

Posted: 1/22/03

2:15 p.m.

Order 2003-1-16

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

Issued by the Department of Transportation  
on the **22nd day of January, 2003**

**Applications of**

**CORPORATE AIRLINES, INC.  
OZARK AIRLINES, INC.  
d/b/a GREAT PLAINS AIRLINES  
AMERICAN TRANS AIR, INC.  
MIDWEST EXPRESS AIRLINES, INC.  
AIRTRAN AIRWAYS, INC.  
US AIRWAYS, INC.**

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

**Served: January 22, 2003**

**Docket OST-2000-7182**

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

**SUMMARY**

By this order, the Department grants the following requests for slot exemptions at Ronald Reagan Washington National Airport (hereafter "DCA") to be operated with Stage 3 aircraft: (1) Corporate Airlines, Inc., two slot exemptions to provide nonstop service to Wilmington, Fayetteville, or Jacksonville, North Carolina; and (2) AirTran Airways, Inc., four slot exemptions to provide nonstop service to Fort Lauderdale, Fort Myers, or West Palm Beach, Florida.

**BACKGROUND**

On April 5, 2000, the President signed into law the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR-21). Among other things, AIR-21 liberalized slot and slot exemption access at the four airports then subject to the provisions of the High Density Rule, 14 C.F.R. 93 Subparts K and S. Specifically, 49 U.S.C. § 41718(b),

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 within the 1,250-mile perimeter established for air transportation at DCA under 49 U.S.C. § 49109. Further, at least four of the slot exemptions must be used to serve a small hub or nonhub airport.

Section 41718(b) directs the Secretary to distribute the 12 inside-perimeter slot exemptions in a manner that promotes air transportation: (1) by new entrant air carriers and limited incumbent air carriers;<sup>1</sup> (2) to communities without existing nonstop air transportation to DCA; (3) to small communities; (4) that will provide competitive nonstop air transportation on a monopoly nonstop route to DCA; *or* (5) that will produce the maximum competitive benefits, including low fares.<sup>2</sup>

On July 5, 2000, pursuant to the provisions of AIR-21, the Department granted a total of 12 slot exemptions at DCA for services inside the 1,250-mile perimeter to the following carriers: American Trans Air (four), Midwest Express Airlines (two), Spirit Airlines (four), and Midway Airlines (two). (Order 2000-7-2).

Six of these slot exemptions have subsequently become available for reallocation. By Order 2002-10-33, issued October 25, 2002, the Department withdrew the two DCA slot exemptions granted to Midway,<sup>3</sup> after finding that the terms of the Regional Jet Service Agreement between Midway and US Airways would transfer effective control of those two DCA slot exemptions to US Airways, an action prohibited by 49 U.S.C. 41714(j).

The slot exemptions awarded to Spirit Airlines<sup>4</sup> became available due to Spirit's failure to reinstate service to its authorized points, which it had suspended following the terrorist attacks of September 11.<sup>5</sup>

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<sup>1</sup> 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.

<sup>2</sup> 49 U.S.C. § 41714(h). In addition, under 49 U.S.C. § 41714(k) "...an air carrier that operates under the same designator code, or has or enters into a code-share agreement, with any other air carrier shall not qualify for a new slot or slot exemption as a new entrant or limited incumbent air carrier at an airport if the total number of slots and slot exemptions held by the 2 carriers at the airport exceed 20 slots and slot exemptions."

<sup>3</sup> Midway was granted two DCA slot exemptions to provide nonstop service to Raleigh/Durham International Airport, North Carolina.

<sup>4</sup> Spirit was granted two slot exemptions to serve either Melbourne, Florida, or Myrtle Beach, South Carolina, and two slot exemptions to serve any of the airports in Florida or South Carolina that Spirit had proposed which included Fort Lauderdale/Hollywood International Airport; Southwest Florida International Airport in Fort Myers; Melbourne Regional Airport; Palm Beach International Airport in West Palm Beach; and Myrtle Beach International Airport.

<sup>5</sup> Federal Aviation Administration (FAA) regulations provide that 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

As a result of these developments, by Notice issued December 3, 2002, the Department invited proposals from eligible carriers for reallocation of six available slot exemptions to provide nonstop service to DCA from airports within the 1,250-mile perimeter. The Notice specified that applications were to be submitted by December 20, with comments due by January 6, 2003. Further, the Notice stated that at least two of the slot exemptions must be used to serve a small hub or nonhub in order to satisfy the statutory requirement that at least four of the 12 available slot exemptions be used for small-hub or nonhub service.<sup>6</sup> The Department also noted that, due to the restrictions of AIR-21, it might not be possible to accommodate the slot times requested by applicants.<sup>7</sup>

### **APPLICATIONS/RESPONSIVE PLEADINGS**

Applications were filed by Corporate Airlines, Inc.; Ozark Airlines d/b/a Great Plains Airlines; American Trans Air, Inc.; Midwest Express Airlines, Inc.; US Airways, Inc.; and AirTran Airways, Inc. Replies/comments were filed by all of the applicants, except Corporate Airlines.<sup>8</sup> In addition, the City of Kansas City, Missouri, filed formal comments in support of Midwest Express' application.

#### **Corporate Airlines, Inc.**

Corporate requests slot exemptions to operate two daily round trips each between DCA and Wilmington, Fayetteville, and Jacksonville, North Carolina, with 19-seat British Aerospace Jetstream turboprop aircraft.<sup>9</sup> Corporate states that, prior to September 11, it had been operating regional code-share services from Raleigh/Durham with its partner Midway, but Midway's inability to resume operations after September 11 also forced Corporate to suspend operations in the region. Since that time, Corporate states that it has been seeking opportunities to resume operations in the Southeast region and that it has the aircraft to do so. Corporate argues that grant of its request would significantly improve the viability of its other anticipated regional services. It further claims that its

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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 losing their 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. However, Spirit never reinstated the DCA service at issue here, making them available for reallocation.

<sup>6</sup> Only two of the required four slot exemptions for small/nonhub service are currently being operated -- by Midwest Express to serve DCA-Des Moines.

<sup>7</sup> Midway's allocated slot times for its nonstop DCA-Raleigh/Durham service were in the 1800 and 1900 hour periods. Spirit's allocated slot times for its DCA service were in the 0900, 1000, 1400, and 1500 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 dated August 2, 2000, the Department may not be able to accommodate carrier requests for alternative slot exemption times.

<sup>8</sup> US Airways, Great Plains and Midwest Express filed additional responsive pleadings after the required due date. These pleadings were accompanied by motions for leave to file otherwise unauthorized documents. In the interests of a complete record, we will grant the motions.

<sup>9</sup> Although the text of Corporate's application seeks six slot exemptions, its proposed schedule calls for two round trips a day for each of the three cities, which would require 12 slot exemptions.

proposal meets the AIR-21 statutory requirements since Corporate would be a new entrant carrier at DCA, its proposed services would serve nonhub communities not currently receiving nonstop DCA service, and it would offer competitive or lower fares than current fares offered for less convenient services.

Respondents to the Corporate request contend that Corporate's proposal would provide only minimal public benefits since Corporate has the smallest aircraft of any proposal, would serve the smallest of the proposed DCA markets, and involves no code-share link to larger carriers. They further argue that, due to the small scale of Corporate's services, its proposed operations would be unlikely to have any impact on competition or fares, as alleged by Corporate. In addition, respondents maintain that the selection of Corporate would not make the best use of the available slots since North Carolina already has three airports (Raleigh/Durham, Charlotte, and Greensboro) with abundant air service to Washington area airports, while other regions do not. The respondents also contend that Corporate is in financial difficulty and that, since its North Carolina flight and ground crews are on furlough, the carrier's ability to inaugurate operations in a timely fashion is questionable. Finally, the respondents allege that Corporate's application is procedurally defective since the carrier has requested 6 slot exemptions but has submitted a schedule requiring 12 slot exemptions, indicating a fundamental misunderstanding of the authority at issue in this case.

#### **Ozark Airlines, Inc. d/b/a Great Plains Airlines**

Ozark Airlines, Inc. d/b/a Great Plains Airlines (Great Plains) requests all six slot exemptions to operate two daily round trips between Tulsa, Oklahoma, and DCA, and one daily round trip between Oklahoma City, Oklahoma, and DCA using 32-seat Fairchild Dornier 328 jet aircraft. At least one of the three proposed round trips would also provide single-plane service to Austin, Texas. Great Plains asserts that it is a new entrant carrier at DCA that does not hold and has never sold or given up a DCA slot; that Oklahoma City and Tulsa are small communities within the meaning of 49 U.S.C. § 41762;<sup>10</sup> and that it proposes to operate its service on routes not now served by any major airline. Great Plains also states that its proposed schedule is consistent with the times allocated to Midway and Spirit.

Respondents contend that Great Plains would provide only limited benefits because of its small aircraft (32 seats) and the fact that it is not a low-fare carrier. They further argue that, with only two owned aircraft, Great Plains would have difficulty operating its current route system plus its proposed DCA services; that the Fairchild Dornier 328 aircraft does not have the operational capability to serve DCA-Oklahoma City or DCA-Tulsa nonstop; and that Great Plains would offer only limited connecting benefits at Oklahoma City and Tulsa. They further argue that Oklahoma City and Tulsa are medium

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<sup>10</sup> In its later filing, Great Plains acknowledges that it inadvertently misstated Oklahoma City's and Tulsa's hub classifications for AIR-21 purposes, but argues that more recent FAA data has reclassified Tulsa as a small hub and Oklahoma City as the smallest medium hub. Great Plains argues that only a narrow interpretation of 49 U.S.C. § 41714(h)(7) would make Great Plains ineligible to receive all six available slot exemptions and that such a result would not be consistent with the intent of AIR-21.

hubs under AIR-21 criteria,<sup>11</sup> and that, since the Department's December 3 Notice stated that at least two of the six available slot exemptions must be used for service to a small hub or nonhub, the Department cannot grant all six slot exemptions to Great Plains. They further state that Great Plains has announced that it will serve the Oklahoma-Washington markets regardless of the outcome of this proceeding.

#### **American Trans Air, Inc.**

American Trans Air requests two slot exemptions to provide one daily round trip between DCA and Chicago's Midway Airport using B-737-800 aircraft (175 seats) to expand its current service in the market to three daily round trips.<sup>12</sup> In support of its request, American Trans Air argues that it would provide service using the largest aircraft of any of the applicants; that it would offer service in a dense market; and that it has a proven record of lower fares, with claimed passenger fare savings of \$17 million and fares 50 percent lower than competitors. American Trans Air asserts that it is a limited incumbent at DCA, and seeks only two slot exemptions to supplement its successful DCA-Midway service. Lastly, American Trans Air contends that its developed hub at Midway provides connecting benefits to 22 additional communities, an advantage other applicants would not provide.

Respondents argue that American Trans Air's proposal would merely supplement existing service, rather than add service to new communities. They also assert that the Washington-Chicago market is already well served, including service by two low-fare carriers, Southwest and American Trans Air. Thus, they contend, an additional DCA-Midway flight would not significantly add new discipline to the market. Respondents further assert that American Trans Air already has received 4 of the 12 available AIR-21 DCA inside-perimeter slot exemptions, and that other carriers, other markets and services should be given an opportunity as well. Finally, they argue that American Trans Air's proposal would provide no service to a community without existing DCA service, no service to a monopoly DCA route, and no service to a small community, three of the statute's selection criteria.

#### **Midwest Express Airlines, Inc.**

Midwest Express requests two slot exemptions to provide one daily round trip to Kansas City, Missouri, using DC9 or MD 80 aircraft, expanding its current two daily round trip DCA-Kansas City service with a mid-day round-trip, thereby strengthening its Kansas City presence and connecting services. Midwest Express does not specify the aircraft type that it would use. Therefore, it could use aircraft configured in any of the four types in its fleet having between 60 and 116 seats. Midwest Express argues that nonstop DCA-Kansas City nonstop service has been declining in recent years and that its proposed service would address and reverse this trend and would enable it to enhance its efforts to

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<sup>11</sup> 49 U.S.C. § 41714(h)(7), (8) and (9) require that hub classifications be based on the Federal Aviation Administration's Primary Airport Enplanement Activity Summary for Calendar Year 1997.

<sup>12</sup> American Trans Air was awarded slot exemptions for its current DCA-Chicago service by Order 2000-7-2.

reduce airfares in the Kansas City market. Midwest Express states that it is a limited incumbent under 49 U.S.C § 41714(h)(5).

Respondents contend that Midwest Express' proposal does not offer service to a new market, but simply adds an additional flight to an existing market. They further maintain that the Washington-Kansas City market is already well served, including low-fare service from Southwest at Baltimore/Washington International Airport. They argue that Midwest Express is not a low-fare carrier and that it would operate a relatively small aircraft type, as compared to some of the other applicants. Respondents further argue that Midwest Express' proposal would provide no service to a community without existing DCA service, no service to a monopoly DCA route, and no service to small community.

In its later filing, Midwest Express argues that American Trans Air has erroneously and unfairly argued that Midwest Express has used its DCA slot and slot exemption authority inefficiently. Midwest contends that its service pattern of DCA service to five smaller Midwest cities provides at least as many public benefits as the single large city-pair market served by American Trans Air. Midwest Express asserts that it provides the only nonstop service in each DCA market it serves; that it offers a competitive and valuable price/quality option for passengers; and that its proposed services provide just as many public benefits as other proposals purporting to offer low-fare service in high-density markets.

#### **US Airways, Inc.**

US Airways requests all six slot exemptions to operate one daily round trip each between DCA and Mobile, Alabama; Pensacola, Florida; and Savannah, Georgia, with 50-seat regional jet aircraft. US Airways argues that it has developed an extensive DCA network that provides key services to numerous smaller communities, such as proposed here, and that, despite its recent financial difficulties, it remains committed to serving smaller communities and the Washington, DC area. It further asserts that its proposed service would provide Mobile and Pensacola with their only nonstop service to the Washington area and Savannah with a competitive option to United's current Dulles-Savannah service. Given these benefits and the Department's precedent in the recent beyond-perimeter slot case, US Airways argues that its large DCA slot holdings should not disqualify it for an award in this case.<sup>13</sup>

Respondents argue that US Airways is neither a new entrant nor a limited incumbent under AIR-21, and that since US Airways holds and operates the largest number of DCA slots of any carrier, granting its request would be contrary to the intent of AIR-21 to enhance competition and improve slot access for new entrants/limited incumbents at DCA. Because of US Airways' large slot holdings, they assert that US Airways could operate its proposed service without AIR-21 slot exemptions. In this regard, the respondents contend that since August 2001, US Airways has eliminated nonstop service to several cities, many of which are larger than the communities it now seeks to serve.

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<sup>13</sup> US Airways specifically cites Order 2002-11-20 in which the Department awarded beyond-perimeter slot exemptions to Delta Air Lines, the second largest slot holder at DCA.

Respondents further allege that the US Airways/United code-share arrangement joins the largest DCA carrier with the largest Dulles Airport carrier and allows those two carriers to have the largest share of the total DC market, and that this market power should not be reinforced with an award here to US Airways. In addition, respondents argue that US Airways has been holding more slots than it has been operating and, therefore, that US Airways' application merely seeks to preempt new entry. In terms of public benefits, respondents argue that US Airways' claimed connecting benefits at DCA to other Northeast points can be obtained at US Airways' other hubs, such as Charlotte, Pittsburgh, and Philadelphia, for its proposed Mobile, Pensacola, and Savannah services; and that Mobile and Pensacola are smaller and/or less isolated than other city choices in this case, *e.g.* the Oklahoma points and Kansas City. They further argue that Mobile and Pensacola are less than one hour's drive from one another, and, therefore, both communities do not require DCA service; that Savannah has ample service to the DC area with multiple nonstop flights from United Express to Dulles Airport and, thus, that US Airways is unlikely to compete vigorously with its code-share partner in this market. Finally, respondents argue that US Airways' relatively small aircraft (50 seats) provide fewer benefits than the aircraft proposed by other carriers, and that US Airways' proposal offers no low-fare service benefits.

**AirTran Airways, Inc.**

AirTran requests all six slot exemptions to operate two nonstop round trips between Fort Lauderdale, Florida and DCA and either one nonstop round trip between Fort Myers or West Palm Beach, Florida, and DCA with 117-seat Boeing 717 aircraft. AirTran argues that it would augment its proposed services with other DCA services outside the slot-restricted hours. AirTran argues that it is a new entrant at DCA, and that, through alliances and other marketing arrangements, the larger air carriers have been increasing their control over the slot-controlled airports, especially DCA. AirTran contends that it has a demonstrated record of low-fare service and that it will bring effective low-fare competition to DCA. AirTran also argues that the number of DCA peak-time mainline jet operations has declined significantly since January 2000 due to the substitution of regional jet operations for mainline jet service, resulting in less efficient operations generally at DCA and diminished competition. AirTran contends that its B-717 aircraft is the most environmentally "friendly" mainline jet in operation and, therefore, its selection would provide significant benefits to communities near DCA.

Respondents argue that AirTran's failure to specify which market (Fort Myers or West Palm Beach) would receive service makes it difficult, if not impossible, to evaluate the merits of its proposal. Respondents further contend that the Department cannot grant all six available slot exemptions to AirTran since Fort Lauderdale, Fort Myers, and West Palm Beach are all medium hubs for purposes of AIR-21. They also argue that AirTran's proposal offers limited public benefits since it would provide no service to small communities and all three of its proposed markets are in southern Florida, limiting the benefits of AirTran's service to that region. The respondents further assert that all of the south Florida communities already have substantial service to the Washington metropolitan area, and that the services of Southwest and JetBlue, at BWI and

Washington Dulles (IAD), respectively, provide effective discipline for the DCA-South Florida markets. They also assert that, based on the March 2003 *Official Airline Guide*, all three markets will soon receive nonstop DCA service, with Delta and US Airways serving Fort Lauderdale and West Palm Beach and US Airways providing service to Fort Myers. Given Spirit's decision not to resume its authorized DCA-Fort Lauderdale service, the respondents argue that the Department should now consider other communities for DCA service, rather than reauthorizing service to Fort Lauderdale. Moreover, they argue that since AirTran already serves the BWI-Fort Lauderdale and IAD-Fort Lauderdale markets, it will have little incentive to develop its DCA services because the BWI and IAD services would suffer as a result. Finally, respondents argue that, in terms of the statutory selection criteria, AirTran would provide no service to communities without existing nonstop service, nor any competitive service to a monopoly carrier, except at Fort Myers, limiting the benefits of the carrier's proposal.

### **Kansas City**

In support of the Midwest Express application, the City of Kansas City, Missouri, argues that in the wake of the events of September 11, it has experienced a drop in nonstop DCA service from six daily flights to the current level of only two daily flights. Kansas City contends that this service loss has resulted in a loss of traffic from over 200,000 O&D annual passengers to approximately 120,000 O&D annual passengers. Kansas City asserts that despite these traffic losses, of all of the proposed DCA markets in this case, only Fort Lauderdale is larger, but Fort Lauderdale already receives abundant nonstop DCA service. Kansas City argues that it has a demonstrated record of supporting higher levels of nonstop service and that grant of the Midwest Express application would result in Kansas City receiving a minimally acceptable level of three daily nonstop flights in the DCA-Kansas City market. Finally, Kansas City contends that grant of the Midwest Express proposal would allow smaller, midwestern communities served by Midwest Express at Kansas City to receive a new online-connecting flight to DCA.

### **DECISION**

We have decided to award Corporate two DCA slot exemptions to provide nonstop service to any of the communities to which it has proposed service, including Wilmington, Fayetteville or Jacksonville, North Carolina. We have also decided to award AirTran Airways four slot exemptions to serve Fort Lauderdale, Fort Myers, or West Palm Beach, Florida. We conclude that these two proposals best meet the statutory criteria for the award of AIR-21 slot exemptions at DCA.

Section 41718(b) directs the Secretary to distribute the 12 inside-perimeter slot exemptions in a manner that promotes air transportation: (1) by new entrant air carriers and limited incumbent air carriers; (2) to communities without existing nonstop air transportation to DCA; (3) to small communities; (4) that will provide competitive nonstop air transportation on a monopoly nonstop route to DCA; or (5) that will produce the maximum competitive benefits, including low fares. A new entrant air carrier or limited incumbent air carrier 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 DCA.

As specified in our Notice issued December 3, AIR-21 requires that at least two of the six DCA slot exemptions created by that legislation be awarded for service to a small hub or nonhub airport.<sup>14</sup> Only two of the applicants in this proceeding, Corporate and US Airways, have submitted proposals to serve small hub or nonhub airports. Thus, at least two of the available slot exemptions must be granted to Corporate or US Airways. Moreover, despite the fact that a number of carriers have sought the full six frequencies that are to be reallocated in this case, only Corporate and US Airways can be considered for all six frequencies because they are the only applicants that propose service to small hub and nonhub cities.

With these considerations in mind, we have decided to grant two slot exemptions to Corporate for its proposed North Carolina services. Corporate, like US Airways, would provide service to communities without existing nonstop service to DCA, and both would serve small communities. However, a primary objective of AIR-21 in creating these slot exemptions is to facilitate new entry at DCA. Corporate is a totally new entrant to DCA, while US Airways is the largest holder of slots at that airport. To the extent that US Airways desires to serve any of the communities that it has proposed in this proceeding, or, for that matter, any community within the DCA flight perimeter, it already has greater flexibility to adjust its schedules than does any other applicant in this case or any other airline serving DCA. While clearly Corporate's proposal suffers from some limitations,<sup>15</sup> we conclude that Corporate's proposal better meets the statutory requirements for award of the small hub/nonhub slot exemptions in this case than its sole competitor.<sup>16</sup>

We will award the four remaining DCA slot exemptions to AirTran Airways to serve its proposed Florida markets. Of all the applicants, only AirTran would afford the dual public benefits of new entry at DCA and low-fare service. It is clear from the provisions of the statute that important objectives in making slot exemption awards are the promotion of new entry and competition for DCA services. AirTran does not now serve DCA, and, thus, would be a true new entrant. Moreover, and significantly, AirTran has

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<sup>14</sup> Hub definitions are provided under 49 U.S.C. § 41714(h)(7), (8) and (9). The statute specifies that these definitions be based on the Federal Aviation Administration's Primary Airport Enplanement Activity Summary for Calendar Year 1997.

<sup>15</sup> We are not persuaded by arguments that Corporate will be unable to inaugurate its services as proposed. There is nothing in the record to support that conclusion or to demonstrate that Corporate would not implement its service as planned. In any event, our award here is subject to the condition that Corporate implement its service within 90 days of issuance of this order.

<sup>16</sup> We are not persuaded by US Airways' argument that the Department's decision in Order 2002-11-20, awarding Delta Air Lines slot exemptions for DCA-Salt Lake City service, is determinative here. The cases are not apposite. Delta was selected for a slot-exemption award for outside-perimeter service. The selection criteria for those exemptions are different from those applicable to inside-perimeter criteria. In addition, Delta would not have been able to serve Salt Lake City without the grant of two outside-perimeter slot exemptions, regardless of the size of its slot holdings, because of the perimeter rule. Moreover, while the selection criteria for both inside- and outside-perimeter slot exemptions promote services by new entrants, in the outside-perimeter case, unlike here, there were no true new entrant applicants for the available exemption authority.

an extensive history of providing low-fare service in the markets that it enters. While limited to only four operations a day (two round trips), AirTran's fare structure can be expected to have an immediate competitive impact on service in those markets where it inaugurates service. In addition, the Florida markets tend to be highly discretionary, as they are largely composed of vacation rather than business travelers. Because these "sun markets" are so price sensitive, we would also expect that AirTran's service would discipline the fares in other Florida markets served from DCA that compete for discretionary travelers.

American Trans Air is a limited incumbent with only a modest presence at DCA. It also has provided a low-fare alternative in the DCA-Midway market that has apparently been well received, and it proposes service with the largest aircraft of any of the applicants. The Department, moreover, recognized the benefits to be afforded by American Trans Air's service in this market when it initially awarded the carrier four slot exemptions in the initial allocation proceeding. However, grant of the American Trans Air application here would concentrate fully half of the 12 total available slot exemptions with one carrier to serve one market. The limited number of slot exemptions available at DCA, taken together with the opportunity to increase the number of competitors at that airport as well as the number of nonstop markets served, argues strongly for the selection of a new competitor at DCA, particularly where that airline has proposed to offer nonstop service to a new destination.

Although still qualified as a limited incumbent at DCA, Midwest Express, along with its commuter affiliate, Skyway Airlines, holds 19 slots and slot exemptions and has a considerably larger presence at DCA than either American Trans Air or AirTran. Moreover, as would also be the case with American Trans Air, selection of Midwest Express would add neither new DCA markets nor a new DCA competitor. In addition, Midwest Express' DC9 and MD80 aircraft are smaller than AirTran's B717, thus limiting the benefits of a Midwest Express selection.

Great Plains' 32-seat regional jets are significantly smaller than the full-size jets of Midwest Express, AirTran or American Trans Air. In addition, Great Plains is not considered to be a low-fare carrier, nor has it alleged that it is, whereas AirTran and American Trans Air are well-established providers of low-fare service. Finally, other applicants have suggested that Great Plains' aircraft might not be able to carry a full passenger load over such a long stagelength. While Great Plains filed a late document in response to other comments, it did not attempt to rebut that argument in that filing. Moreover, publicly available information appears to support such a contention.<sup>17</sup> For these reasons, we do not believe that an award to Great Plains best satisfies the statutory selection criteria, particularly in comparison to the proposal submitted by Air Tran.

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<sup>17</sup> See January 6 comments of US Airways at 10, fn. 10, citing data from Aero Site. According to Aero Site, the range of Great Plains' Dornier 328 jets is 1,036 miles. The nonstop distances from Tulsa and Oklahoma City to DCA are 1,050 and 1,158, miles, respectively. See also consolidated comments of Midwest Express at 14-15.

As was noted, although both US Airways and Corporate were exclusively considered for the small hub/nonhub mandatory slot award, they have both requested six slot exemptions and, therefore, remain eligible for consideration for the remaining allocations. However, our reasons for not selecting US Airways earlier in this order remain fully applicable. Grant of the US Airways' application would add no new competitors at DCA, but rather award additional operations to the single largest slotholder at DCA. In addition, US Airways does not have a history of offering low fares. Three of the other applicants -- Midwest Express, American Trans Air and AirTran -- are new entrants, would use larger aircraft, and two of them have established records as low-fare carriers.

Finally, we are not persuaded to increase our allotment to Corporate beyond the two exemptions for small hub/nonhub service. Clearly, Air Tran's large jet, low-fare service more fully satisfies the statutory objectives of enhancing both new entry and low-fare competition at DCA, and represents the better alternative for the award of these remaining limited exemptions.

### **CONDITIONS**

Start-up: Consistent with Federal Aviation Administration policies regarding start-up of service after slot lotteries, we will require that Corporate and AirTran inaugurate full service within 90 days of the service date of this order. In that regard, we have awarded each carrier less than the full complement of slot exemptions it requested. If, for any reason, either carrier is not able to use the slot exemptions awarded, we request that it so notify the Department as soon as possible so that we could reallocate them.

Assignment of Slot Times: We are directing Corporate Airlines, Inc. and AirTran Airways, Inc. to file in the Docket no later than January 31, 2003, their proposed flight schedules and effective dates for inauguration of operations authorized by this order. As we stated in our Notice of December 3, 2002, the slot times currently allocated for Midway and Spirit's AIR-21 slot exemption services are in the 0900, 1000, 1400, 1500, 1800, and 1900 hour periods. Additional available times include the 1100, 1200 and 1300 hours. 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, Corporate and AirTran should contact the Slot Administration Office of the Federal Aviation Administration as soon as possible to confirm available slot times. Thereafter, Corporate and AirTran 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 review,<sup>18</sup> we remain sensitive to the environmental impact of increased operations at DCA. Consistent with 49 U.S.C. § 41718(c)(1), we will require that all operations authorized by this order be conducted with Stage 3 aircraft. In addition, these awards do not represent additional operations at DCA, but, rather, a redistribution of existing service and slot exemptions from Midway Airlines and Spirit Airlines to Corporate Airlines and AirTran Airways. 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.*, Corporate and AirTran 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 slot exemptions from 14 C.F.R. Part 93, Subparts K and S, to Corporate Airlines, Inc., (two slot exemptions to serve Wilmington, Fayetteville, or Jacksonville, North Carolina) and AirTran Airways, Inc., (four slot exemptions to serve Fort Lauderdale, Fort Myers and/or West Palm Beach, Florida) to enable these applicants to conduct operations described in this order at Ronald Reagan Washington National Airport;

2. The Department directs Corporate Airlines, Inc., and AirTran Airways, Inc. to file in Docket OST 2000-7182 no later than January 31, 2003, the proposed flight schedules and effective date for operations authorized by this Order. Further, Corporate Airlines, Inc., and AirTran Airways, Inc. must commence their proposed service no later than 90 days

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<sup>18</sup> § 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.”

after the service date of this Order. 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. These carriers are advised to exercise 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 Corporate Airlines, Inc. and AirTran Airways to contact the Federal Aviation Administration Slot Administration Office after the Department's determination of slot times. The FAA will assign slot exemption numbers, effective dates, and operating times consistent with statutory limitations;

4. We grant all motions to file otherwise unauthorized documents;

5. 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;

6. 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

7. We will serve this order on all parties in Docket OST-2000-7182 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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