

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

2017 U.S.-Cuba Frequency Allocation Proceeding : Docket DOT-OST-2016-0021
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CONSOLIDATED JOINT REPLY OF
UNITED AIRLINES, INC. AND
MESA AIRLINES, INC.

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United¹ reaffirms its well-founded, disciplined proposal to expand its Saturday-only Houston-Havana service to daily, year-round service using either its own B737 aircraft or Mesa's EMB E175 aircraft that would bring outsized choice, convenience, and competition for its customers, communities, and co-workers, and would enable United to tailor capacity to meet demand for Havana services. The answers submitted by other carriers in this proceeding underscore why the United/Mesa Joint Application should be selected under the Department's public interest standards; United's competition overvalues the Florida market and aircraft size while undervaluing connectivity, inter-carrier and inter-gateway competition, and net capacity growth. While other proposals to serve Havana may have their attributes, they cannot contend with the abundant connecting opportunities, economic benefits, and new entrant competition that are among the hallmarks of United at Houston.

As other carriers proposing service primarily from South Florida quarrel over their disproportionate claims for just 21 weekly U.S.-Havana frequencies, United stands out as the only carrier that has presented an objectively reasonable proposal geared toward an amicable resolution of this proceeding, requesting just 29% of the total frequencies available for allocation. By comparison, American is seeking nearly 50% of the frequencies and, astoundingly, JetBlue is

¹ Common names are used for airlines.

seeking 100% of the frequencies. Their proposals, and others, obsess over market share and Cuban American population size while blatantly ignoring the business, intergovernmental, cultural, education, and familial needs – and the significant Cuban American populations – in the whole of the United States outside of Florida. Such an approach by other applicants is squarely at odds with the heightened importance of connectivity, gateway diversity, and inter-carrier competition. The Department should select United because:

- **Consumers Win:** United at Houston will serve the fourth largest city in the U.S. and the nation's eighth largest Cuban American population. Additionally, consumers across the central and western U.S. will be able to utilize United's optimally located Houston hub gateway for one-stop connecting service to Havana. In total, United's proposal will reach nearly 200,000 Cuban Americans and other individuals with Havana travel needs.
- **Choice Wins:** United will expand service from a gateway that has not yet had an opportunity to offer daily service, and one that promotes gateway diversity and choice for connectivity. Currently, consumers have to circuitously connect at points across the Southeast.
- **Competition Wins:** United is seeking a modest allocation of six weekly frequencies, or 29% of the total available in this proceeding – a well-tailored proposal that will meet demand at United's prized Houston gateway and connecting markets. United's proposal would allow for the remaining 71% of available Havana frequencies to be allocated to other applicants – thereby fostering carrier diversity and competition.
- **Communities Win:** United's proposal will provide round-trip connectivity between Havana and 44 communities that would otherwise have to select only one or two incumbent carriers for Havana travel options. Granting the United/Mesa Joint

Application would also vindicate the strong support from elected officials, the City of Houston, Houston Airport System, and many other organizations and enterprises that have rallied behind United's proposal to expand Saturday-only Houston-Havana service to daily service for the benefit of communities in Houston and beyond.

Other carriers' proposals should not be selected to the exclusion of United's proposal to provide daily Houston-Havana service. The flaws of their proposals can be summarized as follows:

- **JetBlue** is a dominant incumbent at Fort Lauderdale, offers minimal (and, with respect to New York/Newark, zero) connectivity, promotes a first priority proposal at Fort Lauderdale that would simply add to JetBlue's rich portfolio of frequencies for South Florida, and has presented a proposal for 100% of the available frequencies that is anathema to healthy competition in a developing market; only JetBlue's second-priority, Saturday-only Boston-Havana service merits consideration from the Department.
- **American** is a dominant incumbent at Miami that audaciously seeks an additional ten weekly frequencies from Miami when it already holds 28 of them; only American's first- and second-priority, weekend proposals merit consideration from the Department.
- **Southwest** and **Delta** offer duplicative South Florida service with minimal connectivity compared to United's proposal, and each already holds 15% of the U.S.-Havana frequencies available for allocation compared to United's 5.5%; only a less than daily frequency award to Southwest and/or Delta merits consideration from the Department. Additionally, Delta overstates the extent to which it can discipline American at Miami.
- **FedEx's** proposal is the weakest link; it is devoid of the critical details that the Department and other carriers need to review to evaluate the merits of the request.

FedEx simply hasn't offered sufficient information to facilitate a meaningful comparison of the public benefits of its all-cargo service to Havana; as a result, FedEx's proposal should be dismissed.

United takes pride that it is the only carrier in this proceeding that has presented a clear framework for the Department to resolve the competing proposals. As demonstrated in the United/Mesa Joint Application and Joint Answer, there are sufficient frequencies available to ensure not only that each deserving carrier could be awarded at least some of its requested frequencies, but that Florida will receive more than its fair share of the available frequencies without foreclosing opportunities at Houston.

United appreciates the outpouring of support that the United/Mesa Joint Application has garnered from the Governor of Texas, the Mayor of Houston, Texas Congressmen Kevin Brady, Gene Green, Pete Olson, and Ted Poe; Houston Airport System; Greater Houston Partnership; Houston Hispanic Chamber of Commerce; North Houston Association; Texas Commercial Airports Association; Texas Travel Industry Association; and Visit Houston, among other organizations.

In the interest of promoting fair and healthy competition and giving consumers in the central and western U.S. improved access to Havana through United's Houston hub, United urges the Department to allocate six additional frequencies to United for its proposed daily Houston-Havana service, grant Mesa's corresponding request for exemption authority to operate United Express service on this route, and then distribute the remaining 15 weekly Havana frequencies across the spectrum of applications based on merit.

I. COMPARED TO OTHER PROPOSALS, UNITED AT HOUSTON OFFERS SUPERIOR CONVENIENCE, CONNECTIVITY, COMPETITION, AND CAPACITY GROWTH.

United's proposal merits selection because it offers substantially superior convenience and connectivity compared to competing proposals, and would provide geographic diversity in underserved communities – particularly those in the central and western United States – that currently must connect circuitously through points in the southeastern U.S. to reach Havana. The Department's selection of United's proposal would also at least partially offset further concentration in the South Florida-Havana markets dominated by American, JetBlue, Delta, and Southwest and enhance the overall competitive environment in the U.S.-Havana market. Contrary to misleading statements regarding United's capacity growth plans and fleet utilization on the Houston-Havana route, United will actually be significantly growing capacity in this market by virtue of its expansion from once weekly to daily service. The math supporting the United/Mesa Joint Application is simple; it's the other carriers' proposals that don't add up.

As United and Mesa ably demonstrated in their Joint Application and Joint Answer, the Department should grant the United/Mesa Joint Application and select United's proposal for daily year-round Houston-Havana service. United's proposal will offer:

- **Enhanced Convenience for Consumers.** Allowing United to expand its Saturday-only Houston-Havana service to daily service will enable United's customers in Houston (or connecting via Houston) to fly on a nonstop Houston-Havana-Houston itinerary on any day of the week that is convenient for them.
- **Superior Connectivity and Greater Access to Havana for Consumers in the Central and Western U.S.** United's proposal will connect customers in 44 cities throughout the central and western U.S. – a geographically massive portion of the country yet one that lacks a convenient gateway to utilize for daily Havana travel needs.

United's daily Houston-Havana service will rectify this service gap by providing easy connections to and from Havana for nearly 200,000 Cuban Americans, including multiple cities that rank in the top ten largest Cuban American populations.

- **Inter-carrier Competition.** An award of six additional frequencies to United will enable it to grow its presence in the Havana market, better compete with dominant Havana frequency holders American, JetBlue, Delta, and Southwest, and stimulate competition for services currently dominated by a few.
- **Disciplined, Sustainable Growth in the Havana market.** United's proposal seeks to build on the solid performance results this route has generated since United was awarded the frequencies last year, including the high load factors for this route in recent months.

In stark contrast to several of the other applications that were submitted in this proceeding, United has presented a rational, focused proposal that will help make the best use of the 21 newly available Havana frequencies. Awarding United six weekly round-trip frequencies to support daily service to Havana from its Houston hub will offer significant benefits, including a direct air service link to Havana from a city that has the nation's eighth largest Cuban American population, and is truly distinguishable for its ability to connect communities throughout the country to Havana. Representing just 29% of the three daily frequencies available for U.S.-Havana service, and a mere 4% of the total Havana frequencies available to U.S. carriers, United's proposal to serve Havana from Houston reflects an incremental, procompetitive approach that will deliver demonstrable public benefits to a diverse set of markets and communities throughout United's comprehensive route network. United's proposal clearly stands out in this regard.

Expanding United's existing Saturday-only Houston-Havana service to daily service will enhance inter-gateway competition by providing nonstop service at a major international hub

gateway outside of South Florida; bolster inter-carrier competition by allocating frequencies to the combination carrier with the smallest Havana frequency portfolio (*see* Exhibit UA-R103); maximize connecting service options for consumers through a convenient hub serving large portions of the central and western U.S.; and facilitate the development of trade, cultural, and familial ties between Houston (and other large metropolitan areas in the central and western U.S.) and Havana.

A. United at Houston Will Provide Inter-gateway and Inter-carrier Competition and Geographic Diversity.

United has the smallest portfolio of Havana frequencies as compared to other carriers participating in this proceeding (*see* Exhibit UA-R103) yet is the only carrier proposing service from a hub that will feed the central and western regions of the U.S. Indeed, Houston is the only non-East Coast gateway proposed in this proceeding. Despite United's justifiable interest in expanding its Havana service to keep pace with other carriers, and the conspicuous geographic imbalance with respect to Havana frequency awards, United is asking for just six weekly frequencies – underscoring United's support for a balanced competitive environment and diverse geographic service options in the developing U.S.-Havana market.

Rather than further entrench carriers in South Florida and pile on to the mountain of frequencies already serving that area, the Department and the traveling public would be better served by a selection of United for daily service to Havana from Houston. Florida and New York City already have 109 times and 30 times, respectively, the number of daily flights to Havana as does Houston. *See* Exhibit UA-R105. The central and western U.S.-Havana service deficit compared to the eastern region of the U.S. is totally out of balance, with 1.1 flights versus 18.9 as originally allocated by DOT. *See* Exhibit UA-R104. Finally, the central and western U.S. have maintained their Cuba capacity whereas Florida has seen 11 daily flights to Cuba disappear. *See* Exhibit UA-R106.

Inter-carrier competition would also be served by a grant of United's Houston-Havana service proposal. United holds a mere 5.5% of the 20 daily flights originally allocated. By contrast, American was allocated 25.0%; JetBlue 19.5%; and Delta and Southwest each were allocated 15%. An award to United here would rectify a geographic imbalance – with a staggering 94% of the Havana frequencies currently allocated in the Eastern region of the U.S. – as well as an inter-carrier imbalance.

B. United at Houston Will Provide Superior Connectivity.

United's proposed flights will offer convenient on-line round-trip connections between 44 points served via United's hub at Houston Intercontinental (*see* Exhibit UA-R102) and will more than double the number of connection points that United's Saturday-only service can provide. *See* Exhibit UA-R102. None of the other applicants can claim such an enhancement for connectivity. *See* United/Mesa Joint Answer at 8.

The Cuban American population in the Houston metropolitan area ranks eighth nationally, making Houston Intercontinental an optimal gateway for scheduled service to Havana and from which to connect a large portion of the U.S. to Havana. United at Houston will connect cities large and small across the central and western U.S. with Havana, like Kansas City and Lubbock, which in addition to the local Houston population present a market opportunity that approaches 200,000 Cuban Americans. *See* Exhibit UA-R102.

American feebly suggests in its Answer Exhibits that United's Houston hub is superfluous in this proceeding because “almost all of the behind [Houston] connecting points to [Havana] can also be connected through American's [Miami/Charlotte-Havana] services and Delta's [Atlanta-Havana] service.” American Answer at Exhibit AA-R-500-502. In so doing, American marginalizes the benefits that would flow from another competitor offering daily one-stop service between numerous communities in the central and western U.S. to Havana. Carriers like

American, JetBlue, Delta, and Southwest that offer inferior – and, in JetBlue’s case at New York/Newark, zero – connectivity should not receive any frequency awards ahead of 200,000 Cuban Americans residing across a huge portion of the U.S. from Seattle to Laredo, nor ahead of Houston as the fourth largest U.S. population base.

C. United at Houston Will Leverage Untapped Demand.

United’s daily nonstop Houston-Havana flights will serve one of the nation’s largest metropolitan areas out of United’s gateway to Latin America while also reaching a Cuban American population of almost 19,000 – the eighth largest in the U.S. Combining this local traffic base with 179,000 connecting Cuban American passengers, United’s Houston-Havana service will reach almost 200,000 Cuban Americans throughout the country. *See Exhibit UA-R102.*

United at Houston will serve the fourth largest U.S. city, will serve top ten Cuban American population centers (including Houston, Los Angeles, and Las Vegas), and, in June 2017, had the highest reported load factor of any carrier participating in this proceeding, at 90%. *See Exhibit UA-R101.* With just one weekly frequency, however, Houston is clearly underserved among gateways in this proceeding and those that already have Cuba service. *See United/Mesa Joint Answer at 12.*

United is confident that the stable and/or growing categories of travel demand between Houston and Havana, the improvement to nonstop service each day of the week, and a smart allocation of aircraft capacity will generate a positive return for the market into the future.

II. UNITED’S PROPOSAL STANDS OUT AS A MEASURED, BALANCED, SOLUTIONS-ORIENTED APPROACH TO GROWING SERVICE TO HAVANA; OTHER CARRIERS’ CRITICISMS OF UNITED’S PROPOSAL MISS THE MARK.

A. United’s Proposal is Disciplined and Deserving.

As the incumbent carrier in this proceeding with the smallest Havana frequency portfolio, with only seven frequencies for New York/Newark-Havana and one frequency for Houston-

Havana (*see* Exhibit UA-R103), United clearly deserves selection. While other carriers continue to jockey for Havana supremacy in South Florida, United offers a compelling alternative: a proposal that will maximize connectivity, fulfill the Department's interest in promoting diversity of gateways, and offer 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 – and likely led carriers like JetBlue to reduce Havana capacity (*see* United/Mesa Joint Application at 8-9). United acknowledges that other carriers' proposals have certain attributes, but they should not be selected to the exclusion of United at Houston – with its significant Cuban American population, plentiful connecting opportunities, extensive catchment areas, economic benefits, and competition.

Despite the fact that just three of the 20 total daily Havana frequencies are available in this proceeding, American and JetBlue are seeking a grossly disproportionate share of traffic rights to Cuba's capital city. American is requesting nearly 50% of the available frequencies even though it already holds 25% of them – the largest frequency holder by a significant margin. Not to be outdone, JetBlue is requesting 100% of the available frequencies despite already having the second most with 27 (representing 19.5% of the total allotment). United, meanwhile, requests a modest 29% of the available frequencies to give it a total of 14 (or 10%) of the 140 weekly frequencies – a figure that reflects United's support for a balanced competitive environment and diverse geographic service options in the newly liberalized U.S.-Havana market.

B. Florida Deserves Some – But Certainly Not All – Available Havana Frequencies.

As United and Mesa highlighted in their Joint Answer, almost 70% of the Havana frequencies in the 2016 proceeding were allocated to carriers for service from Florida, yet all other carriers participating in this proceeding have applied for additional frequencies to serve Havana from Miami and Fort Lauderdale. Though South Florida encompasses a large number of Cuban

Americans, the size of the Cuban American population is just one of several factors that the Department must consider when evaluating service proposals in this proceeding. The Department should capitalize on this opportunity to promote carrier competition, gateway diversity, and consumer choice and convenience by allocating six frequencies to United to enable it to establish daily service to Havana from Houston.

As the Department evaluates the competing proposals in this proceeding, it must not lose sight of why this proceeding was instituted: the cessation of certain services between South Florida and Havana. United maintains that the public interest compels the Department to craft a balance among carriers and gateways and to cultivate competition between U.S. airlines, including the opportunity of United to compete alongside other major U.S. carriers that already operate the lion's share of the Havana frequencies from the limited area of South Florida. Awarding all 21 Havana frequencies to carriers other than United would only serve to entrench their dominance in South Florida and exacerbate an imbalance with respect to geographic and carrier diversity. United has presented an application that promotes inter-carrier and inter-gateway competition – and it deserves the opportunity to compete with these carriers and provide public benefits to communities outside of Florida.

Delta insists in its pleadings that its additional daily Miami-Havana service is needed to balance competition and discipline American's service from that market, but this argument overlooks the fact that ongoing charter service from Miami continues to present a viable alternative to scheduled service and provides competition from this gateway. Since January 2017, five charter filings covering a total of 1,471 flights have been submitted to the Department for authority to

provide charter service between Miami and Havana.² This statistic is particularly relevant considering Delta has conceded that its extra daily Miami-Havana flight would involve just 5% connecting traffic. Because Delta's proposal does almost nothing for beyond connectivity that a charter flight could not do, Delta's claim that its proposal to add scheduled daily Miami-Havana service is critical to intragateway competition at Miami is rendered less credible – as Miami-Havana charters remain capable of disciplining American's dominant position at Miami.

C. United's Proposal Exemplifies Strength Through Flexibility.

United is not downgauging its Houston-Havana service; far from it, in fact. Lost in the shuffle of other carriers' criticisms of the size of Mesa's EMB 175 aircraft is the unassailable fact that United's proposal to expand its Saturday-only service to daily service will result in a significant increase in net capacity on this route. While United is asking for the operational flexibility to use a smaller aircraft on this route as economic conditions warrant, United would be using that smaller aircraft more frequently – six more times per week. In fact, United's capacity on this route will increase by at least 532 seats per week in this market (a 245% increase over current capacity). The perception that 'aircraft size is everything' is not only false in the abstract, it is mathematically false as applied to United's daily Houston-Havana proposal. What other carriers describe as a "downgauge" is actually a net upgauge.

United notes that nearly all applicants claim United is downgauging its Houston-Havana service. This common claim is a red-herring and entirely without merit for the following reasons:

- Every combination carrier in this proceeding except United has downsized their original Cuba commitments:

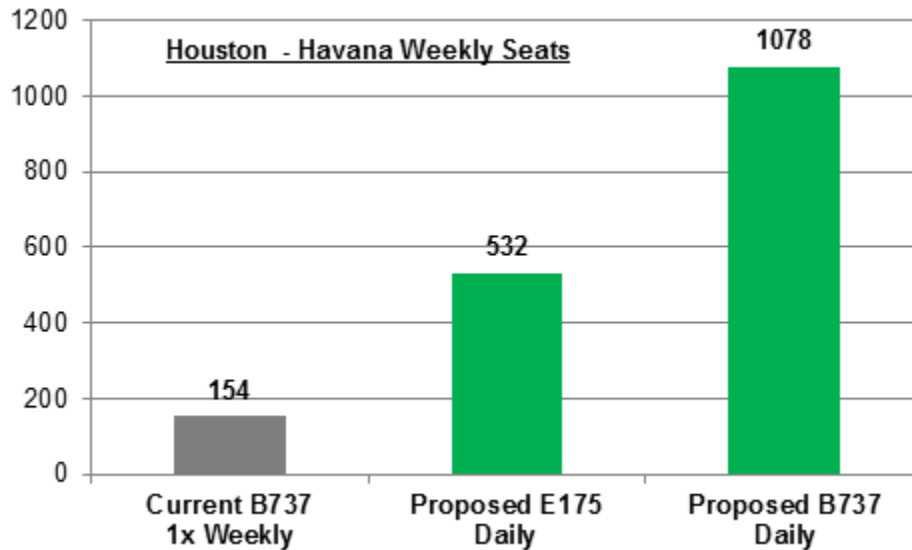
² See U.S. Dep't of Transp., *List of Public Charters 2017* (eff. Sept. 22, 2017), <https://www.transportation.gov/office-policy/aviation-policy/list-public-charters-2017>. None of these 1,471 charter flights were chartered or operated by American.

- American has downgraded from double-daily to once-daily service on three Florida-Cuba routes: Miami-Holguin, Miami-Santa Clara, and Miami-Varadero, and American has also reduced capacity from mainline aircraft to regional jet aircraft on the Miami-Cienfuegos and Miami-Camaguey routes.
- Delta never actually used the 199-seat B757 aircraft it pledged for New York JFK/Atlanta-Havana service; instead, it launched service with 132-seat A319 aircraft. This is an all too familiar narrative for Delta: promising something it never delivers.³
- Southwest has ceased service on all non-Havana routes.
- JetBlue has downgauged all of its U.S.-Havana frequencies, reducing New York JFK-Havana and Fort Lauderdale-Havana 200-seat aircraft to 162-seat aircraft. It has also double-downgauged Orlando-Havana, first from aircraft with 200 seats to 162 seats and later to aircraft with 100 seats.
- The data unequivocally show that United is growing capacity on the Houston-Havana route. With United's proposal, Houston-Havana will grow from 154 seats per week (one direction) to a minimum of 532 seats per week based on service with Mesa's 76-seat EMB 175 aircraft – a 245% increase – and potentially up to 1,078 seats per week based on service with United's 154-seat B737 aircraft – a 600% increase. With a mix of regional jet and mainline service, as envisioned, the capacity increase will fall somewhere between these minimum and maximum figures. But the key point is that United's daily Houston-Havana service will generate an increase of at least 532 seats

³ See generally Dockets DOT-OST-2016-0021 (2016 U.S.-Cuba frequency allocation proceeding) and DOT-OST-2010-0018 and DOT-OST-2016-0048 (U.S.-Haneda combination services allocation proceedings).

per week in this market (a 245% increase). Figure 1 below depicts the fallacy of other carriers' claims about United's "downgauging":

Figure 1



United is planning to use either its own B737 aircraft or the 76-seat EMB 175 aircraft for its daily Houston-Havana service because they will be the most efficient use of United's available fleet resources for this operation. These aircraft are the optimal aircraft choices given their ability to open up new markets and ensure service viability and consumer benefits over the long term. The EMB 175 aircraft that Mesa would use on the Houston-Havana route will offer a two-class cabin configuration, catering to travelers that desire a first class product offering.

United contends that other carriers' 'the biggest aircraft should always win' argument is dated thinking. With airlines facing a heated competitive environment and an ever-increasing need to maximize operational efficiency, the focus has shifted to finding the aircraft that best balances demand and efficiency to help ensure long term viability of services. The fact that United has been forthright regarding its fleet plans for Houston-Havana service should be applauded rather than chastised, as other carriers attempt cynically to do. *See* JetBlue Answer at 18-19; American Answer at 23; Southwest Answer at 19.

Aircraft size is not a dispositive decisional factor in route proceedings, nor should the use of larger aircraft be regarded as the panacea in this case. The Department has, on numerous occasions, selected proposals for smaller aircraft, and has expressly recognized that “aircraft size and capacity matter more in some route proceedings and less in others.” Order 94-7-1 at 9 (Washington Dulles-Ottawa Service Case); *see also* Orders 2014-2-23 (selecting United’s San Francisco-Haneda proposal over Hawaiian’s Kona-Haneda proposal despite United’s proposed use of smaller 219-seat B787 aircraft compared to Hawaiian’s 289-seat A330 aircraft and rejecting Hawaiian’s assertion that United’s use of smaller aircraft demonstrated that the market was not strong enough to support United’s service) and 2006-6-25 at 19 (finding, in pertinent part, that greater capacity was outweighed by new-entrant competition and market structure benefits).

The Department’s principal objective in this proceeding is to maximize public benefits, and it has resolved to accomplish this by considering applicants that “will be most likely to offer and *maintain* the best service for the traveling and shipping public.” Instituting Order at 5 (emphasis added). Offering the best service is relatively easy; the challenge lies in delivering and maintaining the service – and it is on this point that United’s proposal is truly distinguishable. The Department should select the proposals that not only present the best service, but maintain it, particularly in light of the recent cessations of service by Frontier and Spirit. It would be highly unfortunate – and a waste of government and carrier resources – if the Department were forced to institute a third contested U.S.-Cuba frequency proceeding next year to reallocate yet another set of returned Havana frequencies.

American’s attempt to manufacture a meaningful comparison between United’s proposal to use Mesa’s 76-seat aircraft and Silver’s 2016 proposal to serve Havana from a number of cities in Florida with “small commuter-type aircraft” – is laughable, and could even be seen as a sign of desperation. Silver Airways was proposing service with 34-seat Saab 340B Plus turbojet aircraft.

The Department summarily dismissed Silver's application in the Show Cause Order, concluding that in a limited frequency market like Havana and with significant demand to be met, Silver's proposal would not be an efficient use of these limited rights. *See* Order 2016-7-4 at 9. Silver's 2016 small aircraft proposal was also doomed to fail because its service would have been duplicative of Florida service proposed by several other carriers with larger aircraft. By contrast United is proposing United Express service using 76-seat aircraft in a two cabin configuration from the fourth largest city in the U.S. and a large hub with plentiful connections. And unlike Silver's proposal, United is proposing service from a large hub situated in a region outside of Florida that will expand access to Havana.

American's storytelling is filled with yet more irony. American suggests United might have challenges transporting customers and their baggage with the EMB 175 regional jet, hinting that perhaps the Department should not grant the United/Mesa Joint Application. Yet American itself operates a regional jet on two of its Cuba routes, and JetBlue operates a regional jet between Orlando and Havana. If these two carriers can find ways to handle customers and bags to Havana on a regional jet, so can United.

JetBlue, meanwhile, is simply wrong to insinuate that United has decided to reduce seat capacity by more than 50% between Houston and Havana. *See* JetBlue Answer at 19. As noted above, United is actually increasing capacity on this route by at least 245%. What JetBlue overlooks is that aircraft size is just one factor that contributes to capacity on a route. Frequency of service counts, too. By adding six additional weekly flights to Havana from Houston, United will substantially increase capacity and growth potential on this underserved route.

United's proposed daily Houston-Havana service is United's first – and only – priority, demonstrating United's strong commitment to serving the large Houston metropolitan area. United has proposed a measured approach of expanding Saturday-only service to daily service on

a route that has already delivered significant public benefits and shows tremendous promise. United acknowledges that Mesa's 76-seat EMB 175 aircraft are smaller than some aircraft proposed for use by other carriers; United has been consistently forthright about that. It is also the same type of aircraft that other carriers have decided to allocate on their Cuba routes. But United stands by its proposal and does not shy away from the competition. Expanding from once weekly to daily service will provide a significant net capacity increase in the Houston-Havana market, stimulate additional growth in this market and, perhaps most importantly under the present circumstances, offer a sustainable model for service to Havana.

III. UNITED HAS SUPPLIED THE DEPARTMENT WITH A VIABLE PATH FORWARD BASED ON CARRIERS' STATED PRIORITIES THAT WILL ENSURE A FAIR DISTRIBUTION OF FREQUENCIES.

United continues to take great pride in its solutions-oriented approach to this contested route proceeding and unwavering commitment to a procompetitive landscape in the U.S.-Havana market. United has presented a rational, measured, solutions-oriented proposal that will provide significant public benefits without wresting a disproportionate share of the available frequencies from other deserving carriers; United also offers a tangible solution for the Department to allocate the available Havana frequencies such that portions of all carriers' proposals can be accommodated.

United continues to believe there are sufficient frequencies available in this proceeding to award United's proposal and portions of all other carriers' proposals. United offered some solutions in the Joint Application as to how the Department could do so and, after reviewing all competing proposals, United stands by its proposed concept of multiple carrier selections in this proceeding.

IV. JETBLUE’S FAILURE TO GRASP UNITED’S PROPOSED ARRANGEMENT WITH MESA IS BEWILDERING AND EMBLEMATIC OF JETBLUE’S IMPRUDENT BEHAVIOR IN THIS PROCEEDING.

Rather than cut its losses at the answer stage by acknowledging the validity of United’s proposal to use Mesa’s aircraft, as all other carriers have tacitly done through their demonstrated disinterest on this subject to date, JetBlue continues to exhibit an alarming failure to grasp the nature of United’s proposed arrangement with Mesa.

For the fourth and, hopefully, final time: Mesa is not independently seeking any frequencies; it is only seeking underlying exemption authority to operate the Houston-Havana route as a United Express carrier. *See* Instituting Order at 2, n.3. United will hold the awarded frequencies and market the Houston-Havana service, while Mesa will operate any of the seven weekly frequencies with its own EMB 175 aircraft under the United Express trade name. When demand warrants, United’s mainline aircraft will operate on the route in place of Mesa’s aircraft.

JetBlue’s persistence on this issue is nothing more than a thinly veiled effort to derail, on a meritless technicality, United’s superior proposal. Despite the Department’s decision to make United’s request for operational flexibility a salient topic for consideration in this proceeding, JetBlue is the only carrier challenging United’s ability to use Mesa’s aircraft. In fact, JetBlue is the only other carrier that even *addressed* this subject in responsive pleadings; the four other carriers’ silence on this issue signals a tacit acceptance of United’s operational flexibility request that reverberates far louder than JetBlue’s baseless protestations.

The fact that JetBlue is the only dissenting carrier on this subject, yet is also requesting an extravagant 100% of the frequencies, is hardly a coincidence. JetBlue has demonstrated that it will go to any length to obtain these frequencies to the detriment of healthy competition. In an imprudent, impulsive effort to bolster its case that United’s proposal is somehow “procedurally inappropriate” (*see* JetBlue Answer at 20), JetBlue claims that United and Mesa are attempting to

“share a frequency” and that such an arrangement “conflicts with years of Department licensing precedent.” *See id.* As United and Mesa have addressed *ad nauseam* in this case, they are not sharing a frequency, as they will never be providing service concurrently. The frequencies will belong to United, and Mesa will operate them as needed. When Mesa isn’t using them, United will use them.

Moreover, the footnote corresponding to JetBlue’s “years of precedent” assertion is not a route case or a docketed proceeding, but rather a general observation that “DOT treats airlines as distinct entities for licensing purposes” and that “Mesa ... holds its own Open-Skies Certificate.” United applauds JetBlue for making an accurate statement, but notes that the statement is completely extraneous; it offers zero precedent, much less years of precedent, for the proposition that United is prohibited from allowing Mesa to use United’s frequency to provide service to Havana as economic conditions warrant.

JetBlue’s missteps don’t end there. In its haste to manufacture procedural flaws with United’s request for operational flexibility, JetBlue miscites a docket that has nothing to do with the point that JetBlue purports to make. On page 20 of its Answer, JetBlue cites Docket DOT-OST-2016-0226 for the proposition that the Department has previously “requir[ed] regional carriers to obtain separate designations from mainline affiliates before serving points in Mexico.” That cite is incorrect. Docket DOT-OST-2016-0226 involved a request by Republic for exemption authority and frequencies to provide daily year-round nonstop “American Eagle” service under American’s “AA*” designator code on the Miami-Cienfuegos/Camaguey routes. It had nothing to do with Mexico. JetBlue’s error, while certainly inadvertent, exemplifies the pitfalls of straining to find fault where none exists.

United excuses JetBlue’s error; in fact, United is glad that JetBlue mentioned Docket DOT-OST-2016-0226. JetBlue referenced this docket in an ill-advised effort to prove that because a

regional carrier, on one particular occasion, elected to apply for a frequency to serve a point in Cuba on behalf of a mainline carrier, suddenly all regional carriers are required to apply for frequencies to all Cuban points.

Republic's application last year for frequencies to serve non-Havana points Camaguey and Cienfuegos is distinguishable from this Havana proceeding. *First*, Republic arguably needed to obtain those frequencies because it apparently would be *replacing indefinitely* American's mainline service to Camaguey and Cienfuegos; in contrast, Mesa is not replacing United's mainline service between Houston and Havana. United may very well operate mainline B737 aircraft on this route as demand warrants, including during peak periods and as the market grows; it is not a foregone conclusion, as other carriers in this proceeding have insinuated (*see* American Answer at 23), that Mesa's aircraft will operate on this route every day of the year. *Second*, in the Republic example, American apparently had definitive plans to cease mainline service on these routes, which it ultimately did – thereby triggering the 90 day dormancy period and an automatic return of its original frequencies to the Department. As American would no longer hold frequencies to serve these points, Republic needed to apply for and hold them independently to maintain its authority to operate the service as an American Eagle carrier. In sum, JetBlue's reference to Docket DOT-OST-2016-0226 actually illustrates the fallacy of its argument on the procedural validity of United's proposal.

Ironically, JetBlue's sloppy reference to the old U.S.-Mexico bilateral regime illuminates the fundamental flaw in JetBlue's argument. It is true that the Department previously required regional carriers serving Mexico to obtain separate designations from their mainline partners, but that was because the old Mexico bilateral used *designations* – not frequencies – as the limiting factor. As United explained in its Answer, the MOU is distinguishable from the old U.S.-Mexico

bilateral. That bilateral required each country to designate *airlines*, and imposed caps on the number of airlines that could operate between a U.S. and a Mexican point.

The MOU is materially different; it authorizes the Department to allocate 20 daily frequencies to Havana without any limitation as to the number of carriers that may do so. That is, the restriction applies to the number of flights, not the number of operators. As noted above, the Department clarified in the 2016 U.S.-Cuba Frequency Allocation Proceeding that “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.” Order 2016-2-12 at 1, n.2. Nowhere does the MOU suggest that a regional carrier is prohibited from providing service to Havana under its mainline partner’s frequency. Such an interpretation would be excessively restrictive and inimical to U.S. aviation interests.

Had the U.S. and Cuban governments intended to impose limitations on the number of *airlines* that may permissibly operate between a U.S. point and a Cuban point, they could have clearly and expressly done so in the same manner that the U.S. and Mexican governments did under the old bilateral. The fact that they did not impose airline limits despite the opportunity and precedent to do so supplies all the evidence needed to refute JetBlue’s baseless interpretation of the MOU.

Nor is it true, as JetBlue insinuates, that the Department is not permitted to approve the proposed United/Mesa arrangement. *See* JetBlue Answer at 21. It is well established that the interpretation of an international agreement such as the MOU begins with its text. *See Abbott v. Abbott*, 560 U.S. 1, 10 (2010) (“The interpretation of a treaty . . . begins with its text.” (internal quotation marks omitted)). The plain text of the MOU authorizes United’s proposed arrangement with Mesa; it states, in pertinent part, that “for scheduled services 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.” MOU, Annex. The text does not suggest that a U.S. regional airline is prohibited from operating service to Havana using the frequency of its mainline partner.

Even if there were a hypothetical ambiguity regarding the procedural validity of United’s proposal under the terms of the MOU, the Department should quickly and easily resolve such an ambiguity in United’s favor. It would be contrary to U.S. aviation interests to construe the MOU in a way that deprives U.S. carriers the flexibility to tailor capacity to demand by partnering with regional carriers. This conclusion is consistent with the general purposes of the MOU. *See, e.g., Abbott*, 560 U.S. at 9-10 (noting that treaty interpretation inquiry is shaped by the text and purposes of the treaty). The central purpose of the MOU was to re-establish scheduled air service between the United States and Cuba and increase opportunities to provide air services between the two countries.⁴ The purpose of promoting increased access by U.S. airlines to Havana and other markets in Cuba is clearly served by allowing a mainline carrier that holds frequencies to let its regional carrier partner use the frequencies consistent with the mainline carrier’s prerogatives.

In any case, it is well established that the meaning attributed to treaty provisions by the Government agencies charged with their negotiation and enforcement is entitled to great weight. *See Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 184-85 (1982). Even if there was a potential ambiguity on this issue in the MOU, the Department could cure it by exercising its broad discretion and prerogative to interpret the MOU’s text expansively to the benefit of U.S. airlines and the traveling public. Indeed, the very text of the MOU contemplates flexibility with respect to frequency use: “The competent authority of each Country may request an increase of frequencies

⁴ *See, e.g.,* U.S. Dep’t of Transp., *Fact Sheet – DOT Issues Show Cause Order For U.S.-Cuba Service to Havana* (Jul. 7, 2016), <https://www.transportation.gov/briefing-room/cuba-havana-fact-sheet>.

and the other Country intends to give prompt and thorough consideration to this request in accordance with the needs of the market and airport infrastructure.” MOU, Annex. Adopting JetBlue’s restrictive interpretation of the MOU so as to impose limits on U.S. airlines where there are none would be inimical to U.S. aviation interests.

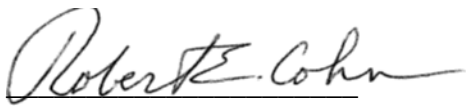
United reiterates that its request for operational flexibility is simply intended to help United more nimbly and effectively respond to consumer demand fluctuations in the U.S.-Havana and Houston-Havana markets. Other than JetBlue, no applicant has raised a concern with United’s plan.

V. CONCLUSION.

WHEREFORE, United urges the Department to allocate six frequencies to United to be used for daily, year-round service between Houston and Havana, grant Mesa’s application for underlying exemption authority to provide scheduled service on this route, and grant such other relief as the Department may deem necessary or appropriate.

Respectfully submitted,

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**Before The
Department Of Transportation
2017 U.S. – Cuba Frequency Allocation Proceeding
Docket DOT-OST-2016-0021**



Houston - Havana

Reply Exhibits of:



United Index Of Exhibits

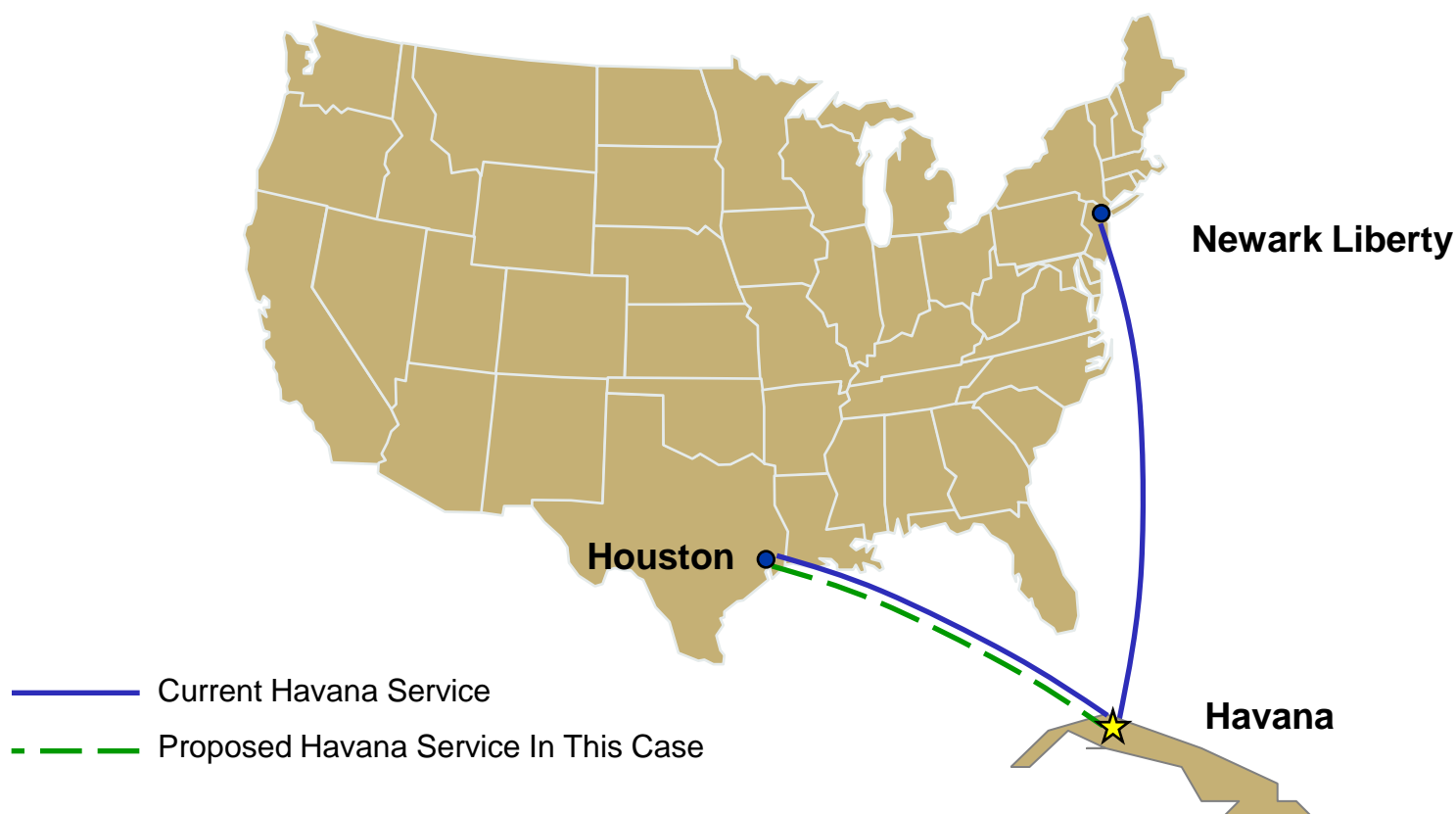
Houston - Havana

Exhibit Number	Houston - Havana Service	Number Of Pages
UA-R100	Current And Proposed United Nonstop Havana Service	1
UA-R101	United's Houston – Havana Load Factors Are Highly Competitive With Load Factors Of Other Applicants	1
UA-R102	United's Daily Houston Service Will Connect, On A Roundtrip Basis, 44 Communities And Nearly 200,000 Cuban Americans With Havana	1
UA-R103	United Is The Smallest Incumbent Combination Carrier In This Proceeding	1
UA-R104	The Central And Western U.S. Have A Service Deficit To Havana Compared To The Eastern U.S.	1
UA-R105	Florida And New York City, Respectively, Have 109 And 30 Times The Number Of Daily Flights As Houston	1
UA-R106	The Central And Western U.S. Have Maintained Cuba Frequencies While 11 Daily Flights Have Been Terminated Between Florida And Cuba	1

Current And Proposed United Nonstop Havana Service



Houston - Havana



United Havana Service		
Current Service		
<u>Route</u>	<u>Weekly Frequency</u>	<u>Daily Frequency</u>
Newark Liberty - Havana	7.0	1.0
Houston - Havana	1.0	0.1
Proposed Service In This Proceeding		
<u>Route</u>	<u>Weekly Frequency</u>	<u>Daily Frequency</u>
Houston - Havana	6.0	0.9
End State Service		
<u>Route</u>	<u>Weekly Frequency</u>	<u>Daily Frequency</u>
Newark Liberty - Havana	7.0	1.0
Houston - Havana	7.0	1.0

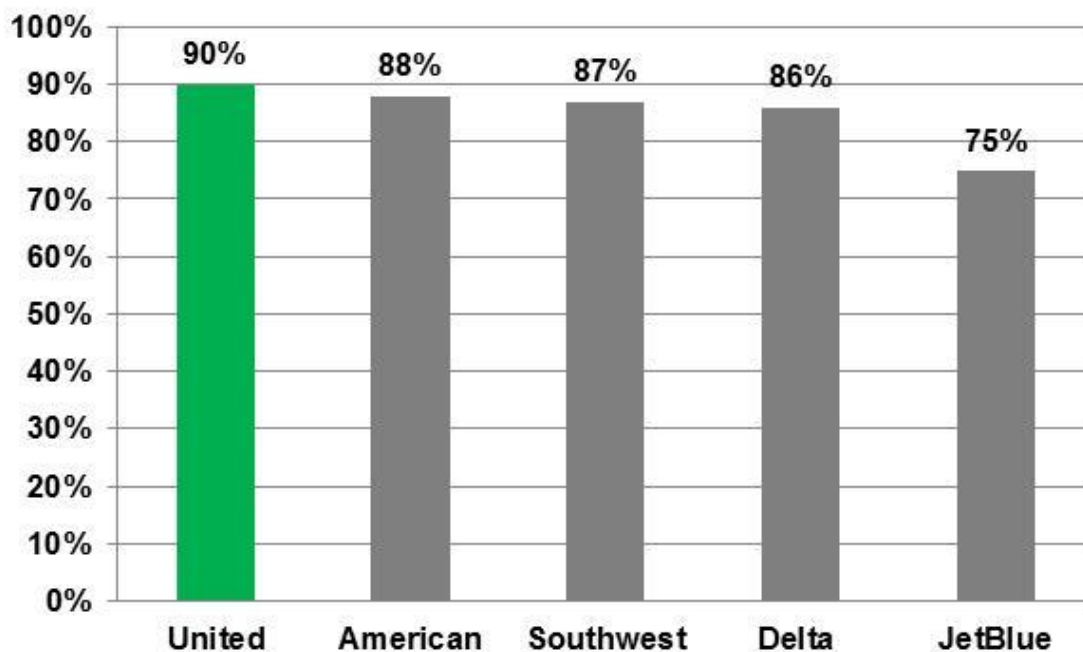
Note: United's current Havana services operate year-round.

United's Houston – Havana Load Factors Are Highly Competitive With Load Factors Of Other Applicants



Houston - Havana

Comparison Of Highest Reported Load Factors



Comparison Based On:

- 1) United: Houston – Havana, Jun 2017
- 2) American: Miami – Havana, Jul 2017
- 3) Southwest: Tampa & Ft. Lauderdale – Havana, Jul 2017
- 4) Delta: Miami – Havana, Jun 2017
- 5) JetBlue: Ft. Lauderdale – Havana, Aug-Jul 2017

United's Daily Houston Service Will Connect, On A Roundtrip Basis, 44 Communities And Nearly 200,000 Cuban Americans With Havana

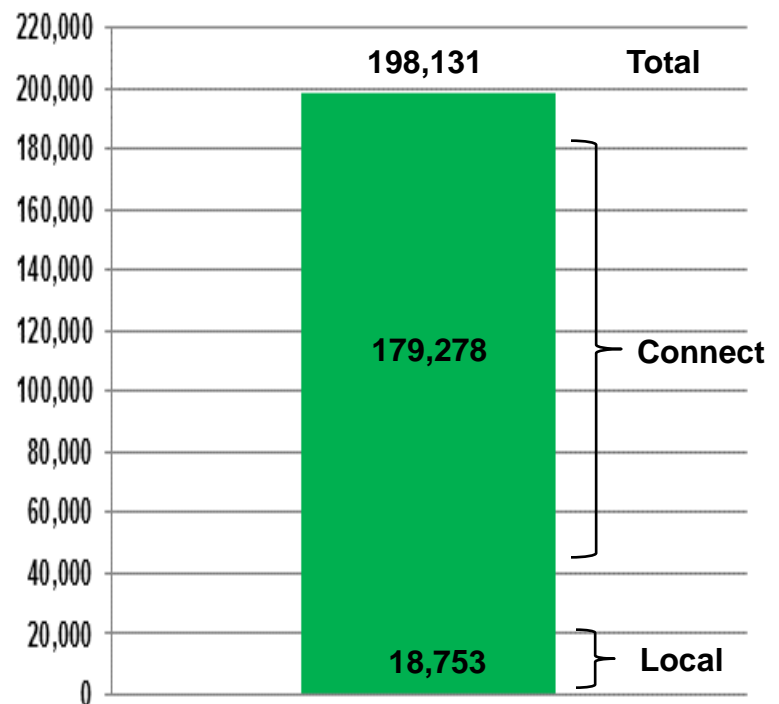


Houston - Havana

Roundtrip Connections To/From Havana Via United's IAH-HAV Proposal

1	Albuquerque	23	Los Angeles
2	Alexandria	24	Lubbock
3	Austin	25	McAllen
4	Baton Rouge	26	Memphis
5	Brownsville	27	Minneapolis
6	Chicago	28	Monroe
7	College Station	29	New Orleans
8	Corpus Christi	30	Oklahoma City
9	Dallas/Ft. Worth	31	Omaha
10	Denver	32	Pensacola
11	Des Moines	33	Phoenix
12	El Paso	34	Portland
13	Fayetteville	35	Sacramento
14	Gulfport	36	Salt Lake City
15	Harlingen	37	San Antonio
16	Jackson	38	San Francisco
17	Kansas City	39	Seattle
18	Killeen	40	Shreveport
19	Lafayette	41	Springfield
20	Lake Charles	42	St. Louis
21	Laredo	43	Tulsa
22	Las Vegas	44	Wichita

Cuban American Population By Local And Connect Traffic Mix



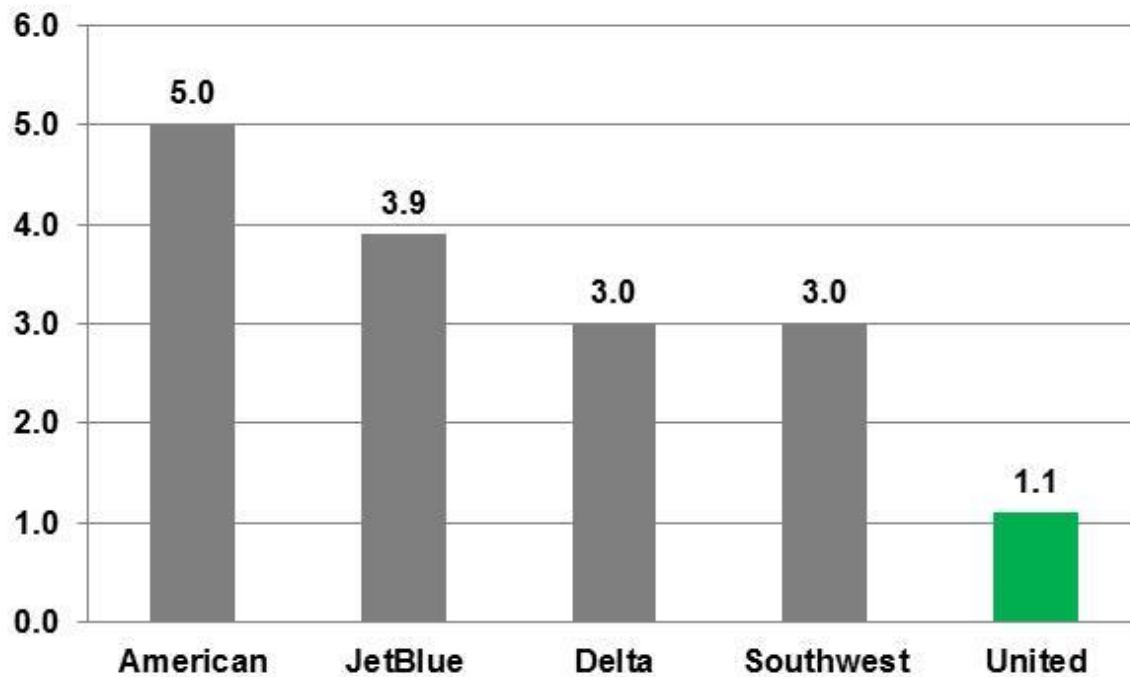
Source: Based on planned summer schedule, see Exhibits 120 and 121. 2010 Census data

United Is The Smallest Incumbent Combination Carrier In This Proceeding



Houston - Havana

Original Havana Daily Flight Allocations



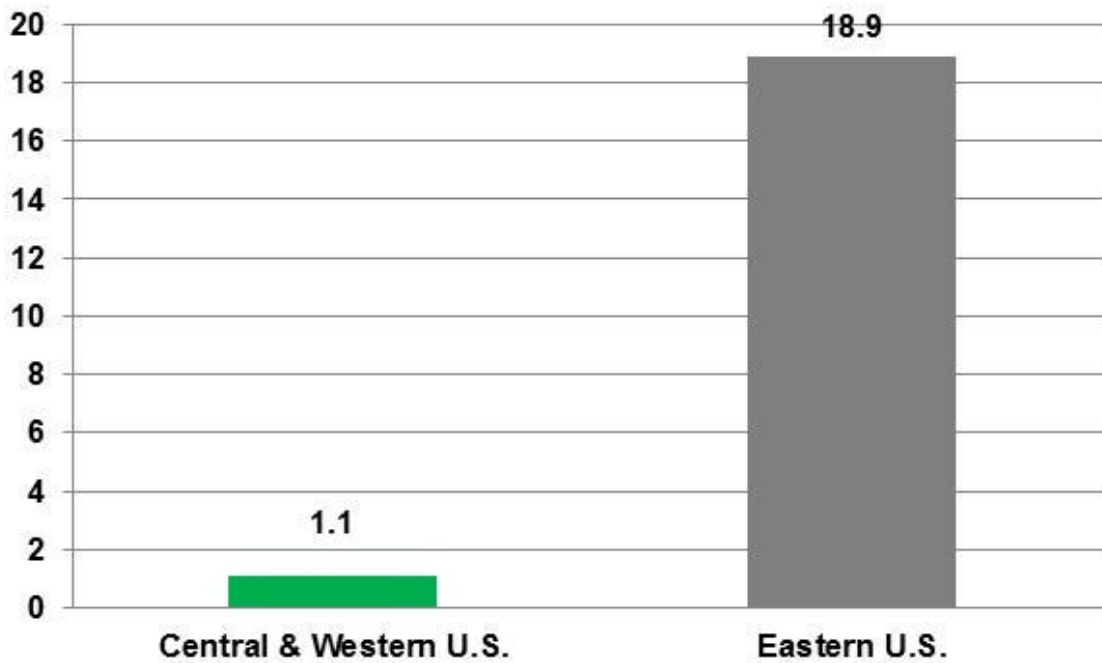
<u>Competitor</u>	<u>Daily Flights</u>	<u>Larger Than UA</u>
AA	5.0	355%
B6	3.9	255%
DL	3.0	173%
WN	3.0	173%

The Central And Western U.S. Have A Service Deficit To Havana Compared To The Eastern U.S.



Houston - Havana

Original Havana Daily Flight Allocations

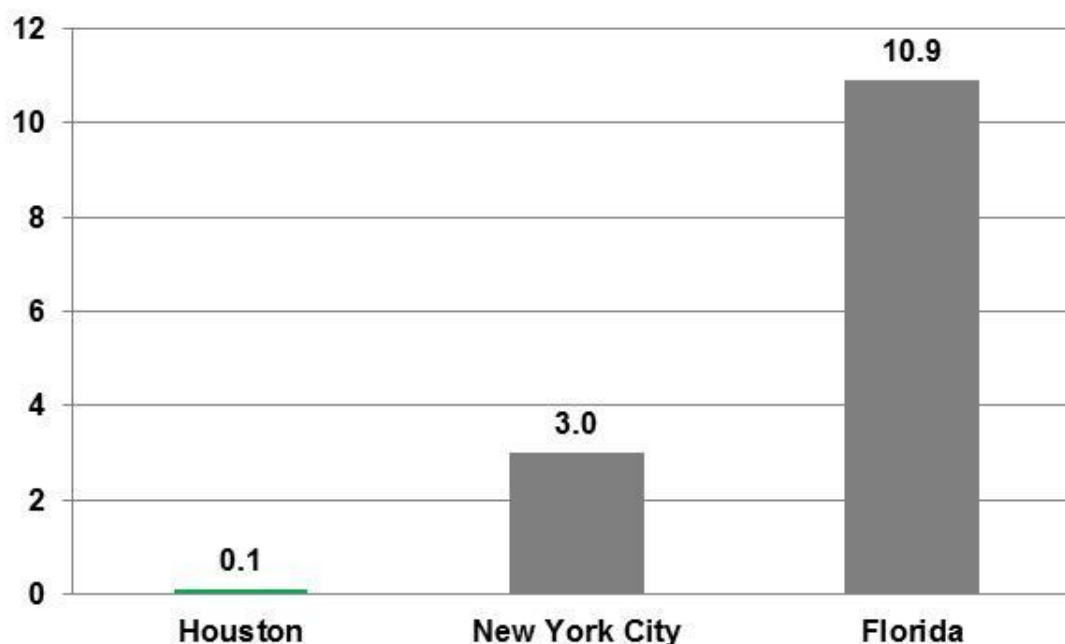


Florida And New York City, Respectively, Have 109 And 30 Times The Number Of Daily Flights As Houston



Houston - Havana

Original Havana Daily Flight Allocations



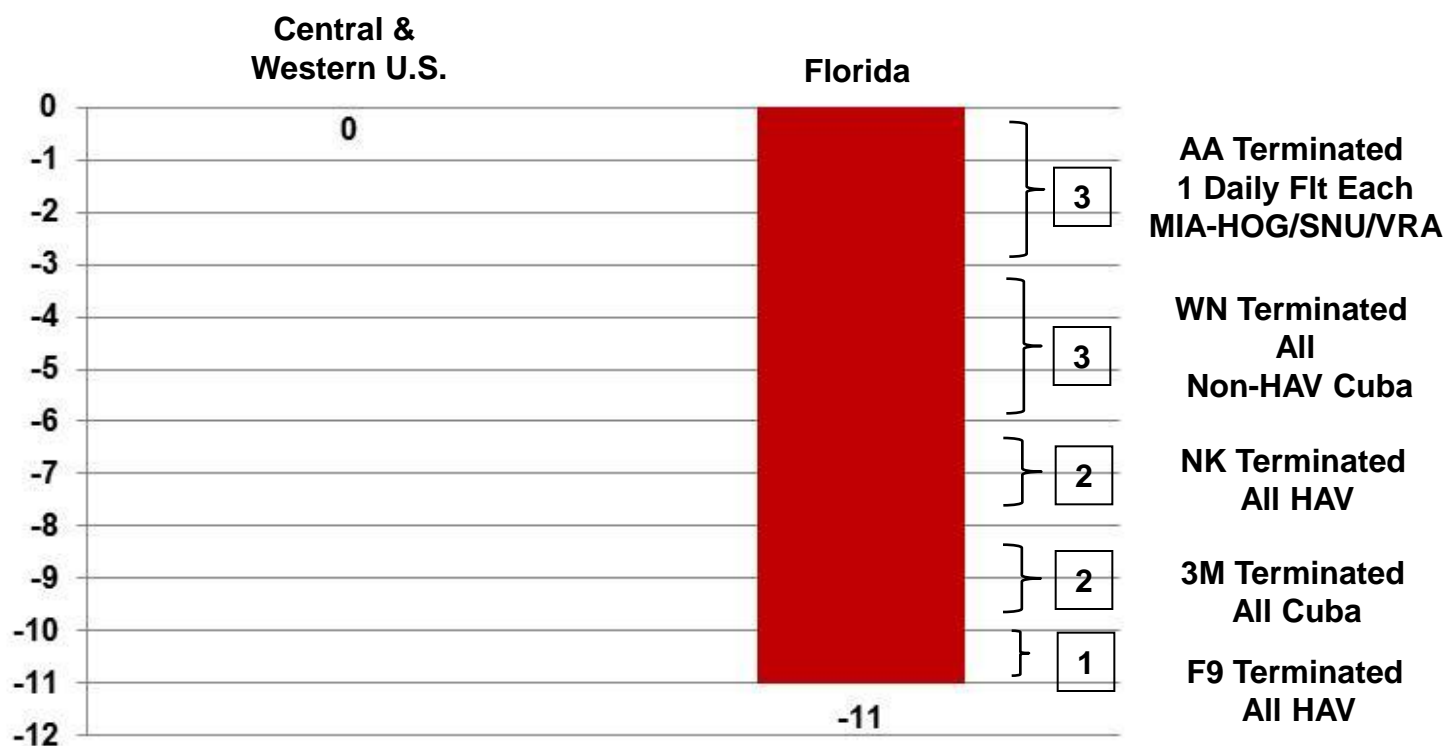
<u>Region</u>	<u>Daily Flights</u>	<u>Larger Than Houston</u>
Florida	10.9	109x
New York City	3.0	30x

The Central And Western U.S. Have Maintained Cuba Frequencies While 11 Daily Flights Have Been Terminated Between Florida And Cuba



Houston - Havana

Original Cuba Daily Flight Allocations Terminated



CERTIFICATE OF SERVICE

I certify that I have this date served the foregoing document on the following persons by causing a copy to be sent electronically in accordance with the Department's Rules of Practice:

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September 26, 2017