



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

Order 2022-7-12

Issued by the Department of Transportation
on the 14th day of July, 2022

Served: July 14, 2022

2022 U.S.-SOUTH AFRICA COMBINATION FREQUENCY ALLOCATION PROCEEDING

DOCKET DOT-OST-2022-0050

ORDER TO SHOW CAUSE

Summary

By this order, the U.S. Department of Transportation (the Department) tentatively allocates three weekly frequencies to Delta Air Lines, Inc. (Delta) for its proposed scheduled service between Atlanta, Georgia, and Cape Town, South Africa; and three weekly frequencies to United Airlines, Inc. (United) for its proposed scheduled service between Washington, DC, and Cape Town, South Africa.

Background

By Order 2022-5-1, the Department instituted the *2022 U.S.-South Africa Combination Frequency Allocation Proceeding* to allocate the four available U.S.-South Africa frequencies among the competing applicants, Delta and United.¹ Delta seeks three frequencies to engage in year-round three-times-weekly nonstop service between Atlanta and Cape Town, using 306-seat Airbus A350-900 aircraft; and United seeks three frequencies to institute year-round three-times-weekly nonstop service between Washington, DC, and Cape Town, using 257-seat Boeing 787-9 aircraft.²

¹ The U.S.-South Africa Air Transport Agreement provides that U.S. carriers may operate 21 weekly scheduled round-trip combination service frequencies. At this time, 17 of the frequencies are allocated to U.S. carriers as follows: Delta holds seven frequencies for use between Atlanta and Johannesburg (*see* Notice of Action Taken dated June 29, 2021, in Dockets DOT-OST-2006-23924 and DOT-OST-2020-0051); and United holds seven frequencies for use between Newark and Johannesburg, and three frequencies for use between Newark and Cape Town (*see* Notice of Action Taken dated September 30, 2020, in Docket DOT-OST-2020-0182; and Notice of Action Taken dated April 19, 2019, in Docket DOT-OST-2019-0062).

² United requests authority for year-round service, with seasonal flexibility to adjust capacity to potential fluctuations in demand.

The order set forth a procedural schedule and evidentiary requirements for the Department to make a decision in this case. Delta and United each filed supplements to their applications and further responsive pleadings asserting various positions as to why each carrier's respective proposal would better serve the public interest. The Delta Master Executive Council of ALPA (the Delta MEC) filed a pleading in support of Delta's proposal. Pleadings in support of United's proposal were filed by the United Master Executive Council of ALPA (the United MEC), and the Metropolitan Washington Airports Authority (MWA).

Subsequent Bilateral Developments

Leading up to and during the course of this proceeding, the Department has engaged in a number of bilateral communications with the Department of Transport of the Republic of South Africa (SADoT), seeking to negotiate an exchange of extrabilateral opportunities. The Department specifically requested two additional frequencies in order to accommodate the increase in U.S. carrier demand for passenger service to South Africa. On June 22, 2022, the SADoT advised that upon certain conditions being met, the two extra frequencies requested shall be considered as espoused in the Agreement. The Department is separately addressing the corresponding SADoT request, and we fully expect that SADoT will honor its commitment to permit U.S. carriers to operate two weekly frequencies in addition to the 21 weekly frequencies currently provided for in the Agreement. We have requested that SADoT grant the applications of authorized U.S. carriers no later than August 15, 2022.

Tentative Decision

In light of the bilateral developments discussed above, the Department has tentatively decided to allocate Delta and United three weekly frequencies each for their respective proposed services.³

At the time of our instituting order, there were only four weekly frequencies available for allocation to U.S. carriers for scheduled service between the United States and South Africa, and the combined requests of Delta and United amounted to six weekly frequencies, requiring the Department to select among the competing proposals. Since then, we have received assurances from the government of South Africa that two extra frequencies shall be considered as espoused in the Agreement. As a result, there are a total of six opportunities available for allocation to U.S. carriers, enough to satisfy the full proposals of both applicants. In these circumstances, the Department tentatively finds that the public interest would be best served by allocating three weekly frequencies to Delta for its proposed Atlanta-Cape Town service, and three weekly frequencies to United for its proposed Washington, DC-Cape Town service, subject to the Department's standard conditions as discussed below.⁴

³ It is our tentative view that Delta and United should each receive two frequencies from the four available under the Agreement, and one frequency each from the extrabilateral exchange discussed above. In the event that any of the three frequencies tentatively allocated to each carrier here should be returned or revert to the Department, it is our intention to consider the first such returned/reverted frequency from each carrier to be from the extrabilateral allocation.

⁴ As stated above, we fully expect that SADoT will honor its commitment and approve U.S.-carrier applications to operate the additional frequencies as agreed upon through diplomatic channels. In our

Considering our tentative decision to grant the applicants' full requests, and the expectation that authorized carriers will file applications with SADOt as soon as possible, we will establish an expedited procedural schedule for objections to our tentative decision. We will accordingly allow four business days for objections to our tentative decision, and two business days for answers to any objections. 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 as proposed in this order.⁵

Terms, Conditions, and Limitations

The Department has tentatively decided to impose a startup condition for this award of U.S.-South Africa frequencies. If the Department's tentative decision is made final, the Department will require the selected carriers to inaugurate service within 90 days of November 17, 2022, each carrier's proposed startup date.

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 and, where authorized, for any reason other than seasonal use) 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 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.⁶

ACCORDINGLY,

1. The Department tentatively allocates to Delta Air Lines, Inc. three weekly U.S.-South Africa combination frequencies to engage in scheduled foreign air transportation of persons, property, and mail between Atlanta, Georgia, and Cape Town, South Africa;
2. The Department tentatively allocates to United Airlines, Inc. three weekly U.S.-South Africa combination frequencies to engage in scheduled foreign air transportation of persons, property, and mail between Washington, DC, and Cape Town, South Africa;⁷
3. The frequencies tentatively allocated by ordering paragraphs 1 and 2 above would be effective immediately and would not expire, *provided that* the holder continues to hold the

final order, however, we will expressly reserve the right to revisit the entire allocation at issue here in the event that SADOt should not follow through on its commitment.

⁵ 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.

⁶ See *e.g.*, footnote 4, above.

⁷ The Department tentatively grants United's request for year-round service, with seasonal flexibility to adjust capacity to potential fluctuations in demand.

necessary underlying authority to serve the markets authorized; that the holder begins service with the allocated frequencies within 90 days of its proposed startup date as discussed in 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 and, where authorized, for any reason other than seasonal use);

4. The frequencies tentatively allocated by ordering paragraphs 1 and 2 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;

5. 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 4 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 four business days from the date of service of this order; answers thereto shall be filed no later than two business days thereafter;⁸

6. If timely and properly supported objections are filed, the Department will afford full consideration to the matters or issues raised by the objections before we take further action; 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

7. The Department will serve this order on all U.S. certificated air carriers operating large aircraft; the U.S. Department of State (Office of Aviation Negotiations); the Federal Aviation Administration; and the Ambassador of South Africa in Washington, DC.

By:

CAROL A. (ANNIE) PETSONK
Assistant Secretary for
Aviation and International Affairs

(SEAL)

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<http://www.regulations.gov>

⁸ The original filing should be on 8½" x 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our docket imaging system. In the alternative, parties are encouraged to use the electronic submission capability available through the Dockets FDMS Internet site (<http://www.regulations.gov>) by following the instructions on the web site. Additionally, service by facsimile or electronic mail is authorized.