



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC

Issued by the Department of Transportation on May 13, 2016

**NOTICE OF ACTION TAKEN -- DOCKET DOT-OST-2016-0048**

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This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Motion of **HAWAIIAN AIRLINES, INC. (Hawaiian)** filed **5/4/16** for:

**XX** Immediate approval of Hawaiian's application filed April 21, 2016, for authority to serve between Tokyo's Haneda Airport (Haneda), and Kona, Hawaii (three times per week) and Honolulu (four times per week) during nighttime hours.

Applicant reps: **J. Parker Erkmann and Julia Renehan (202) 842-7800**

DOT Analyst: **Brett D. Kruger (202) 366-8025**

**DISPOSITION**

**XX** **Granted** (subject to conditions, see Discussion below)

The above action allocating a nighttime slot pair was effective when taken: **May 13, 2016** and is subject to the conditions below.

**Action taken by: Jenny T. Rosenberg**  
**Acting Assistant Secretary for**  
**Aviation and International Affairs**

**XX** **The authority granted is consistent with the aviation agreement between the 1952 Civil Air Transport Agreement between the United States and Japan, as amended ("the Agreement").**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

**XX** **Hawaiian's certificates of public convenience and necessity**  
**XX** **Standard Startup and Dormancy Conditions (see below)**

**DISCUSSION**

**Background:** By Order 2016-3-26, the Department instituted the *2016 U.S.-Haneda Combination Services Allocation Proceeding* to allocate the five daytime slot pairs and one nighttime slot pair available for U.S.-Haneda scheduled combination services made available by the Agreement. That order called for applications for the available slot pairs.<sup>1</sup>

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<sup>1</sup> See also Order 2016-4-11, which sets forth the current procedural schedule in the proceeding.

Only one applicant, Hawaiian, expressed interest in securing the nighttime slot pair, namely to provide four-times-weekly Honolulu-Haneda service, and three-times-weekly Kona-Haneda service, in the event that it did not receive a daytime slot for this service.

**Motion of Hawaiian:** By motion dated May 4, 2016, Hawaiian requests that the Department grant its uncontested application to serve the Kona/Honolulu-route in time for Hawaiian to participate in the slot allocation process for the forthcoming winter traffic season.<sup>2</sup> Hawaiian said that while its application prioritized daytime service over nighttime authority for the Kona/Honolulu route, Hawaiian will accept the award of nighttime authority for this proposed service.<sup>3 4</sup>

**Responsive Pleadings:** American Airlines, Inc. (American) filed a response stating that it does not object to Hawaiian's request. Delta Air Lines, Inc. (Delta) and United Airlines, Inc. (United) filed objections, Hawaiian filed a reply, and Delta filed a reply reiterating its opposition to Hawaiian's requests.

Delta states that it does not object to the Department awarding Hawaiian the nighttime slot pair as the sole award to Hawaiian, and Delta supports an award of the nighttime slot with gateway flexibility within the Hawaiian Islands for Hawaiian to use at is sees fit at Honolulu, Kona, or any combination thereof.<sup>5</sup> However, Delta takes issue with Hawaiian seeking a nighttime award now, while reserving its rights to obtain a daytime slot pair.<sup>6</sup>

Delta argues that Hawaiian's motion attempts to circumvent the Department's process by seeking to receive its third-priority slot pair before other applicants, while still pursuing an overlapping daytime award. Delta argues that the public interest does not support an award of any daytime slot pairs to Hawaiian at this time.<sup>7</sup> Delta states that public benefits support an award to Hawaiian of a single nighttime slot pair for its continued service on Hawaiian's current Honolulu-Haneda route. Delta asserts that awarding Hawaiian the current slot pair for its third priority route, while leaving open the possibility of daytime award(s) to Hawaiian is outside the parameters outlined in the Instituting Order and would be at the expense of a full public interest evaluation of the totality of the applications and available slot pairs.<sup>8</sup>

United argues that Hawaiian's application is, in fact, contested and that significant and material objections have been raised with respect to Hawaiian's entire application. United asserts that it and Delta have argued that (1) Hawaiian's proposed Honolulu-Haneda service should only be considered for a nighttime slot award; and (2) Hawaiian's proposed Kona/Honolulu service does not merit selection in this proceeding. United asserts that Hawaiian's nighttime request is not severable from the Department's comparative selection proceeding.<sup>9</sup>

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<sup>2</sup> As noted in Orders 2016-3-26 and 2014-4-11, U.S. carriers face a deadline of May 20, 2016 (May 19, 2016 in the United States), to file applications with Japanese authorities for takeoff and landing slot times at Haneda airport for the forthcoming winter traffic season that begins October 30, 2016.

<sup>3</sup> Hawaiian's motion also requested that the Department shorten the answer period, and by Notice dated May 5, 2016, the Department shortened the answer period for Hawaiian's motion and required that answers be filed by close of business on May 9, 2016. The Department also permitted replies to the answers until the close of business on May 10, 2016.

<sup>4</sup> Hawaiian specifically noted, however, that its first priority is and remains the permanent award of authority to serve Honolulu daily during daytime hours, and that it would continue to pursue that application with the upmost vigor. Motion of Hawaiian, at 2.

<sup>5</sup> Answer of Delta to Hawaiian's Motion, at 2

<sup>6</sup> Answer of Delta to Hawaiian's Motion, at 2.

<sup>7</sup> *Id.*, at 3.

<sup>8</sup> *Id.*, at 2.

<sup>9</sup> Answer of United to Hawaiian's Motion, at 1.

United argues that the Department has the ability to allocate a nighttime Haneda slot pair for Hawaiian at Honolulu, and that there are compelling reasons for the Department to do so here, so that the five daytime slot pairs can be allocated for mainland service that can cover 60% of all U.S.-Tokyo demand.<sup>10</sup> United contends that Hawaiian's Kona/Honolulu-Haneda proposal cannot be awarded in isolation, as doing so could unfairly prejudice the competing service proposals.<sup>11</sup>

Delta and United each also take issue with the timing of Hawaiian's motion. Delta states that Hawaiian could have requested an immediate award at any time immediately after the applications were filed on April 21, but instead Hawaiian waited and filed its motion the day before Answers were due in the proceeding.<sup>12</sup> United asserts that the Department should not countenance Hawaiian's manufactured crisis at the expense of full and fair comparative consideration of all applicants' competing proposals.<sup>13</sup>

Hawaiian asserts that in the absence of a competing application for nighttime authority, the Department has no legal obligation under *Ashbacker Radio Corp. v. FCC*<sup>14</sup> or any other legal precedent to continue further proceedings.<sup>15</sup> Hawaiian states that its nighttime application is the only bona fide application for nighttime authority before the Department and it is not mutually exclusive with Delta's or United's applications for daytime authority.<sup>16</sup> Hawaiian argues that the fact that other carriers have not applied for nighttime authority is the end of the story, and further proceedings would be a waste of the Department's time and resources.<sup>17</sup>

Hawaiian further argues that it is well established that the Department will grant an uncontested application even when a baseless objection has been submitted. Hawaiian asserts that the Answers of Delta and United do not change the fact that Hawaiian's application is uncontested, and Hawaiian asserts that the Department should grant the relief Hawaiian requested without delay.<sup>18</sup>

In its reply, Delta argues that Hawaiian's motion is hotly contested, and that Hawaiian seeks to inappropriately amend its application in the middle of the proceeding. Delta states that the only circumstance in which Hawaiian's motion would be uncontested by Delta would be if the Department conditioned acceptance of any new nighttime slot pair by Hawaiian on withdrawal of any other proposed schedules, including for daytime operations at Haneda.<sup>19</sup> Delta also asserts that Hawaiian's focus on *Ashbacker* is inapposite, arguing that the Department must review Hawaiian's nighttime application in totality with all the other applications for the mutually exclusive authority.<sup>20</sup>

**Decision:** The Department has decided to grant the motion of Hawaiian and allocate to Hawaiian one nighttime slot pair for its proposed service in the Kona-Haneda market, three times weekly, and the Honolulu-Haneda market four-times weekly.

In reaching this decision, the Department notes that, notwithstanding the various arguments offered by Delta and United, neither Delta, United, nor any other carrier has requested the available nighttime slot pair. Only Hawaiian has requested the nighttime slot pair.

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<sup>10</sup> *Id.*, at 2.

<sup>11</sup> *Id.*, at 2-3.

<sup>12</sup> Answer of Delta to Hawaiian's Motion, at 4.

<sup>13</sup> Answer of United to Hawaiian's Motion, at 4.

<sup>14</sup> 326 U.S. 327 (1945).

<sup>15</sup> Reply of Hawaiian, at 2.

<sup>16</sup> *Id.*, at 4.

<sup>17</sup> *Id.*, at 2.

<sup>18</sup> *Id.*, at 6.

<sup>19</sup> Reply of Delta, at 2.

<sup>20</sup> Reply of Delta, at 4.

Delta and United have argued that Hawaiian's nighttime proposal must be considered in the context of all of the U.S.-Haneda applications, including the daytime requests. They further argue that Hawaiian's nighttime request cannot be severed from its daytime proposal and awarded in isolation.<sup>21</sup> The Department finds, however, that these arguments ignore the Department's express declaration in the order instituting this proceeding that the Department may proceed directly to a final decision "for some or all of the slot pairs at issue where an application for a particular slot pair is uncontested."<sup>22</sup>

Despite the arguments that Hawaiian's nighttime request is contested, the Department finds nothing in the objections of Delta and United that overcomes the absence of any other application for nighttime slot pair authority. Hawaiian, and Hawaiian alone, requested the nighttime slot pair, and the Department finds that prompt approval of Hawaiian's request is consistent with the public interest. In these circumstances, the Department does not find that any additional regulatory procedures are necessary to decide the matter.

Nor does the Department find that delaying approval of Hawaiian's application would be consistent with the public interest. Allocating Hawaiian the nighttime slot pair now will allow Hawaiian to participate in the Haneda airport slot allocation process, thereby enhancing the U.S. carrier presence at Haneda during the forthcoming winter season. The Department finds no basis to conclude that the public interest would be better served by allowing a valuable slot right to go unused.

As a final matter, this decision in no way prejudices the outcome of the ongoing carrier selection proceeding for daytime slot pairs. The other applicants have already availed themselves of the opportunity to challenge Hawaiian's application for daytime authority and they can continue to do so.

Against that background, the Department has decided to approve Hawaiian's request for a nighttime slot pair to serve the Honolulu-Haneda market four times weekly and the Kona-Haneda market three times weekly.

**Conditions:** Consistent with our standard practice, the slot pair allocated here is subject to our standard 90-day dormancy condition, wherein any slot pair not operated for a period of 90 days (once inaugurated), will be deemed dormant and the allocation as to that slot pair will expire automatically and the slot pair will revert to the Department for reallocation.

In addition, consistent with our standard practice, we will require that Hawaiian inaugurate service with the slot pair allocated here within 90 days of its proposed startup date, October 30, 2016. Failure to inaugurate service with a newly allocated slot pair by that time will result in the unused slot pair reverting to the Department.

**Remarks:** Hawaiian states that the introduction of its services will result in a near-term annual change in fuel consumption exceeding 10 million gallons. Under the provisions of the Energy Policy and Conservation Act of 1975 and 14 CFR Part 313 of our rules, we have considered the matter of Hawaiian's anticipated fuel consumption along with the other public interest factors we consider in taking action in a proceeding of this kind. We find, in the circumstances presented, that in view of our obligations under 49 U.S.C. 40105 to act consistently with international agreements (in this case, the U.S.-Japan Civil Air Transport Agreement, as amended), and the public benefits that will be derived from Hawaiian's services, approval of the request notwithstanding the anticipated level of fuel consumption is warranted.

*An electronic version of this document is available on the World Wide Web at:*  
<http://www.regulations.gov>

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<sup>21</sup> See e.g., Answer of United to Hawaiian's Motion, at 1; and Answer of Delta at 5.

<sup>22</sup> Order Instituting the 2016 U.S.-Haneda Combination Services Allocation Proceeding (2016-3-26), at 3.