

Order 2004-8-27



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

Issued by the Department of Transportation
on the **25th day of August, 2004**

Applications of

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

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 27, 2004

Docket OST-2000-7182

**ORDER WITHDRAWING TWO WITHIN-PERIMETER SLOT EXEMPTIONS
AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT AND
REQUESTING PROPOSALS FOR THEIR REALLOCATION**

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. The Department is also withdrawing two slot exemptions from AirTran Airways for failure to use them in compliance with the use-or-lose rules¹ and is requesting proposals from all carriers interested in providing service from a medium hub, small hub, or nonhub within the 1,250-mile perimeter to Ronald Reagan Washington National Airport (DCA).

¹ 14 CFR Section 93.227(a) requires that a slot must be used at least 80 percent of the time over a two-month reporting period or it shall be withdrawn for non-use. By Department Order 2003-1-16, the AIR-21 slot exemptions awarded to AirTran are subject the above usage requirement. In order to meet the usage requirement for the July/August reporting period, AirTran must operate the slot exemptions for a period of at least 48 days. AirTran ceased the DCA/West Palm Beach service on June 30, 2004. Consequently, AirTran is unable to meet the slot usage requirement for these slot exemptions for this reporting period.

Background

On January 22, 2003, pursuant to the provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), the Department issued Order 2003-1-16, which granted a total of six slot exemptions at Ronald Reagan Washington National Airport (DCA) for services inside the 1,250-mile perimeter to AirTran Airways, Inc., and Corporate Airlines, Inc.

Under the provisions of that order, AirTran was granted a total of four DCA slot exemptions to provide nonstop service to Fort Lauderdale, Fort Myers, or West Palm Beach, Florida.

On June 4, 2004, Air Tran filed a motion to temporarily suspend one round trip a day and to modify markets served at Ronald Reagan Washington National Airport. Specifically, Air Tran requested that the Department allow it to temporarily suspend the one-round-trip-per-day service it operated between DCA and West Palm Beach (authorized by Order 2003-1-16) effective July 15, 2004. Air Tran requested that it be allowed to reinstitute service by November 4, 2004, using two of its four slot exemptions awarded by Order 2003-1-16.

By Order 2004-8-16, issued August 13, 2004, the Department denied the AirTran request. The Department also said that it would withdraw two of the slot exemptions awarded to AirTran by Order 2003-1-16 unless the carrier notified the Department within five business days of the service date of that order that it would either 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, the Department stated that it would establish a proceeding to reallocate the slot exemptions.

On August 20, AirTran notified the Department that it intended to use the two slot exemptions at issue to serve the DCA-West Palm Beach market, effective October 30, 2004.

AirTran Pleading

In support of its position, AirTran restates that its service would provide low-fare service for West Palm Beach passengers and that the West Palm Beach market has grown because of its service to Philadelphia and Atlanta. It also states that it should be allowed to trade or lease slots, and to use them in any markets. Finally, AirTran included a letter from the Palm Beach International Airport supporting its October 30 startup.

Decision

We reject AirTran's August 20 notification request as wholly inadequate. In Order 2004-8-16, issued just two weeks ago, the Department explained in great detail its reasons not to waive the use-or-lose requirements until November 4, 2004, for AirTran, and so we will not repeat them all here. Suffice it to say that these slot exemptions are scarce resources that are in very high demand by carriers that are willing and able to use them on a year-round basis for their proposed service. AirTran's notification fails to comply

with the terms of Order 2004-8-16 to fully utilize this opportunity by immediately restarting service, and otherwise has raised no new issues that we did not already address in Order 2004-8-16. We denied AirTran's request to postpone the start date until November 4, and AirTran now proposes a restart on October 30, a mere five days earlier than the date we had already denied. Further, the carrier states that daily service would not begin until November 4 -- the precise date we previously had rejected. We also note that AirTran suspended the use of the two slot exemptions effective July 1.

Based on the above, we finalize our decision in Order 2004-8-16 to withdraw two slot exemptions from AirTran.

Request for Proposals

Given this development, the Department will now consider applications from air carriers using Stage 3 aircraft for the two slot exemptions formerly granted to Air Tran by Order 2003-1-16. Applicants must propose to provide service to DCA from an airport that was designated as a medium hub, small hub, or nonhub airport in 1997² within the 1,250-mile perimeter established for civil operations at DCA under 49 U.S.C. § 49109. Applications should be filed in Docket OST 2000-7182.³

Section 41718(b) of Title 49 U.S.C. establishes certain requirements for award of these exemptions. As concerns the medium hub, small hub or nonhub category for within-perimeter exemptions, it directs the Secretary to distribute them 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.

Completed applications must be submitted by September 17, and comments with respect to any timely filed request for slot exemptions must be filed by September 27.

As a final matter, we note that the allocated slot times for the nonstop DCA-West Palm Beach service terminated by AirTran are in the 1400 and 1500 hour periods.

Section 41718(c)(2) does not allow us to assign more than three slot exemptions per one hour period. Almost all time periods were fully subscribed by the Department's Notice

² Definitions of nonhub, small hub, and medium hub airports are provided under 49 U.S.C. § 41714 (h)(7), (8), and (9).

³ Title 49, U.S.C. § 41718(c)(3), incorporating amendments made by P.L. 108-176 (the Vision 100 – Century of Aviation Reauthorization Act, “Vision 100”), authorizes the Department to award a total of 20 within-perimeter slot exemptions. Of these, at least six must be for air transportation to small hub and nonhub airports. (See section 41718(c)(3)(a)). At present, these six were awarded and allocated as follows: two to Midwest Airlines for service to Des Moines in Order 2000-7-2; two to Comair, Inc. for either Jackson, MS, or Lexington, KY, in Order 2004-4-2; and two to US Airways, Inc. for Asheville, NC, Chattanooga, TN, or Wilmington, NC, also in Order 2004-4-2. By Order 2004-8-3, issued August 9, 2004, the two slot exemptions awarded to Midwest for DCA-Des Moines service were reallocated to Spirit Airlines for service to Myrtle Beach, SC. Thus, these exemptions may be used for medium, small, or nonhubs.

dated May 3, 2004, and, thus, we may not be able to accommodate carrier requests for alternative slot exemption times.

ENVIRONMENTAL ISSUES

Although 49 U.S.C. §41718(e) specifically exempts our action here from review under the National Environmental Policy Act,⁴ 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. Also, under 49 U.S.C. §47117(e), the Department will give DCA priority in making grants for airport noise compatibility planning and programs that qualify for Federal financial assistance.

ADMINISTRATIVE TERMS

As the FAA slot regulations make 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)). Moreover, under the provisions of 49 U.S.C. § 41714(j), carriers should understand that they may not sell, trade, transfer, or convey the operating authorities that they apply for in this proceeding.

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

ACCORDINGLY,

1. The Department denies the request of AirTran Airways to postpone the resumption of DCA-West Palm Beach service until October 30, 2004;
2. The Department affirms its decision in Order 2004-8-16 to withdraw the two slot exemptions that were granted to AirTran Airways (1400 and 1500) effective immediately;
3. The Department requests interested carriers to apply to use two within-perimeter slot exemptions to serve a medium hub, small hub, or nonhub by September 17. Answers are due by September 27; and

⁴ §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.”

4. 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)

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