

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Application of
Kalitta Air, L.L.C.

Docket DOT-OST-2020-0013

for four Hong Kong Fifth-Freedom All-Cargo
Frequencies (Hong Kong-Singapore)

**ANSWER OF FEDERAL EXPRESS CORPORATION
AND MOTION TO INSTITUTE A FREQUENCY ALLOCATION PROCEEDING
AND APPLICATION FOR FREQUENCY ALLOCATION**

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Answer

Federal Express Corporation (“FedEx”)¹ respectfully submits this Answer in opposition to the recent filings² of Kalitta in the above-captioned docket of the U.S. Department of Transportation (the “Department”). FedEx also files a competing application for allocation of one (1) of the Hong Kong fifth-freedom frequencies (“Hong Kong fifths”) returned to the Department on April 30/May 1, 2020, by UPS.³ FedEx further files a motion to institute a comparative selection proceeding that consolidates Kalitta’s application for allocation of the three (3) available Hong Kong fifths and the one (1) Hong Kong fifth that it seeks to exchange from the Hong Kong-Sharjah route to the Hong Kong-Singapore route.

¹ FedEx will use common carrier names throughout this filing.

² On May 5, 2020, Kalitta amended the initial application filed on January 28, 2020, in the instant docket.

³ See, Dockets DOT-OST-2004-17279 and DOT-OST-2009-0168. By letters dated April 30 and May 1, 2020, UPS clarified that, effective immediately, it returned to the Department two (2) frequencies used for fifth-freedom service from Hong Kong (HKG) to Singapore (SIN), continuing onto Diosdado Macapagal International Airport, Philippines (CRK) initially allocated in March 2004; and one (1) frequency used for Hong Kong-Singapore fifth-freedom service initially allocated in May 2004.

Application For Frequency Allocation

FedEx respectfully requests allocation of one (1) Hong Kong fifth with full traffic rights for an indefinite period to be used on the Hong Kong-Singapore route. In support of that application and in accordance with 14 C.F.R. § 302.303:

1. FedEx is a citizen of the United States, as defined in 49 U.S.C. § 40102(a)(15). It is a corporation duly organized under the laws of the State of Delaware with its principal place of business and mailing address at 3610 Hacks Cross Road, Memphis, Tennessee 38125. Its president and at least two-thirds of its board of directors and other managing officers are citizens of the United States, and it is under the actual control of citizens of the United States. At least 75 percent of its voting interest is owned or controlled by persons that are citizens of the United States. FedEx holds certificates of public convenience and necessity⁴ authorizing it to engage in domestic and foreign all-cargo air transportation.
2. The Department has previously allocated to FedEx twelve (12) Hong Kong fifths, with local traffic rights, to Paris, Seoul, and Clark.⁵ FedEx continues to operate flights on these routes and has significant experience operating a worldwide fifth-freedom network, including more than 230 weekly intra-Asia flights in support of its global express air cargo services.
3. FedEx plans to use a Boeing 767-300F aircraft with a 115,700-pound payload capacity to offer the HKG-SIN segment of the proposed service. FedEx proposes to operate on a Memphis-Tokyo (NRT)-Singapore-Hong Kong-Singapore-Osaka-Memphis route that will provide greater connectivity to FedEx's domestic and international network. While this

⁴ Pursuant to 14 C.F.R. § 302.24(g), FedEx requests that the Department take official notice of the extensive record that establishes FedEx's fitness to operate under the authority requested. *See, e.g.*, Order 2013-7-7 (U.S.-Mexico).

⁵ *See*, Dockets DOT-OST-2010-0160, DOT-OST-2005-22571, DOT-2002-14049.

service is sustainable on its own, it will also allow for greater efficiency in moving critical supplies that are needed to continue to combat the current health crisis. FedEx proposes to begin the HKG-SIN segment as soon as possible after award of the frequency allocation sought in this application.

4. The requested authority is consistent with the provisions of the October 19, 2002, Memorandum of Understanding between the Government of the United States and the Government of the Hong Kong Special Administrative Region of the People's Republic of China (the "MOU"). The MOU allows the United States to select up to ten (10) intermediate/beyond points on U.S. Route B and the United States has already selected Singapore. Furthermore, the MOU allows U.S. carriers, collectively, to provide up to seven (7) weekly all-cargo frequencies to any intermediate/beyond points selected for Route B.⁶ The Department recently advised FedEx that only one (1) Hong Kong fifth is currently allocated for use on the Hong Kong-Singapore route, which would allow for FedEx to use a Hong Kong fifth on the HKG-SIN route.
5. The requested authority is consistent with the Multilateral Agreement on International Air Transportation (MALIAT), to which the United States and Singapore are Parties. FedEx currently serves Singapore from Dubai, Guangzhou, Jakarta, Osaka, Penang, Ho Chi Minh, Sydney, Tokyo, pursuant to its Certificates of Public Convenience and Necessity for Routes 638 (China) and Route 867 (Open-Skies).⁷
6. FedEx specifically reserves the right to modify or supplement its application with further information related to its service proposal in accordance with the requirements of the

⁶ The MOU allows up to twelve (12) Hong Kong fifths be used to serve Korea and certain points in the Philippines, but those opportunities are not at issue here.

⁷ See, Orders 2014-4-12 and 2007-7-4, respectively.

anticipated instituting order in this matter and consistent with standard Department practice. Any supplement may include detailed schedule, equipment type, and fuel burn information, or other information deemed necessary to demonstrate that FedEx's proposed service will be consistent with the public interest.

Motion to Institute a Comparative Selection Proceeding

The MOU affords U.S. carriers up to 64 Hong Kong fifths for all-cargo service, only three (3) of which are currently available for allocation. These available frequencies represent a limited public resource and FedEx's application is mutually exclusive to Kalitta's application. In this connection, FedEx hereby moves that the Department institute a proceeding to allocate the available frequencies in accordance with the *Ashbacker* principles.⁸ Consistent with the *Ashbacker* decision, the Department's long-standing practice has been to conduct a comparative selection proceeding where two mutually exclusive applications are filed.⁹

In that connection, FedEx also moves that the Department consolidate Kalitta's application to exchange the Hong Kong fifth currently allocated by DOT to Kalitta for use on the Hong Kong-Sharjah route into the comparative selection proceeding requested by FedEx, thus making four (4) Hong Kong fifths available for allocation by the Department. Inclusion of the Hong Kong-Sharjah opportunity that Kalitta proposes to exchange in the anticipated proceeding will serve the public interest by offering the Department the opportunity to review the allocation of this limited resource on the basis of a fresh record, and in light of current circumstances.

In the event that circumstances change so as to make it possible for the Department to award one (1) Hong Kong fifth to FedEx, FedEx would be prepared to withdraw this motion.

⁸ *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

⁹ See, e.g., Order 2018-7-3 (U.S.-Cuba), Orders 2009-7-21 (Hong Kong-Seoul), 2004-3-3 (Hong Kong), Order 2002-12-11 (Hong Kong) 96-5-14 (Japan all-cargo).

Conclusion

FedEx respectfully objects to Kalitta's application, requests that the Department accept FedEx's application for allocation of one (1) Hong Kong-Singapore fifth, and grants FedEx's motion that the Department institute a frequency allocation proceeding for this matter and include FedEx's application in said proceeding.

Respectfully submitted,



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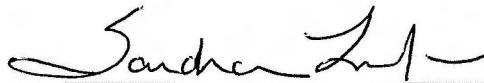
Certificate of Service

I hereby certify that I have this date served a copy of the foregoing document by electronic mail upon the following:

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5-20-2020

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