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Order 2002-11-20

Served: November 27, 2002



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 27th day of November, 2002

Applications of

- ALASKA AIRLINES, INC.**
- AMERICA WEST AIRLINES, INC.**
- AMERICAN AIRLINES, INC.**
- DELTA AIR LINES, INC.**
- FRONTIER AIRLINES, INC.**
- UNITED AIRLINES, INC.**
- US AIRWAYS, INC.**

Dockets OST-2000-7181-2117

For exemptions from 14 C.F.R. Part 93,
Subparts K and S, pursuant to 49 U.S.C.
§ 41718(a), Special rules for Ronald Reagan
Washington National Airport (beyond-perimeter slot
exemptions)

**ORDER GRANTING OUTSIDE-THE-PERIMETER SLOT EXEMPTIONS
AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT**

SUMMARY

By this order, the Department grants the application of Delta Air Lines, Inc., for two slot exemptions at Ronald Reagan Washington National Airport (hereafter "DCA") in order to provide nonstop service between DCA and Salt Lake City, Utah.

BACKGROUND

On April 5, 2000, the President signed into law the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21). Among other things, AIR-21 liberalized slot and slot exemption access at the four airports subject to the provisions of the High Density Rule, 14 C.F.R. 93 Subparts K and S. Specifically, at DCA, 49 U.S.C. §41718(a), as added by Section 231 of AIR-21, provides that the Secretary shall grant 12

slot exemptions to air carriers for the provision of nonstop air transportation outside the 1,250-mile perimeter established for air transportation at DCA under 49 U.S.C. § 49109.

AIR-21 directs the Secretary to distribute those 12 slot exemptions if the Secretary finds that the exemptions will (1) provide air transportation with domestic network benefits beyond the 1,250-mile perimeter; (2) increase competition by new entrant air carriers¹ or in multiple markets; (3) not reduce travel options for communities served by small hub airports and medium hub airports within the 1,250-mile perimeter; and, (4) not result in meaningful travel delays.

On July 5, 2000, the Department issued Order 2000-7-1, which granted a total of 12 slot exemptions at DCA for services outside the 1,250-mile perimeter to the following carriers: America West Airlines, Inc.; Frontier Airlines, Inc.; National Airlines; and, Trans World Airlines, Inc.²

Under the provisions of that order, National Airlines was granted two slot exemptions to provide nonstop service to Las Vegas, Nevada.

In order to optimize utilization of valuable slots and slot exemptions, under Federal Aviation Administration (FAA) regulations, slots or slot exemptions not used at least 80% of the time over a two-month period are subject to recall by the FAA for non-use. In the aftermath of September 11, the FAA suspended the minimum slot usage requirement to give airlines an opportunity to adjust to changes in the aviation operating environment and passenger demand without airlines' losing slots or slot exemptions during this period. On February 28, 2002, the FAA extended the suspension of the use-or-lose requirement until October 27, 2002.

National Airlines ceased all DCA operations shortly after September 11, and never restarted those operations. On September 3, 2002, by letter to the Department, National Airlines, among other things, requested a six-month extension of the FAA suspension of the use-it-or-lose-it requirement at DCA. By letter dated September 27, the FAA denied National's request and stated the Department would institute a proceeding to reallocate the two slot exemptions unless National provided assurance that it would institute DCA service in a timely fashion, so as to comply with the FAA's use-it-or-lose-it requirement.

¹ AIR-21 amended the previous definition of "new entrant," and its statutory applicability. Under the revised 49 U.S.C. § 41714(h)(3), as added by section 231 of AIR-21, the term "new entrant," for purposes of the slot exemption provisions including those at DCA, means "an air carrier that does not hold a slot at the airport concerned and has never sold or given up a slot at that airport after December 16, 1985, and a limited incumbent carrier as defined in subpart S of part 93 of title 14 code of federal regulations." The latter term, again as amended by AIR-21, is defined as an air carrier or commuter operator that holds or operates (or held or operated, since December 16, 1985) fewer than 20 slots and slot exemptions at the high density airport in question.

² American Airlines subsequently purchased most of TWA's assets. However, because AIR-21 prohibits the sale or transfer of slot exemptions (49 U.S.C. § 41718(e)), the Department conducted a carrier selection case similar to this one and awarded TWA's two slot exemptions to Alaska Airlines for nonstop DCA-Seattle service. See Order 2001-6-20.

In a September 30 response, National indicated that it could not provide that assurance. (These letters have been placed in Docket OST-2000-7181.) As a result, by Notice issued October 15, 2002, the Department invited proposals from eligible carriers for reallocation of the two slot exemptions awarded to National Airlines by Order 2000-7-1 to provide nonstop service to DCA from airports beyond the 1,250-mile perimeter. The Notice specified that applications were to be submitted by October 17 with comments due by October 31. The Department also noted that due to the restrictions of AIR-21, we may not be able to accommodate the slot times requested by applicants.³

APPLICATIONS

Alaska Airlines Inc.

Alaska requests two slot exemptions to operate one daily round trip between Los Angeles and DCA with 120-seat Boeing 737-700 aircraft. Alaska asserts that it is a limited incumbent carrier as it holds only two DCA exemption slots. While Alaska itself serves many cities from Los Angeles, it states that its code-share partner, Horizon Air, provides more connecting opportunities. In addition, Alaska also has a code-share with American Eagle that would provide eight additional cities with one-stop service to DCA. Finally, Alaska states that it plans to add other points over time, and it would bring low-fare competition to the communities it does serve. Alaska's principal justification for its proposal is the success of its DCA-Seattle service.

America West Airlines, Inc.

America West requests two slot exemptions to operate one additional round trip between Las Vegas and DCA. It does not specify aircraft type, so it could be any of the three types in its fleet: 190-seat B-757, 150-seat Airbus 320, or 124-seat Airbus 319 aircraft. America West states that it is a limited incumbent carrier, as it holds only six DCA slot exemptions. (The Department notes that, in addition, America West holds three slot exemptions authorized by Federal Aviation Administration Exemption 5133K which are currently operated by America West Express.) It further argues that an additional DCA-Las Vegas frequency would enable it to be an effective competitor at DCA, and that it is the only airline with both a large network and low fares to compete with large incumbent carriers in multiple Washington markets.

Other carrier applicants oppose America West's proposal, arguing that it has already been granted more DCA slot exemptions than any other carrier.

³ National's allocated slot times for its nonstop DCA-Las Vegas service were in the 800 and 2000 hour periods. 49 U.S.C. § 41718(c)(2) does not allow us to assign more than two slot exemptions per one-hour period, and most one-hour periods were fully subscribed by the Department's Notice dated August 2, 2000.

American Airlines, Inc.

American requests two slot exemptions to provide one daily round trip between DCA and Los Angeles using B-757 aircraft (176 seats). American argues that the reasons for selecting Los Angeles in the first proceeding have not changed, and that its request should be granted because its significant presence at Los Angeles would allow it to best compete with the largest Los Angeles carrier, United.

Other carrier applicants oppose American's request, arguing that it already has a strong presence at Los Angeles and DCA, as well as at other Washington area airports. As such, it is a dominant carrier in the Los Angeles-Washington market and it operates substantial connecting service between DCA and Los Angeles via within-perimeter hubs such as Dallas/Ft. Worth, Chicago and St Louis.

Delta Air Lines, Inc.

Delta requests two slot exemptions to provide one daily round trip to Salt Lake City using B-757 aircraft (183 seats). Delta argues that its proposal would best satisfy the objectives of maximizing domestic network benefits, that its Salt Lake City hub is well located for low circuitry DCA connecting service for numerous communities, and that it would provide the best and strongest competition for American and United. The Utah Air Travel Commission and the Salt Lake City Department of Airports (Utah and the Salt Lake City Parties) filed answers in support of Delta's application. They argue that Delta's strong Salt Lake City presence and the excellent geographic position of Salt Lake City for routings to DCA, which require minimal backhaul, make Delta the superior choice.

The other applicants have stated that Delta already is a large operator at DCA and that most of the markets that could connect at Salt Lake City already have the ability to connect one-stop to DCA via one of Delta's interior hubs at Atlanta and Cincinnati.

Frontier Airlines, Inc.

Frontier requests two slot exemptions to operate one additional round trip between Denver and DCA using Boeing 737-300 aircraft. Frontier states that, although its DCA-Denver service authorized by the Department has been successful, that it operates at a significant disadvantage compared with other carriers operating more flights in the Washington-Denver market, and that it could offer better service and compete more effectively with a second daily round trip. The carrier also notes that since the last DCA slot case, it has vastly expanded its network at Denver in three ways: 1) it has increased its own presence at Denver by adding new spokes; 2) it has entered into a code-share agreement with Mesa Airlines to provide regional jet service into Denver from six cities as Frontier JetExpress; and, 3) it has expanded its code-share agreement with Great Lakes Aviation to provide turbo-prop service under the Frontier code. Frontier also argues that due to increasing airline industry concentration, it should be awarded the two available slot exemptions as a way to improve airline competition generally. The City and County

of Denver filed an answer in support of Frontier's application. Denver asserts that Frontier has substantially improved competition at Denver, but the selection of Frontier's proposal is critical to the full development of Frontier's DCA-Denver service and Frontier's continued growth generally as a new entrant carrier.

Other applicants oppose Frontier's application, principally on the grounds that Frontier already received two AIR-21 slot exemptions that it is using to serve the Denver-DCA market.

United Airlines, Inc.

United requests two slot exemptions to operate one nonstop round trip between Los Angeles and DCA with 182-seat Boeing 757 aircraft. United contends that TWA's earlier DCA-Los Angeles service was successful and should be reinstated by United. United contends that its significant connecting complex at Los Angeles will enable it to afford significantly greater public benefits than had been provided by TWA's service. United states that its proposal should be given priority because Los Angeles has the largest population, greatest commercial center, and largest connecting hub of any beyond-perimeter community in the United States.

Other carrier applicants oppose United's request, arguing that it already has a strong presence at Los Angeles and DCA, as well as at other Washington airports. As such, it is a dominant carrier in the Los Angeles-Washington market and it operates substantial connecting service between DCA and Los Angeles via its within-perimeter hub at Chicago.

US Airways, Inc.

US Airways requests two slot exemptions to provide one nonstop round trip between San Francisco and DCA with 182-seat Boeing 757 aircraft. US Airways states that San Francisco is one of the largest markets without nonstop service to DCA. The carrier also points out that its recent code-sharing relationship with United Airlines provides network benefits to all of the destinations that United serves from its hub at San Francisco. US Airways argues that it offers significant network benefits, primarily due to its substantial DCA presence, for San Francisco local and connecting passengers seeking to connect to east coast points.

Other carrier applicants oppose US Airways' request, arguing that it is already the largest slotholder at DCA.

DECISION

We have decided to select Delta Air Lines for nonstop service to Salt Lake City. We conclude that Delta has the application that best meets all of the AIR-21 statutory criteria.

Section 41718(a)(1) directs that any slot exemptions we award must provide “domestic network benefits” beyond the perimeter. Second, under § 41718(a)(2), we are directed to ensure that the slot exemptions awarded will also increase competition by new entrant carriers or in multiple markets. Third, under § 41718(a)(3), we must ensure that an award of exemptions would not reduce travel options for communities served by small hub airports and medium hub airports within the perimeter. Finally, under § 41718(a)(4), the exemptions granted must not result in meaningfully increased travel delays. With regard to the latter two statutory requirements, as discussed below, we find that all applicants meet both.⁴

We affirm our finding in Order 2000-7-1 that the determinative criteria for the allocation of slot exemptions beyond the DCA perimeter are those involving network benefits and competition that is provided by new entrants or in multiple markets. As we also stated in that Order, Congress did not provide any specific guidance as to the relative weight we should assign these two criteria in our decisional process.

As before, applicants stressed their advantages under one or the other of these two criteria, depending upon the strength of their existing presence at DCA. Those with the strongest presence highlighted the scope and size of their respective networks and the competitive benefits that could be brought to multiple markets via those networks (American, Delta, United, and US Airways). Applicants with a more modest DCA presence (Alaska, America West and Frontier) stressed the competitive benefits afforded by their limited incumbency at DCA. These carriers argued that, even though their networks might be smaller, enhancement of their limited presence at DCA would create a stronger competitive impact than an award to any of the larger more established DCA incumbents.

As indicated, under § 41718(b)(3), the Department must also consider the effect of an award of exemptions upon inside-perimeter services. Specifically, we must ensure that an award of exemptions would not reduce travel options for communities served by small hub airports and medium hub airports within the perimeter. In our earlier decision, we concluded that Congress sought to ensure that new services provided through the AIR-21 exemptions would not displace or disrupt existing services at small or medium hubs. No party asserted that the proposed services of the various applicants would produce this result, and we did not conclude that any of the proposed services is likely to cause a reduction in the travel options for the communities currently served by small and medium hubs inside the perimeter.

⁴ Alaska Airlines argued that Delta, among others, could not use the exact times that National was using and that, therefore, it would be required to swap slot-times internally in order to fit the schedule. That, in turn, Alaska argues, means that an inside-the-perimeter community’s service would be denigrated. We do not find that argument compelling; with more than 100 slots at DCA, we find that Delta has sufficient flexibility to fine-tune schedules with slot times so that no community’s service need be materially denigrated.

Consistent with our finding in the initial slot exemption proceeding, none of the services proposed in this case would result in meaningfully increased travel delays. The General Accounting Office, in 1999, found that additional operations at DCA would not cause significant delays. We concluded in Order 2000-7-1 that 24 additional operations at DCA, spread out over the entire slot-controlled period to comply with the statutory limitation of no more than two additional operations per hour, would not “meaningfully” increase travel delays at DCA. We affirm that finding here.

In analyzing the applications in this proceeding, we compared all proposals on a city-by-city and carrier-by-carrier basis. We sought to determine which proposal best met the statutorily mandated selection criteria and, in doing so, would afford the greatest public benefits.

Los Angeles

The three Los Angeles applicants fall into two groups: the established large incumbents, American and United, with significant Los Angeles hubs; and the smaller network carrier, Alaska Airlines, with minimal Los Angeles presence. Both American and United argued the advantages of their respective Los Angeles networks. They further point out that the Los Angeles market is one of the largest in the country. Nonetheless, neither the size nor the significance of the local market is an AIR-21 selection criterion, and accordingly we cannot make a finding that any one city, such as Los Angeles, deserves DCA nonstop service on that basis. In fact, the argument that Washington-Los Angeles is a large local market militates against its selection, as it would reduce any network benefits. That is, the large number of local passengers would tend to preempt seats that would otherwise be available to connecting passengers for beyond-Los Angeles destinations, thereby diminishing the network benefits and service to multiple markets afforded by these proposals.

Furthermore, both American and United are major DCA incumbents and, therefore, do not qualify as either new entrants or limited incumbents at DCA.

The other Los Angeles applicant, Alaska Airlines, while a limited incumbent at DCA, would provide comparatively minor network benefits. Alaska’s only service beyond Los Angeles would be to four U.S. cities -- Anchorage, Seattle, Portland, and San Francisco. Seattle and Anchorage already receive direct DCA service from Alaska Airlines (Seattle nonstop and Anchorage one-stop). Portland would be better served via Seattle than Los Angeles, so any network benefits would be minimal. Its code-share partner, Horizon Air, would provide connections to six destinations.

San Francisco

As with the Los Angeles proposals, the statutory criteria do not allow us to consider the needs for service or the benefits to passengers traveling in the local market. As with Los Angeles, San Francisco is also a very large local market. We are required to consider the

network benefits and increase competition in multiple markets. Thus, every seat taken up by a local San Francisco-DCA passenger deprives a connecting passenger the ability to access DCA on a one-stop basis. Further, US Airways is the largest slotholder at DCA, so it also does not meet the new entrant/limited incumbent criterion.

Las Vegas

While America West is not a new entrant (it operates 10 DCA slots to serve Columbus, Phoenix, and Las Vegas), it is a limited incumbent, as it has fewer than 20 slot and slot exemptions. Moreover, its proposed service would provide domestic network benefits and increase competition in multiple markets because it has a significant hub and spoke system at Las Vegas, serving 19 U.S. cities. However, because America West already offers nonstop DCA-Las Vegas service, the *new* network benefits provided by America West's additional service would be quite limited. While many of the cities that America West now serves beyond Las Vegas would receive a second daily connecting flight to DCA, no additional market would be afforded first-time access to DCA on the America West network as a result its selection in this proceeding. In addition, America West serves only one city from Las Vegas that it does not serve out of Phoenix, its largest hub, and America West currently provides two nonstop round trips a day in the DCA-Phoenix market.

Denver

Frontier clearly qualifies as a limited incumbent airline at DCA, as it currently holds only two DCA slot exemptions for a single daily round trip to Denver. Of the applicants, only Alaska and America West are on a comparable footing as a limited DCA incumbent. Frontier's selection would provide some network benefits and, as a consequence, increase traffic in multiple markets. Frontier has also added cities from its Denver hub since its selection for DCA-Denver slot exemptions in July 2000. Since its initial award, Frontier has also developed a code-share agreement with Mesa Airlines at Denver and has expanded a code-share agreement with Great Lakes Aviation. On the other hand, since Frontier already serves the DCA-Denver market, its selection would not result in any new cities gaining on-line, single-connecting service to DCA. Second, although the aircraft is unspecified, Frontier would likely serve the DCA-Denver route with the same aircraft that it currently operates on the route, B737-300 (136-140 seats), one of the smallest aircraft of any of the applicants.

Salt Lake City

Although Delta is not a new entrant or limited incumbent, because it provides considerable service to DCA from both Atlanta and Cincinnati, it offers both significant network benefits and would increase competition in multiple markets as a consequence of its large connecting network at Salt Lake City. And while some communities that would connect at Salt Lake City can already access DCA via Atlanta or Cincinnati, there are a number of communities, principally north and west of Salt Lake City that would benefit from

improved service, namely one-stop connections over Salt Lake City, as opposed to two-stop connections over Salt Lake City and either Atlanta or Cincinnati. As far as capacity, Delta would use 183-seat B-757, a relatively large aircraft. That large aircraft, coupled with the fact that the DCA-Salt Lake City market is likely the smallest local market of any of the applicants, further enhances Delta's network benefits as it would start with a large inventory of seats and relatively fewer would be taken up by local Salt Lake City-DCA passengers.

CONCLUSION

Based on all of the above, we believe that Delta's service best meets the statutory criteria of proposing service that would provide network benefits and increase competition in multiple markets. Delta and its code-share partners serve a total of 67 communities from its Salt Lake City hub, including several cities that would gain first-time, single-connect service to DCA. This, combined with the use of large aircraft in a smaller local market, will result in more seats for connecting passengers, and gives Delta a decided advantage in the "network benefits" criterion of the statute. As we have discussed, all three Los Angeles proposals suffer from the fact that Los Angeles is a very large local market, and the almost certain preemption of seats by local passengers seriously diminishes any network benefits that these proposals might offer. And while Alaska, unlike American and United, qualifies as a limited incumbent at DCA, the network benefits afforded by its proposed beyond-Los Angeles service would be negligible. San Francisco suffers from the same weakness as the Los Angeles proposals, namely that it is a very large local market susceptible to seat preemption. In addition, US Airways is the largest slot holder at DCA. At Las Vegas, America West does qualify as a limited incumbent, but it already serves the Las Vegas-DCA market, and, on top of that, it serves all of the same cities, except one, to DCA from its larger Phoenix hub. Frontier also qualifies as a limited incumbent, but it also already serves the Denver-DCA market so no additional communities would receive first-time service to DCA as a direct consequence of its selection in this proceeding.

CONDITIONS

Assignment of Slot Times: We are directing Delta Air Lines, Inc. to file in the Docket no later than December 16, 2002, the proposed flight schedules and effective date for inauguration of operations authorized by this order. As we stated in our Notice of October 15, 2001, the slot times currently allocated for National's DCA-Las Vegas service are in the 800 and 2000 hour periods. Since 49 U.S.C. §41718(c)(2) does not allow us to assign more than two slot exemptions per one hour period, and most one hour periods were fully subscribed by the Department's Notice of August 2, 2000, Delta should contact the Slot Administration Office of the Federal Aviation Administration as soon as possible to determine available slot times. The Department will determine the final slot times assigned to Delta in accordance with the provisions of 49 U.S.C. §41718(c)(2). Thereafter, Delta may request the FAA Slot Administration Office to approve exchanges of the assigned slot exemptions times with other slots or slot exemptions for the purpose of conducting the operations authorized by this Order in a different hour. In acting on

such a request, the FAA will employ standard practices in conjunction with applicable statutory and regulatory requirements for the utilization of slot times between and among individual air carriers. Regardless of subsequent approved slot time exchanges, the slot times assigned by the Department or the FAA's Slot Administration Office pursuant to this order will be tagged such that if any of the service granted by this Order is suspended, or is not inaugurated in a timely manner, the Department will withdraw the slot exemptions based on their tagged slot time rather than by any subsequent slot time operated.

ENVIRONMENTAL ISSUES

Although 49 U.S.C. §41718(e) specifically exempts our action here from environmental review⁵, we remain sensitive to the environmental impact of increased operations at DCA. Consistent with the statute, we will require that all operations authorized by this order will be conducted with Stage 3 aircraft. In addition, this award does not represent additional operations at DCA, but, rather, a redistribution of existing service and slot exemptions from National Airlines to Delta Air Lines. DCA also has, and must be given, priority for noise compatibility planning and program grants, 49 U.S.C. §§ 47117(e), and 41718(e)(3).

ADMINISTRATIVE TERMS

As the FAA slot regulation makes clear "slot(s) do not represent a property right but represent an operating privilege subject to absolute FAA control (and) slots may be withdrawn at any time to fulfill the Department's operating needs..." 14 C.F.R. 93.223(a). Under the provisions of 49 U.S.C. §41714(j), these carriers may not sell, trade, transfer, or convey the operating authorities granted by the subject exemptions unless otherwise authorized herein.

Further, granting of these exemptions in no way is to be construed as allowing a carrier to operate services that it could not otherwise operate, *i.e.*, Delta must still meet all the requirements of the Department of Transportation, the Federal Aviation Administration, and all other statutes and regulations governing air transportation.

This order is issued under authority delegated in 49 C.F.R. 1.56(a).

ACCORDINGLY,

1. The Department grants two slot exemptions from 14 C.F.R. Part 93, Subparts K and S, to Delta Air Lines, Inc., to enable Delta Air Lines to provide one nonstop round trip a day in the Salt Lake City-DCA market as described in this order;

⁵ §41718(e) states, "Neither the request for, nor the granting of an exemption, under this section shall be considered for purposes of any Federal law a major Federal action significantly affecting the quality of the human environment."

2. The Department directs Delta Air Lines, Inc., to file in the Docket no later than December 16, 2002, the proposed flight schedules and effective date for operations authorized by this Order, and Delta Air Lines must commence its proposed service no later than January 31, 2003. The slot exemptions granted must be conducted with Stage 3 aircraft, may not be used for operations between the hours of 10:00 p.m. and 7:00 a.m., and may not increase the number of operations at Ronald Reagan Washington National Airport in any one-hour period during the hours between 7:00 a.m. and 9:59 p.m. by more than two operations. Delta Air Lines is advised to consider maximum flexibility in proposed operating times to ensure compliance with these limits;

3. The Department will make the final determination of slot times as soon as possible after schedules are filed to enable the carrier to conduct the operations authorized by this Order. The Department directs Delta Air Lines, Inc. to contact the Federal Aviation Administration Slot Administration Office for the determination of available slot times. The FAA will assign slot exemption numbers, effective dates, and operating times consistent with statutory limitations;

4. Except as otherwise granted, we deny all other applications for exemptions from 14 C.F.R. Part 93, Subparts K and S, filed in these dockets;

5. The authorities granted under these exemptions are subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use-or-lose requirements; and,

6. We will serve this order on all parties in Docket OST-2000-7181 and the Federal Aviation Administration Slot Administration Office.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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