

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION
WASHINGTON, D.C.**

)	
Petition of)	
)	
FEDERAL EXPRESS CORPORATION)	Docket BTS-2004-19241
)	
For Review Pursuant to 14 C.F.R. Part 385)	
)	

ANSWER OF UNITED AIR LINES, INC.

Communications with respect to this document should be sent to:

JULIE OETTINGER
Director-Regulatory Affairs
UNITED AIR LINES, INC.
1025 Connecticut Avenue, N.W.
Suite 1210
Washington, D.C. 20036

MARY BARNICLE
Manager-Regulatory Affairs
UNITED AIR LINES, INC.
P.O. Box 66100 - WHQIZ
Chicago, IL 60666

BRUCE H. RABINOVITZ
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-6960 (phone)
(202) 663-6363 (fax)
bruce.rabinovitz@wilmerhale.com

Counsel for
UNITED AIR LINES, INC.

DATED: December 4, 2006

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION
WASHINGTON, D.C.**

)	
Petition of)	
)	
FEDERAL EXPRESS CORPORATION)	Docket BTS-2004-19241
)	
For Review Pursuant to 14 C.F.R. Part 385)	
)	

DATED: December 4, 2006

ANSWER OF UNITED AIR LINES, INC.

Pursuant to Section 385.31(e) of the Department’s Rules of Practice,^{1/} United Airlines submits the following answer to the petition Federal Express (“FX”) filed seeking review of a decision by the Assistant Director of the Office of Airline Information (“OAI”), dated November 6, 2006, denying FX a waiver of the requirement to file periodically with the Department certain data associated with its transportation of U.S. mail. The mail data at issue are required to be reported to the Department pursuant to Part 241 of its Regulations.

FX apparently ceased filing these data with the Department starting some time prior to April of 2004. In October of that year, the Department published a Notice in the

^{1/} Under the terms of Part 241, United is also required to report on its transportation of mail. United will be disadvantaged if FX is relieved of the cost and administrative burden associated with the filing of these data and United is not. As such, United has a “substantial interest which would be adversely affected by the relief” FX is seeking and, under the terms of Section 385.31(e), is included in the class of persons that are authorized to file an answer to the petition.

Federal Register seeking comments from interested parties on whether it should *sua sponte* grant FX a waiver of the requirement to report the data. United and other parties filed responses to the Notice. By letter dated November 6, 2006, the Assistant Director of OAI denied the waiver.

FX has now sought review of that staff decision, even though it maintains that it has no obligation under applicable regulations to file the data at issue.^{2/} In support of its petition, FX argues that, due to the unique nature of its agreement with the Postal Service, it does not have readily available the data it is required to report pursuant to Part 241, and that it would be an undue burden on it to have to change its operating procedures to collect the data. It also maintains that the Department has no legitimate regulatory need for the data, and argues that DOT should not impose on it the burden and expense of collecting unnecessary data. FX cites in support of such argument recent comments of Under Secretary Jeffrey N. Shane to the effect that, with the airline industry now deregulated, DOT should impose rules only if they “add value.”^{3/}

United shares FX’s strong support of deregulation. It also shares FX’s support for Under Secretary Shane’s admonition that the Department should implement rules only if they “add value.” For that reason, United has stressed throughout this proceeding that the

^{2/} FX does not deny that it transports domestic mail. Rather, its core argument is that the nature of its agreement with the Postal Service makes it difficult to report the specific data Part 241 requires. While that claim -- if true -- may justify the grant of a waiver in appropriate circumstances, it does not establish that the requirement to report on the carriage of domestic mail does not apply to FX.

^{3/} See, FX Petition at 1.

real issue here is not whether it would be a burden for FX to report the data at issue -- it is a burden on all carriers to report the various data required by Part 241 -- but whether the data are needed by the Department. No carrier should be burdened with an obligation to report information to the Department, whether on Form 41 or otherwise, that the Department does not need to carry out its statutory responsibilities. If DOT does not need the mail data at issue here, then no carrier should be required to report the data, and OAI should grant all carriers (not just FX) an exemption from Part 241 relieving them of the filing obligation. On the other hand, if the Department continues to need such data to carry out one or more of its statutory responsibilities -- and the Assistant Director's decision denying FX a waiver concludes that it does -- then there is no public interest justification for granting FX (or any other carrier) an exemption, regardless of the administrative burden that is imposed in reporting the mail data required by Part 241.

In sum, so long as the Department concludes that it has an ongoing regulatory need for the domestic mail data FX has stopped reporting, FX's petition should be denied. On the other hand, if the Department no longer has a need for the data, as FX maintains, then all carriers, not just FX, should be relieved of the obligation to report the data.

Respectfully submitted,



BRUCE H. RABINOVITZ
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 663-6960 (phone)

Counsel for
UNITED AIR LINES, INC.

DATED: December 4, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Answer of United Air Lines, Inc. by electronic mail or facsimile upon the following:

American Airlines: carl.nelson@aa.com, mark.gilbert@aa.com

Delta Air Lines: recohn@hhlaw.com, john.varley@delta.com

Federal Express: jmhansen@fedex.com, nssparks@fedex.com

Southwest Airlines: leslie.carr@wnco.com

Airports Council International: dpeterson@aci-na.aero

U.S. Postal Service: Anthony Pajunas (via facsimile at 202-268-6251)


Kathryn Dionne North

DATED: December 4, 2006