;
6. The Department 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 allocated to United by Order 2016-8-38, and the six weekly Houston-Havana frequencies allocated by ordering paragraph 5 above;
7. The frequencies allocated by ordering paragraphs 1 through 5 above are effective immediately and will 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 issue date of this order; 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 allocated by ordering paragraphs 1 through 5 above are 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;

¹ Carriers are reminded that a number of significant limitations and requirements remain in place concerning air transportation between Cuba and the United States. Nothing in the Department's award of authority in this proceeding relieves parties from complying with all applicable regulations and requirements of other U.S. agencies and with all applicable laws of the United States.

9. The Department 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 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 granted by ordering paragraphs 9 and 10 above is effective immediately and will remain in effect for two years, subject to the Department's standard exemption conditions attached as Appendix A, 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;²
12. The operations conducted under the exemption authority granted to Mesa Airlines, Inc. are subject to the Department's standard code-share conditions as follows:
 - (a) The code-sharing operations conducted under this authority must comply with 14 C.F.R. 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (*i.e.*, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected; and
 - (b) The authority granted here is specifically conditioned so that neither United nor Mesa shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions;
13. To the extent not granted, the Department denies the remaining requests in this proceeding;³
14. The Department will not consider petitions for reconsideration of this order; and

² The Department 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.

³ The Department will address separately the Joint Application of United and Republic Airline, Inc. filed April 16, 2018 in this docket.

15. 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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U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.