

**OBJECTION OF THE CITY AND COUNTY OF DENVER, OPERATOR OF DENVER INTERNATIONAL AIRPORT,
TO THE ORDER TO SHOW CAUSE.**

2016 U.S.-Cuba Frequency Allocation Proceeding

Docket DOT-OST-2016-0021

Communications with respect to this document should be addressed to:

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Pursuant to Order 2016-7-4 establishing a tentative decision in this U.S.-Cuba frequency allocation proceeding, the City and County of Denver (the Parties), operator of Denver International Airport (DEN), files this Objection to the Order to Show Cause served on July 7, 2016 by the Department of Transportation (the Department) allocating frequencies for the 20 daily round trip flights available between the U.S. and Havana's José Martí International Airport (HAV).

Introduction

The Parties actively participated in this frequency allocation proceeding and offered the Department a great deal of data to support their case that daily nonstop service by Frontier from DEN was not only important for the community and region, but necessary to meet the public benefits and the public interest standards as consistently set forth by the Department in previous route allocation proceedings. The Parties continue to believe that such an allocation to Frontier for service between DEN and HAV is not only warranted, but in the best interest of the public, and are disappointed by the Department's tentative decision to not only shut out Denver, but much of the entire Western U.S. , from convenient, low-fare service.

That being said, the Parties understand the immense task that was facing the Department in reaching its decision and commends the Department for the manner in which it handled both the frequency allocation proceeding and its responsibility. As such, the Parties urge the Department to review its allocation to determine if service to DEN can be accommodated. In particular, the Parties object to the tentative decision by the Department not to allocate back-up authority in this case. Additionally, the Parties urge the Department to begin immediate consultations on adding a new tranche of HAV frequencies to those tentatively allocated.

Denver International Airport Should Be Awarded Back-Up Authority

As the Parties previously stated, the Department's frequency allocation is a critical opportunity to ensure the continued development of the U.S. - Havana market, a new, important market that has not had regularly scheduled air service for decades.

Through its award, the Department was charged with ensuring that public interest standards were met by continuing its long standing goal of ensuring intercarrier, intergateway and interregional competition while at the same time allowing new business models to develop, ensuring a multitude of pricing and service options.

As we stated in our Reply, the Department must not be content with the status quo – it must look at the future and the development this frequency allocation could allow. While recognizing the challenge of the Department's task, the Parties argue that the Department's tentative decision falls short of this goal in several respects. For example, by failing to tentatively allocate back-up authority, the Department is missing an important opportunity to best utilize the frequencies tentatively allocated in this proceeding and to use all of the methods open to it to ensure the public good.

Rather than resubmit our prior comments, the Parties ask the Department to review what we, and other commenters presented and ask that our prior filings in this docket be deemed as part of this Objection. By doing this, the Parties are certain that the Department will agree that one-year back-up authority should be allocated to Frontier for service between DEN and HAV, so that should any of the tentatively allocated frequencies not be started, or should any of the tentatively allocated frequencies be started and suspended within the year, Frontier, and Denver, is given the first opportunity to offer replacement service, subject to standard start up conditions. Additionally, the Parties urge the Department to disallow any seasonal suspensions so that the frequencies tentatively allocated can be utilized in their totality.

In our previous filings, the Parties proved that despite a relatively small Cuban-American population, the Denver area has a vibrant economy with robust and growing relationships with and connections to Cuba and that the broad catchment area for Frontier's proposed DEN service constitutes a significantly larger number of Cuban-Americans (approximately 142,000 or eight percent of the Cuban-American population).

Additionally, the Parties successfully argued that the proposed DEN-HAV flight will provide significant—and, in many cases, unique—low fare connectivity to markets in the Western half of the United States, facilitating intercarrier, intergateway and interregional competition. At the same time, it is clear from previous filings that the proposed DEN-HAV flight schedule is viable.

It is clear from the Department's tentative decision awarding frequencies to Frontier, Spirit, Southwest and JetBlue that it deems price competition and low-fare access to HAV as a critical issue in this route proceeding. However, the Department's decision falls short in providing these features to many points in the western U.S., with only one nonstop daily flight from any point west of Atlanta, and limited low-fare connecting options from the western half of the country. Frontier's proposed DEN-HAV flight is the best means to rectify this shortcoming for the western half of the United States and from all of the proposed routes not selected.

When reviewing all of these established principles, it is clear that a back-up award to Frontier for daily nonstop Denver service is not only viable, but crucial to maintain the goals of the Department. Operations at key airports, like Denver, need to be given the opportunity to develop and grow in this market. A back-up award will provide notice to those tentatively allocated frequencies that the Department will not allow this valuable resource to be wasted for any period of time.

The Department Must Immediately Begin Consultations

There is one thing on which all applicants and interested parties in this case agreed. The demand for service between the U.S. and Havana is great and the desired number of frequencies far exceeded those permitted under the latest air services agreement. The Department (as well as the Department of State) should utilize the enthusiasm of this proceeding to develop plans for obtaining additional frequencies so that cities that were not tentatively allocated service in this proceeding, first and foremost Denver, can quickly garner service in the near future.

As such, the Parties urge the Department to immediately request consultations leading to negotiations with Cuba for added service, even before the inauguration of services tentatively allocated in this proceeding. A request for such consultations will be an important reminder that this proceeding is simply a start to the process, not an ending. Additionally, as restrictions between the U.S. and Cuba are eliminated, as trade and tourism develop, and as more people are permitted to travel for more reasons between the two countries, more frequencies and air service will be quickly needed. Planning for this growth should start today. The multiple cities and regions not tentatively awarded service in this proceeding, and the tens of millions of people these regions represent deserve action in this manner. The Parties previously congratulated this Administration on its successful Cuba accords. We look forward to congratulating the Administration again on both another successful set of air service negotiations, and on having the insight to award Denver frequencies in the next proceeding.

Conclusion

As stated by nearly every applicant and submission in this proceeding, and by the Parties on multiple occasions, the Department was faced with a historic decision in this case. After an embargo of more than 50 years, air service between the U.S. and Cuba (especially Havana) will help develop the relationship between the two countries. The Department's Order to Show Cause does not change the fact that an allocation to operate daily nonstop service between Denver and Havana would contribute greatly to the goals of the Department and offer significant public benefits. The Parties urge the Department to choose Frontier and Denver International Airport for one-year backup authority for the first allocated flight not served (or started and suspended). Additionally, the Parties urge the Department to quickly commence consultations and negotiations with the Government of Cuba to expand the number of weekly frequencies permitted between the U.S. and Havana so that Denver, along with other cities shut out in this proceeding, can be allocated nonstop rights as soon as possible in order to provide the needed public benefits

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