

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

In the matter of

**Air China Limited d/b/a/ Air China; Beijing  
Capital Airlines Co., Ltd.; China Eastern  
Airlines Corporation Limited; China  
Southern Airlines Company Limited; Hainan  
Airlines Holding Co. Ltd.; Sichuan Airlines  
Co., Ltd.; and Xiamen Airlines**

Docket DOT-OST-2020-0052

**Application of The Commonwealth Ports Authority of  
the Commonwealth of the Northern Mariana Islands  
for an Exemption Pursuant to 49 U.S.C. § 40109**

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September 27, 2023

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for an Exemption Pursuant to 49 U.S.C. § 40109**

Pursuant to 49 U.S.C. § 40109(c) the Commonwealth Ports Authority of the Commonwealth of the Northern Mariana Islands (CMNI) applies for an Exemption from the Department's Part 213 Order 2023-8-10 (August 11, 2023) in this Docket, to permit unrestricted scheduled air transportation between China and the CNMI as provided in Annex VI of the Agreement Between the Government of the United States of America and the Government of the People's Republic of China Relating to Civil Air Transport.<sup>1</sup> Annex VI was added to protect service to the isolated islands that are part of the CNMI. We emphasize that this application does not seek relief for flights to Guam which, while included in Annex VI, is not part of the CNMI.

This Exemption is urgently needed to address the "public interest" and fully meets the criteria for an Exemption under 49 U.S.C 40109(c). Access to scheduled

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<sup>1</sup> Annex VI was added to the Agreement by Article 6 of the July 9, 2007, Protocol to amend the Agreement (the "Protocol").

service by Chinese airlines is required to support desperately-needed recovery of the CNMI economy and tourism industry. **It bears emphasis that tourism is the only major economic industry for the CNMI, which lost approximately \$331,000,000 (the equivalent of approximately 28% of its GDP) annually in recent years due to the impact of catastrophic hurricanes and the COVID-19 pandemic.** In this connection, China only recently lifted travel restrictions for its citizens in August 2023, making this relief urgently needed if the CNMI is to rebuild its tourism market and improve the Commonwealth's dire economic status – an economic status that is preventing the CNMI from meeting the most basic needs of its people who are U.S. citizens.<sup>2</sup>

No U.S. airline has provided scheduled passenger service between China and the CNMI. This is a reason the CNMI was exempted under Annex VI and why the urgent relief requested to reinstate Annex VI authority for CNMI airports will have no impact on competition between China and the mainland U.S. The requested authority is fully consistent with the Department's orders in this docket seeking to "restore a competitive balance and fair and equal opportunity among U.S. and Chinese air carriers in the scheduled passenger service marketplace."

## I. BACKGROUND

Resumption of unrestricted scheduled service between the CNMI and China is critical to saving the CNMI economy. Tourism is CNMI's only major industry, which effectively shut down for the past several years during the pandemic and even before that following Super Typhoon Yutu in 2018. Between FY2017 and FY2022,

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<sup>2</sup> We note that other Pacific Islands not part of the CNMI – like Guam, whose people are also U.S. citizens – do not rely on Chinese tourism. As noted below, Guam's tourism industry is primarily supported by visitors from Japan and Korea.

the Ports Authority's aviation revenue fell from \$9,914,685 to \$1,212,891. In 2021, CNMI aviation revenue totaled the shockingly low amount of \$174,567. Overall, including other sources, the Ports Authority operating income has remained negative, with over \$5.2 million in operating losses in 2021. More broadly, the CNMI GDP has fallen by double-digits annually (30% in 2020) due primarily to tourism losses.<sup>3</sup>

Between 2015 and 2020, travelers from China made up approximately 40% of the CNMI tourism industry on average.<sup>4</sup> It bears emphasis that number and proportion of Chinese tourists visiting CNMI overwhelmingly exceed those visiting other Pacific Islands such as Guam. For example, during the same 2015-2020 time period, Chinese visitors accounted for only 1.2% of all Guam arrivals annually, on average.<sup>5</sup> Whereas Japan and Korean arrivals were up to 85% of all Guam visitors.

Chinese carriers have operated flights between the CNMI and China, as no U.S. carriers serve this market. While flights between China and the U.S. mainland have been subject to frequency restrictions for years, since 2007 and until the Department's Part 213 Orders, flights between China and the CNMI have been exempted and left purely to the market. Specifically, under Annex VI and "[n]otwithstanding any other provision of [the bilateral]" Chinese carriers were able

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<sup>3</sup> Bureau of Economic Analysis, U.S. Dept. Commerce, *Gross Domestic Product for the Commonwealth of the Northern Mariana Islands, 2020*, NEWS RELEASE (Jan. 31, 2023) (emphasis added), <https://www.bea.gov/news/2023/gross-domestic-product-commonwealth-northern-mariana-islands-2020>.

<sup>4</sup> See CNMI Dept. of Commerce, Central Statistics Division, *CNMI CENTRAL STATISTICS DIVISION REPORT HUB: Economic Indicators*, <https://ver1.cnmicommerce.com/divisions/central-statistics/report-hub/> (last visited on Sept. 27, 2023).

<sup>5</sup> See Guam Visitors Bureau, *Visitor Arrival Statistics*, <https://www.guamvisitorsbureau.com/research/statistics/visitor-arrival-statistics> (last visited on Sept. 27, 2023).

to provide “unlimited scheduled air services between the People’s Republic of China... and the Northern Mariana Islands.”<sup>6</sup> Annex VI was created to support the isolated CNMI islands and ensure that other aspects of the U.S.-China bilateral would not impact flights to Saipan.

The continuing frequency restrictions as most recently referenced in Order 2023-8-10 are designed for “ensuring an equitable and competitive operating environment for U.S. air carriers while providing for the “reasonable balance of rights and benefits between both Parties.” These restrictions are of clear importance to U.S.-China mainland flights. However, the Order does not address the much broader public interest of the humanitarian and economic impact these restrictions are having on our fellow U.S. citizens who live and work in these isolated islands.<sup>7</sup> The simple fact is that Chinese airlines will not use any of the very limited frequencies authorized by Order 2023-8-10 for a short haul tourist market, instead of the long-haul flights to the U.S. mainland carrying both business and tourists. As applied to the CNMI, the restrictions are unnecessarily perpetuating a dire situation for the CNMI/Saipan economy, hindering its recovery and effectively blocking tourism from China which, since April 2009 when the last garment factory in Saipan closed, has made up such a substantial amount of CNMI revenues as its sole major industry.

This Exemption request seeks only for the Department to confirm for the CNMI what is already expressly authorized under the U.S.-China bilateral. As explained below, granting the Exemption significantly furthers the public interest

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<sup>6</sup> See Article 6 of the Protocol. U.S. carriers can provide unlimited frequencies between CNMI/Guam and 3 destinations in China except Beijing and Shanghai.

<sup>7</sup> The distance from Shanghai to Sapan is approximately 1,900 miles. The distance from Los Angeles to Saipan is approximately 6,000 miles.

and is necessary to prevent further downward spiraling of the CNMI economy – which along with other Pacific islands “are the United States’ closest allies or territories; [and] are also among the poorest, most disenfranchised parts of America.”<sup>8</sup> Indeed, in CNMI the “short commuter flights between islands are sometimes too costly for residents” (*e.g.* Tinian, Rota).<sup>9</sup> The economic repercussions CNMI is enduring from the restrictions on Chinese travel go beyond transportation and strike at the heart of the CNMI’s ability to fund and provide basic services to its citizens. As one example, we emphasize that earlier this year CNMI was forced to limit, reduce, and suspend Medicaid services due to financial constraints and required cost-cutting measures.<sup>10</sup>

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<sup>8</sup> The America That Americans Forget, NY TIMES MAG. (July 07, 2023), <https://www.nytimes.com/2023/07/07/magazine/guam-american-military.html>

<sup>9</sup> *Ibid.*

<sup>10</sup> Public Notice – CNMI Medicaid State Plan Amendment (SPA) MP-23-0006 Impacts of Services Due to Financial Constraints (May 22, 2023), <https://governor.gov.mp/news/public-notice-cnmi-medicaid-state-plan-amendment-spa-mp-23-0006-impacts-of-services-due-to-financial-constraints/>.

**II. THE ISOLATED CNMI ECONOMY CRITICALLY DEPENDS ON TOURISM REVENUE FROM THE ASIAN MARKET INCLUDING OVERWHELMINGLY CHINESE TOURISTS**

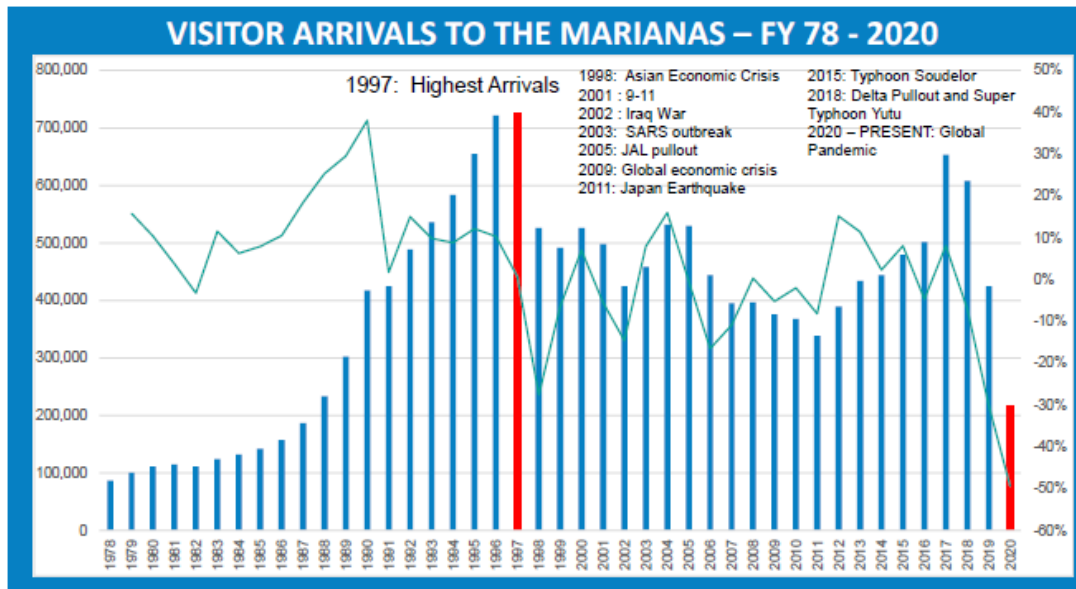


Figure 1: Visitor Arrivals to CNMI 1978-2020

Both Ports Authority airport operations as well as the broader CNMI economy depend on air travel and the associated tourism for revenue to support even the most primary components of operations. As the U.S. Department of Commerce, Bureau of Economic Analysis recognized in its 2020 report: “The CNMI economy was substantially affected by the COVID–19 pandemic due to its effects on spending by consumers, visitors, businesses, and governments.”<sup>11</sup> As shown in the chart above, no other worldwide or environmental disaster has devastated the CNMI economy as much as the recent pandemic – cutting annual visitor arrivals from near-highs of ~650,000 just a few years ago to under 200,000 after 2020.

<sup>11</sup> Bureau of Economic Analysis, U.S. Dept. Commerce, *Gross Domestic Product for the Commonwealth of the Northern Mariana Islands, 2020*, NEWS RELEASE (Jan. 31, 2023), <https://www.bea.gov/news/2023/gross-domestic-product-commonwealth-northern-mariana-islands-2020>.

**A. Airport Operational Revenues are Dire and Will Only Worsen Without Resumption of Scheduled Service to/from China.**

Ports Authority operations are funded by airport revenue. These revenues are closely tied to passenger demand for air travel to Saipan and other airports. Visitor declines have massively deprived the Ports Authority of necessary airport operational funding from terminal arrival fees, rents, and utilities. Given the lack of travel, the Ports Authority had to implement austerity measures, including reducing employee hours.

As of July 2023, only four airlines were operating out of the Saipan International Airport, three of which provide service to Korea, the other to Japan and Guam.<sup>12</sup> Primarily, the airport has only been able to meet its operational and debt service requirements as a result of federal funding provided in recent years to assist with Pandemic impacts and recovery efforts.

Ports Authority Chairwoman Kimberlyn King-Hinds was recently quoted explaining this impact:

Kimberlyn King-Hinds, chairwoman of the CPA; said despite a 1,000% increase in visitor arrival numbers from a year ago, airline service to the CNMI has not reached pre-COVID-19 numbers and due to the lack of flights the CPA is forced to hike airport rental rates up to 79% from \$18 to a little over \$32 per square foot.

Airport rentals do not only refer to rent paid for actual physical space like a store, but also refers to the assigned gate for each airline — a terminal rental.

“We’re going to adopt a new rate methodology. As I stated before, it’s based on cost recovery. What we’re looking at is basically different scenarios to try to lessen the impact

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<sup>12</sup> Two small carriers also provide commuter and interisland passenger/cargo services.



on the airline carriers — basically airport rates and charges. We have to find money to operate,” she said.

King-Hinds said this dilemma will only continue until the NMI either brings back the China market, rapidly expands the influx of tourists from the CNMI’s largest pre-pandemic market, or find new markets to replace the China market.

“We are in a world of hurt because we don’t have the China market online. That’s a fact. If you compare pre-pandemic and post-pandemic arrival numbers, we are nowhere near where we need to be. Absent the China market, we will not reach those numbers unless we get new markets online. That has a significant impact on our ability to keep rates down,” she said.<sup>13</sup>

Importantly, these are unique problems which mainland U.S. airports do not face as - those served by Chinese carriers are major international airports with substantial service. In CNMI, and particularly at Saipan International Airport, airlines have indicated service will not return to pre-pandemic levels in the near future. Government intervention is urgently needed.

FISCAL YEAR (FY)	FRANCISCO C. ADA/ SAIPAN INTERNATIONAL	
	Enplanements	Landings
FY 2019	462,217	2,708
FY 2020	235,696	1,714
FY 2021	17,360	259
FY 2022	94,906	900

<sup>13</sup> MVA, HANMI welcome NMI reinstatement of PRC Approved Destination Status, MARIANAS BUS. J. (Sept. 4, 2023), <https://mbjguam.com/mva-hanmi-welcome-nmi-reinstatement-prc-approved-destination-status#:~:text=Concepcion%20SAIPAN%20%E2%80%94%20The%20Marianas%20Visitors.to%20the%20destination%20once%20again.>

As of September 2022, airline enplanements at the Francisco C. Ada/Saipan International Airport were at 21% of pre-pandemic activity. International passenger traffic decreased from average monthly enplanements of 38,518 in FY 2019 to 7,909 in FY 2022. These reductions in airline activity shown above have led to significant corresponding reductions in revenue.

### **B. Tourism is the Fuel of CNMI's Economy and Needs Chinese Tourism to Recover**

CNMI has faced significant challenges due to the collapse of its tourism industry between 2020 and 2022, primarily attributed to the pandemic's impact on international travel. Travel restrictions have eased somewhat across primary source markets, including South Korea and Japan. However, demand remains significantly below historic levels. These conditions have led to an urgent need to rebuild the tourism sector to pre-pandemic levels with a focus on China now that Chinese citizens are being permitted to travel internationally. Indeed, U.S. Secretary of Commerce, Gina Raimondo applauded the importance of China's decision to restore tourism to the United States, which is now effectively blocked to CNMI given the DOT Part 213 Order:

"Today's action to restore the United States as an approved destination for Chinese group travel is a significant win for the U.S. travel and tourism industry and an important step forward to promote the type of people-to-people exchange that is crucial for our bilateral relationship. This has been the culmination of months of hard work between the U.S. Department of Commerce and the People's Republic of China Ministry of Culture and Tourism. Before COVID, as many as 3 million Chinese travelers visited the United States annually, contributing more than \$30 billion to the U.S. economy.

We look forward to once again welcoming Chinese group travel to the United States.”<sup>14</sup>

In the 1990s, the CNMI witnessed an over-reliance on the Japanese market, which experienced remarkable growth until the Asian Financial Crisis. Subsequent events, including the discontinuation of Japan Airlines service, led to a decline in Japanese arrivals. However, the South Korean market emerged as a robust replacement, bolstering the economy during the collapse of the garment manufacturing sector between 2005 and 2009. To further safeguard the economy and support the tourism sector, CNMI explored opening to the Chinese market. This effort resulted in the 2007 Protocol which made direct flights between China and the CNMI feasible. This was facilitated by the Chinese government's Approved Destination Status. Consequently, South Korea and China became CNMI's primary markets.

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<sup>14</sup> U.S. Dept. Commerce, *Statement from U.S. Secretary of Commerce Gina Raimondo on Chinese Group Travel Designation*, Press Release (Aug. 10, 2023), <https://www.commerce.gov/news/press-releases/2023/08/statement-us-secretary-commerce-gina-raimondo-chinese-group-travel#:~:text=%E2%80%9CToday%27s%20action%20to%20restore%20the,crucial%20for%20our%20bilateral%20relationship>.

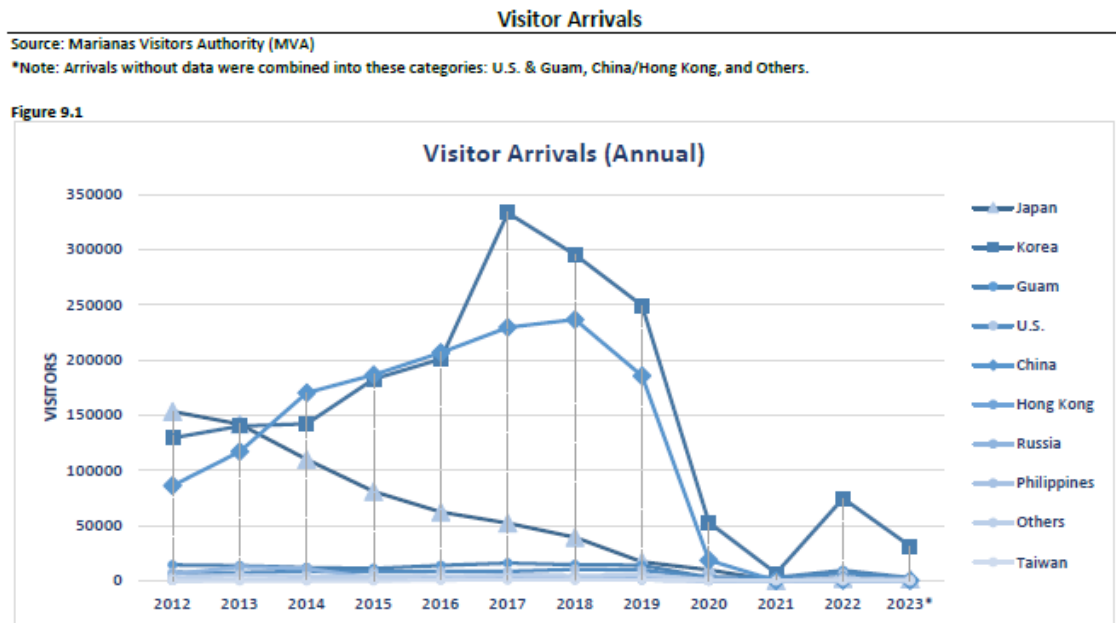


Figure 2: CNMI Visitor Arrivals 2012-2023

As CNMI works toward normalizing the market post-pandemic, working from the previous tri-market approach to reflect the realities of primarily dominant Korean and Chinese markets is paramount for its economic resurgence and resilience. Presently, the vast majority of the market is concentrated in tourists from South Korea, constituting 80% of 2023 arrivals to date. Chinese arrivals, remain at just 177, compared to 236,577 in 2018. Going forward rapidly opening up scheduled flights from China is critical to stabilizing both Ports Authority revenue and the health of the CNMI economy. This stabilization of the CNMI economy is dependent on DOT allowing Chinese carriers to resume unrestricted operations to Saipan.

## Visitor Arrivals

Source: Marianas Visitors Authority (MVA)

\*Note: Arrivals without data were combined into these categories: U.S. &amp; Guam, China/Hong Kong, and Others.

Table 7

Visitor Arrivals	Year											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023*
Total	401,289	438,908	459,280	477,868	501,490	653,150	607,591	487,008	88,941	12,686	95,956	39,300
% Change from Previous Year	17.30%	9.37%	4.64%	4.05%	4.94%	30.24%	-6.98%	-19.85%	-81.74%	-85.74%	656.39%	-59.04%
Japan	153,259	141,747	109,793	80,832	62,120	52,227	39,238	17,121	9,869	54	2,134	1,514
Korea	129,394	139,958	142,081	182,622	200,875	333,069	295,260	249,211	52,726	6,783	74,613	31,478
U.S. & Guam*	21,994	21,235	20,445	19,244	22,448	24,546	24,884	23,753	5,983	5,439	16,008	4,870
Guam	14,319	13,711	11,879	11,165	13,932	16,018	14,566	14,203	3,069	2,930	9,391	2,731
U.S.	7,675	7,524	8,566	8,079	8,516	8,528	10,318	9,550	2,914	2,509	6,617	2,139
China/Hong Kong*	86,666	117,713	171,219	187,883	208,248	234,135	240,219	188,489	18,803	21	333	192
China	86,119	116,967	170,121	186,509	206,538	229,389	236,577	185,526	18,550	12	271	177
Hong Kong	547	746	1,098	1,374	1,710	4,746	3,642	2,963	253	9	62	15
Russia	6,282	12,493	11,200	2,405	1,796	2,130	1,850	1,031	58	2	21	8
Philippines	528	649	694	732	999	969	810	760	296	154	593	240
Others*	3,166	5,113	3,848	4,150	5,004	6,074	5,330	6,643	1,206	233	2,254	998
Others	3,052	5,113	3,848	4,150	4,287	5,021	4,402	5,655	1,112	225	2,232	989
Taiwan	114	-	-	-	717	1,053	928	988	94	8	22	9

Figure 3: CNMI Visitor Arrival Data 2012-2023

The implications to the wider economy of the inability to resume pre-pandemic levels of tourism arrivals are profound. The tourism sector, along with the industries closely intertwined with it through visitor spending, constitutes a major portion of the CNMI private sector output. Recent data, sourced from the U.S. Bureau of Economic Analysis (BEA), underscores the critical role played by tourism-related activities, especially in the wake of the initial pandemic year, 2020. As stated in the BEA report for 2020: ““Exports of goods and services decreased **74.4 percent** .... The decrease in exports was **largely accounted for by exports of services, which consists primarily of visitor spending**.... Statistics published by the CNMI government showed that the number of **visitor arrivals to the CNMI decreased 81.7 percent, reflecting effects of the COVID-19 pandemic.**”<sup>15</sup>

Prior to the pandemic, the hotel accommodations, food service, and amusements sector (e.g., casinos) constituted a significant pillar of the CNMI

<sup>15</sup> Bureau of Economic Analysis, U.S. Dept. Commerce, *Gross Domestic Product for the Commonwealth of the Northern Mariana Islands, 2020*, NEWS RELEASE (Jan. 31, 2023) (emphasis added), <https://www.bea.gov/news/2023/gross-domestic-product-commonwealth-northern-mariana-islands-2020>.

economy. This tourist-focused sector accounted for a substantial 41% of the total private sector compensation disbursed to employees. Furthermore, the export of services, prominently the tourism sector, contributed 42% to the Gross Domestic Product (GDP) when adjusted for inflation. In one example, the hotel occupancy rate – a key reflection of tourist/visitor levels – decreased from a consistent 80-90% over the last decade to under 20% in 2020. In 2022, this level still remained in the mid-20<sup>th</sup> percentile.

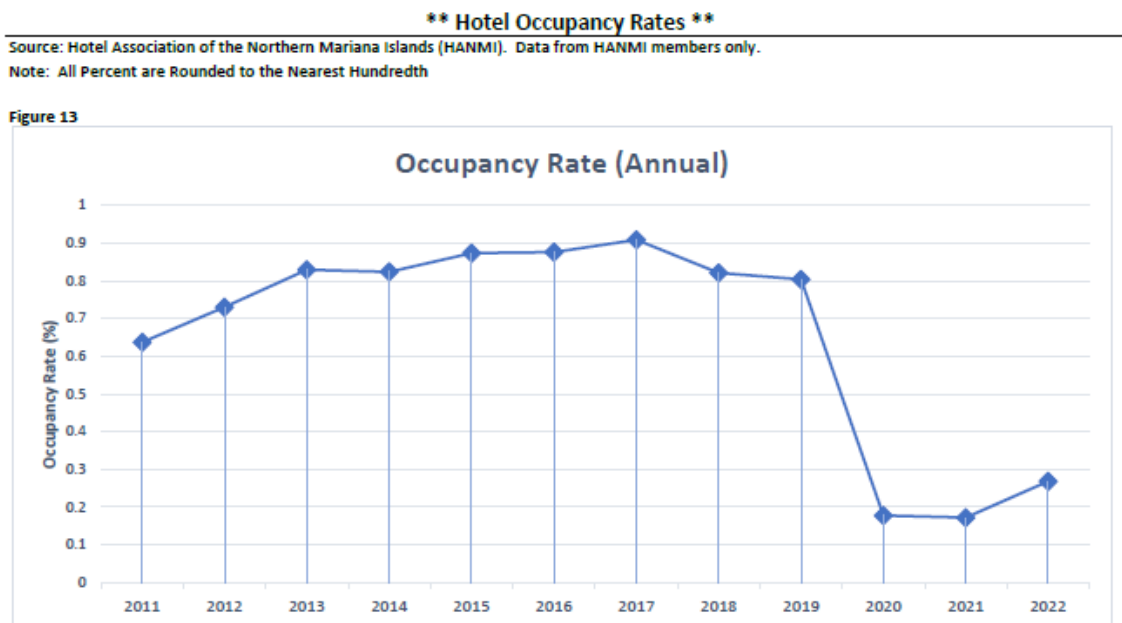


Figure 4: CNMI Hotel Occupancy Rate 2011-2022

Reestablishing Chinese tourism within CNMI's pre-pandemic tri-market strategy is critical to CNMI economic viability. The China market has contributed significantly to economic output and government revenue, including generating 12.2% of total government budgetary resources recently.<sup>16</sup> It is imperative to

<sup>16</sup> Special Representatives of the United States and the Commonwealth of the Northern Mariana Islands (May 15, 2019). Report to the President on 902 Consultations Related to the DHS Discretionary Parole Program. [https://www.doi.gov/sites/doi.gov/files/uploads/final\\_902\\_report.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/final_902_report.pdf)

restore tourism arrivals from China as both a strategic pursuit and an economic necessity for the rehabilitation of the CNMI economy.

### **III. GRANTING THE EXEMPTION WILL NOT HARM COMPETITION TO CNMI OR THE MAINLAND UNITED STATES**

Annex VI was established to support CNMI and its people, who are U.S. citizens. Notably, Annex VI provides a framework where market forces determine the level of service which can be operated by Chinese or U.S. airlines. Yet historically U.S. airlines have chosen not to serve the China-CNMI market. Under the current restrictions of the Department's Part 213 Order, it is our understanding that any Chinese carrier would first need to acquire one of a handful of frequencies available for flights to the mainland U.S. and instead operate that frequency exclusively to the CNMI. We are not aware of any Chinese airline with access to the very limited frequencies available under the most recent August 11, 2023 Department order which would then use such a frequency to provide scheduled passenger service to the CNMI. The Ports Authority, however, has received interest from multiple Chinese carriers which would provide this critical service under the standard terms of Annex VI of the bilateral, which this application seeks to re-implement with respect to the CNMI.

### **IV. GRANT OF THIS AUTHORITY IS NECESSARY FOR CNMI RECOVERY FROM HUMANITARIAN EMERGENCIES, WHICH WILL ADVANCE THE PUBLIC INTEREST AND IS CONSISTENT WITH SIMILAR DEPARTMENT GRANTS OF RELIEF**

The Department and the broader U.S. government have long recognized the unique economic circumstances of the CNMI, for reasons which support the Department's public interest consideration of this application. Critically, just a few

weeks ago the Department issued a broad waiver for the CNMI and other Pacific Islands from the Build America, Buy America Act (BABA), Infrastructure Investment and Jobs Act (IIJA), and related domestic preference statutes administered by DOT and its Operating Administrations (OAs).<sup>17</sup> In issuing this notice, the Department recognized the unique geographical and economic circumstances of the CNMI being “over 5,000 miles from the mainland United States” which requires relying on “established regional supply chains from east Asia, Australia, and New Zealand,” including China.

This reflects the understanding that the CNMI’s livelihood depends on the Department and U.S. government approaching domestic and foreign policy matters such as air transportation with China with similar recognition of needed exceptions for the isolated CNMI community. This approach is why Annex VI of the U.S.-China Air Transport Agreement exists with respect to the CNMI. Having suffered just recently from a super typhoon and pandemic, one after another, the Department needs to recognize how its current broad-reaching China Part 213 Order negatively impacts CNMI’s ability to recover and importantly undermines other U.S. government initiatives for this area so vital to our national security . The Department has a long precedent of granting similar broad exemption authority for international carriers at airports for humanitarian and public interest reasons. And this includes the intent behind Annex VI of the U.S.-China bilateral with respect to the CNMI.<sup>18</sup>

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<sup>17</sup> See Notice of Proposed Waiver of Buy America Requirements for the Pacific Island Territories, 83 Fed. Reg. 53949 (Aug. 9, 2023).

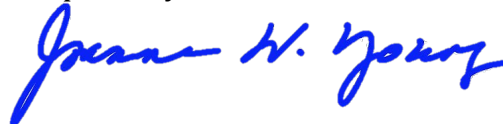
<sup>18</sup> See, e.g., Order 2007-4-9 (Blanket Exemption for Scheduled Foreign Air Carriers at CNMI Airports); Order 2006-12-21 (Blanket Exemption for Scheduled Foreign Air Carriers at Antonio B. Won Pat International Airport); Order 2020-4-10 (Blanket Exemption for Scheduled Foreign Air Carriers at Puerto Rico International Airports); Order 99-12-10 (Blanket Exemption for Foreign Air Carriers



**V. CONCLUSION**

For the reasons set forth above, the Commonwealth Ports Authority respectfully requests that the Department recognize it is in the public interest to address the dire economic situation faced by the Commonwealth of the Northern Mariana Islands and that the Department issue the requested Exemption. Service to the CNMI under Annex VI to the U.S.-China bilateral agreement will have no impact on the competitive relationship between U.S. airlines and Chinese airlines in the overall U.S. market.

Respectfully submitted,



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**Counsel for the Commonwealth  
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## **CERTIFICATE OF SERVICE**

I hereby certify that, on September 27, 2023, I served by email a copy of the foregoing on the following persons:

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