



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

Issued by the Department of Transportation  
on 13<sup>th</sup> day of August, 2004

**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: August 18, 2004**

**Docket OST-2000-7182**

**ORDER**

**SUMMARY**

By this order, the Department denies the request of AirTran Airways, Inc., to amend Department Order 2003-1-16 to permit AirTran to temporarily suspend its services authorized by that order at Ronald Reagan Washington National Airport (DCA) while maintaining its slot exemptions.

**BACKGROUND**

Under the provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR-21) on January 22, 2003, the Department issued Order 2003-1-16 that, among other things, awarded four DCA slot exemptions to AirTran for new services to Fort Lauderdale, Fort Myers, and/or West Palm Beach.<sup>1</sup> The order required that AirTran institute its new DCA services within 90 days of the January 22, 2003, service date of the order, or by April 23, 2003.

---

<sup>1</sup> Applications for six available DCA slot exemptions 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.

By letter dated February 13, 2003, AirTran requested that it be allowed to postpone the required date of DCA service inauguration from April 23, the date required by the Department's order, to May 6. By Order 2003-4-13, issued April 16, 2003, the Department granted AirTran's request, but on April 23 the Federal Aviation Administration (FAA) temporarily waived the use-or-lose requirements for slot and slot exemption operations at the high-density airports. In order to harmonize its policies with this FAA action, by Order 2003-6-14, the Department also applied the waiver to Order 2003-4-13 for all slot exemptions at DCA, including AirTran's. The Department also required that AirTran commence its operations authorized by Order 2003-1-16 after reinstatement of the FAA's use-or-lose requirements.

By Order 2003-7-5, issued July 2, 2003, the Department accepted the offer of US Airways to temporarily operate services authorized by Order 2003-1-16 for AirTran through October 25, 2003, or until AirTran inaugurated service, whichever came first.

On August 20, 2003, AirTran filed notice that it would commence its authorized services on October 23, 2003.<sup>2</sup>

By Order 2004-4-2, issued April 1, 2004, AirTran was awarded two additional slot exemptions for additional services between Atlanta and DCA.

#### **APPLICATIONS/MOTION/RESPONSIVE PLEADINGS**

On June 4, 2004, AirTran filed a motion to temporarily suspend one round trip at Ronald Reagan Washington National Airport. Specifically, AirTran requested that the Department allow AirTran to temporarily suspend the one round trip per day service it now operates between DCA and West Palm Beach (authorized by Order 2003-1-16) from July 15, 2004, to November 4, 2004.

AirTran argues that since its inauguration of service at West Palm Beach, a number of factors have combined to influence its system operations. These include increased fuel costs, AirTran's decision to phase out its Jet Connect operations, and the award of additional DCA slots to AirTran for which it had applied. AirTran contends that it has brought important benefits to the Fort Myers, West Palm Beach, and Fort Lauderdale markets, but that increased competition and rising fuel costs combined with reduced summer demand mandate that the carrier temporarily suspend service to one of its DCA-Florida markets. AirTran asserts that, unlike the larger carriers, its limited DCA slot holdings provide little or no operational flexibility to meet changing market and operating conditions. AirTran states that since AIR-21 slot exemptions cannot be traded even for a short period, the carrier has only two options: (1) to return the slot exemptions, or (2) to continue to operate the slot exemptions at a loss. AirTran argues that either to resume or add service to one of its other Florida markets could not be done before November 14, because it would have to adjust crews and facilities, market the service, and coordinate activities with the community. However, AirTran argues that it needs to temporarily

---

<sup>2</sup> The slot exemption times used by AirTran for DCA/PBI service are at 1400 and 1500.

suspend service without losing the slot exemptions during this hiatus. Finally, AirTran argues that by Order 99-11-4, issued November 4, 1999, the Department granted similar relief to Midwest Airlines when that carrier requested two slot retimings or "slot slides" well in advance of the date of implementation. AirTran argues that in granting AirTran additional time to inaugurate its DCA services, by Order 2003-4-13 the Department recognized the operational difficulties DCA new entrant carriers face. AirTran also argues that the Department has consistently acknowledged the importance of low-cost new entrant service to DCA and that grant of its request is consistent with that policy. In contrast, AirTran argues that if it is forced to return its slot exemptions, the exemptions would most likely be reallocated to a large carrier, a result not consistent with Department policy goals.

Delta Air Lines, US Airways, and the Metropolitan Washington Airports Authority (MWAA) filed answers opposing AirTran's request. Delta and US Airways argue that AirTran has effectively sought a waiver of the FAA's use-or-lose rule during Florida's summer season and that grant of AirTran's request for only seasonal operation of its DCA slot exemptions does not comply with the terms of the award of DCA slot exemptions to AirTran and is not in the public interest. Delta and US Airways argue that AirTran's request does not meet the conditions under which the FAA grants waivers from the use-or-lose requirements. Delta and US Airways argue that the rise in fuel prices have affected the entire airline industry, not just AirTran. In addition, they contend that the other factors cited by AirTran, downsizing its Jet Connect service and the use of new slot awards, are factors within AirTran's control. Thus, Delta and US Airways assert that none of factors cited by AirTran are either highly unusual or unpredictable. Delta and US Airways argue that AirTran should have made its request for waiver of the use-or-lose requirements to the FAA rather than the Department, and that the Department must use the FAA's decisional standards to reach its decision. Delta and US Airways assert that AirTran does not have a good history of using DCA slots. Delta and US Airways also argue that AirTran obtained the DCA slot exemptions now used in its Florida service based on the inability of Spirit Airlines to comply with the FAA's use-or-lose requirements. Both US Airways and Delta assert that AirTran should now to be held to the same standard as all other carriers operating at DCA.

US Airways argues that the Department should deny the AirTran request, withdraw the slot exemptions, and award the West Palm Beach slot exemptions to US Airways. US Airways states that it is prepared to commence service to West Palm Beach within four to six weeks of an award by the Department. Delta opposes US Airways' proposal and argues that if the two slot exemptions are withdrawn, they should be reallocated in a comparative selection proceeding, as is the Department's normal practice. If the two AirTran slot exemptions are to be reallocated, Delta objects to consolidating the new selection proceeding with the current proceeding for the reallocation of two DCA slot exemptions as described in our Notice served June 8. Delta also states that if the Department denies the AirTran request, the Department should require AirTran to file a

statement immediately as to whether it will continue to operate the service or turn the exemptions back.<sup>3</sup>

On June 25, by letter, the Metropolitan Washington Airports Authority (MWAA) filed an answer opposing the AirTran request. MWAA argues that the FAA use-or-lose rules should be enforced and that suspension of the service between DCA and West Palm Beach would harm metropolitan Washington community economic interests. MWAA argues that the Department should not grant waivers from the use-or-lose requirements based on a carrier's perceived market weakness, as is the case with the AirTran request.

AirTran responded that the objections of Delta and US Airways are based solely on their respective goals of maintaining their dominant DCA positions and limiting competition by new entrant, low-cost airlines; that, as part of the Air Transport Association of America, Delta and US Airways have sought and obtained relief from FAA's use-or-lose rules; and that grant of the AirTran request will enhance competition at DCA.

## DECISION

We have decided to deny AirTran's request to temporarily suspend service authorized under Order 2003-1-16.

Initially, we note that AirTran filed its request with the Department, rather than with FAA. FAA has authority to waive slot usage requirements under conditions that are "highly unusual and unpredictable,"<sup>4</sup> while DOT has authority to grant exemptions from the terms of 49 USC § 41718(b) DCA slot exemption awards based on a finding of consistency with the public interest. 49 USC §40109. We accepted the filing for processing and advised FAA of our reasoning in doing so.

In applying public interest considerations here, we first note that, as the respondents have observed, the recent rise in fuel prices has affected all carriers, not simply AirTran, and other DCA operators have adjusted accordingly. Likewise, AirTran's decision to phase out its Jet Connect operations is an action of its own choosing and not an event beyond its control. Finally, AirTran knew, or should have known, the impact that the award of requested DCA slot exemptions would have on its operations and adjusted accordingly, rather than seeking extraordinary relief from the Department.

Also, the cases cited by AirTran in support of its position are not analogous to the relief now sought by AirTran. The slot-slide request granted to Midwest Airlines by Order 99-11-4 did not involve a suspension of service such as contemplated by AirTran's request.

---

<sup>3</sup> On June 22 Delta filed a motion for leave to file and response. On June 30, AirTran filed a Response. In the interest of a complete record, we will grant the Delta motions and we will accept the AirTran Response.

<sup>4</sup> Under 14 CFR § 93.227(j), the Chief Counsel of the FAA may waive the slot usage requirement in the event of a highly unusual and unpredictable condition which is beyond of the slot-holder and which exists for a period of 9 or more days. Examples cited of conditions that could justify a waiver are weather conditions that result in the restricted operation of an airport for an extended period of time and the grounding of an aircraft type.

Likewise, the Department's grant of AirTran's request for a brief delay of inauguration of DCA-Florida service by Order 2003-4-13 did not result in a suspension of operating service already in place.

We take seriously our requirement that these slot exemptions must be used to serve specific communities with specific levels of service in conformance with the conditions of the award. Indeed, AirTran was awarded these two slot exemptions in a highly competitive case based on its representations that it would provide that service. Moreover, under the provisions of Order 2003-1-16, AirTran has greater flexibility to serve its DCA-Florida slot communities than most carriers that have been awarded DCA slot exemptions. Rather than requiring AirTran to use its DCA slot exemptions to serve specific communities, AirTran may use its four awarded DCA slot exemptions to serve Fort Lauderdale, Fort Myers, *and/or* West Palm Beach.

Finally, we find AirTran's argument that the Department's subsequent award of two more slot exemptions on April 1, 2004 (Order 2004-4-2), has somehow caused it operational problems unconvincing. AirTran has argued for years that it is at a competitive disadvantage to carriers with larger slot holdings because there is a minimum critical mass of slots needed to gain economic efficiencies in the operations at DCA. Thus, we find it inconsistent for AirTran now to argue that the Department's award of additional slot exemptions has created such problems for the carrier that it must now temporarily discontinue some DCA service.

Based on all of the above, we deny AirTran's request to retain its two slot exemptions to serve the designated Florida points while temporarily discontinuing that service. We have both contacted Palm Beach International Airport and consulted AirTran's website, and it appears that the carrier has already suspended the nonstop West Palm Beach-DCA service that had been provided with these exemptions. Therefore, we will withdraw the two slot exemptions unless the carrier notifies us within five business days of the service date of this order that it either will immediately serve the West Palm Beach-DCA market nonstop, or immediately inaugurate nonstop Fort Lauderdale-DCA service or additional nonstop Fort Myers-DCA service. If withdrawn, we will establish a proceeding to reallocate the slot exemptions as we have done previously.

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

**ACCORDINGLY,**

1. The Department denies the motion of AirTran Airways, Inc., to temporarily suspend one roundtrip at Ronald Reagan Washington National Airport, unless the carrier notifies us within five business days as described above;
2. We grant all motions to file otherwise unauthorized documents; and

3. We will serve this order on all parties in Docket OST-2000-7182, the Metropolitan Washington Airports Authority and the Federal Aviation Administration Slot Administration Office.

By:

**KARAN K. BHATIA**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this document will be made available on the World Wide Web at:  
<http://dms.dot.gov/>*