



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

Order 97-4-1

Served: April 1, 1997

Issued by the Department of Transportation
on the 1st day of April, 1997

Application of

**PAKISTAN INTERNATIONAL
AIRLINES
CORPORATION**

for an exemption from Subparts K and S of
Part 93 of Title 14, Code of Federal Regulations
pursuant to 49 U.S.C. § 41714(b)(1)

Docket OST-97-2193

ORDER

APPLICATION

On March 7, 1997, Pakistan International Airlines Corporation ("PIA") requested an exemption from 14 C.F.R. Part 93, Subparts K and S, under 49 U.S.C. 41714(b)(1). Specifically, PIA seeks the exemption authority to the extent necessary to enable it to substitute previously allocated takeoff and landing slots at Chicago's O'Hare Airport for other slots more appropriately suited to accommodate its recently revised summer schedule, using Airbus A310 or Boeing 747 equipment (both Stage 3 aircraft). PIA indicates its need for this substitution by March 30, 1997.

In support of its request, PIA says that it has served the Pakistan-Chicago market since December 1996,¹ and that the operations are consistent with the terms of the U.S.-Pakistan Agreement.² PIA states that it made a timely request with the Federal Aviation Administration ("FAA") for certain slots the carrier needed for its originally scheduled

¹ By Notice of Action Taken, dated October 31, 1996 (See Docket OST-96-1858), the Department of Transportation ("DOT") granted PIA an exemption from 49 U.S.C. 41301 to conduct, among other things, scheduled foreign air transportation of persons, property and mail in the Pakistan-Chicago market.

² The August 16, 1996, agreement with Pakistan is *ad referendum*. The delegations to the negotiations noted the intention of their respective aeronautical authorities to permit operations consistent with the draft agreement, on the basis of comity and reciprocity.

operations.³ PIA further states that certain "unforeseen" operational circumstances required that it reschedule the days and times of its summer season services at O'Hare Airport, and that on March 5, 1997, PIA requested from the FAA the O'Hare Airport slots the carrier needed to operate its revised summer schedule.⁴ PIA says that "if [it] does not receive the requested exemption authority, PIA will ... suspend its Chicago service," and PIA will be unable to exercise traffic rights that are bilaterally authorized. For these reasons, PIA maintains that grant of the exemption authority is in the public interest.

RESPONSIVE PLEADINGS

On March 11, 1997, the City of Chicago ("the City"), owner and operator of O'Hare International Airport, filed in support of the application. The City states that there is a strong community of interest between the Chicago region and Pakistan, and that the inauguration of service by PIA in the Chicago market has provided many benefits to the traveling and shipping public in both the Chicago region and throughout the Midwest. The City notes that PIA's service is provided for under the U.S.-Pakistan Agreement, and that any disruption of PIA's existing service will adversely affect passengers and shippers in the Chicago region who rely on the applicant's service to meet their travel and shipping needs. The City therefore requests that the Department grant PIA's application expeditiously.

On March 14, 1997, American Airlines, Inc. ("American") filed an answer opposing PIA's request. American notes that the FAA allocated slots to PIA for the upcoming summer season, and that now, only days before the commencement of its summer schedules, PIA asks the Department for discretionary authority to shift its scheduled services. American maintains that PIA is attempting to move its service from non-peak to peak times, while avoiding the normal slot allocation process.

American argues that granting PIA's request would be unfair to other international carriers that have fully complied with FAA's slot regulations, and that nothing in the public interest supports "an abandonment" of the normal slot regulations. American states that granting the applicant's application will further increase traffic congestion at O'Hare, decreasing airport efficiency, increasing the likelihood of delays, and adding expense and passenger inconvenience.

³ The service begun in December 1996 was in the winter season. In November 1996, the FAA confirmed slots for PIA's summer season operations on Tuesdays and Fridays arriving at O'Hare Airport at 4:10 PM and departing at 10:10 PM.

⁴ On March 6, 1997, the FAA notified the applicant that it was unable to accommodate PIA's most recent and untimely request for slots (*i.e.*, the allocation of slots to support the carrier's proposed Monday and Thursday operations). The FAA also informed PIA that its request exceeded the total number of slots that the FAA was able to allocate, consistent with 49 U.S.C. 41714(b)(2). The FAA notified the applicant that O'Hare Airport was operating at full capacity on Mondays and Thursdays during controlled hours, within which PIA proposed to operate. The FAA recommended that PIA trade for the additional slots the carrier needed from within the airline industry.

American states that it and other U.S. airlines "suffered" the withdrawal of slots that PIA used to establish its summer schedule. Furthermore, American says that, as a result of PIA's "eleventh-hour" decision to revise its summer schedule, American will be unable to use the slots PIA now intends to abandon during this peak travel period. American also maintains that PIA is fully capable of readjusting its summer schedule without the requested exemption. American notes that customary industry practices provide PIA with an opportunity to arrange for a slot trade with another carrier to accommodate its revised operational plans, just as other carriers do at O'Hare as well as at slot-constrained European airports.

On March 17, 1997, PIA filed a reply stating that if the Department did not act positively on its exemption request by March 18, 1997, PIA "will be required to discontinue its operations from Pakistan to Chicago." PIA explains that its schedule change was necessitated by the lack of aircraft availability for use in its Chicago operations. PIA says that contrary to American's assertions, it is not trying to avoid the slot allocation rules or harm other carriers. PIA notes that it provides the only single-plane service in the Pakistan-Chicago market, and that termination of this service will have a significant adverse impact on the traveling and shipping public. For these reasons, PIA requested prompt action by the Department.

On March 18, 1997, the City of Chicago filed a reply to the American answer. The City maintains that PIA's requested rescheduling will have a *de minimis* impact on O'Hare operations, aid the City's noise-abatement program, and improve the efficiency of gate utilization at O'Hare's International Terminal. The City restates the value it places on the services provided by PIA, and urges the Department to grant the request expeditiously.

By Diplomatic Note dated March 26, 1997, the Embassy of Pakistan in Washington, D.C. supported Departmental approval regarding PIA's application.

STATUTORY BACKGROUND

Subparts K and S of 14 C.F.R. Part 93 designate Chicago's O'Hare International Airport, New York's John F. Kennedy International and LaGuardia Airports, and Washington, D.C.'s National Airport as high density traffic airports and prescribe certain air traffic rules for the operation of aircraft at these airports. These regulations limit the number of allocated Instrument Flight Rule (IFR) operations (takeoffs and landings) for specified classes of users during certain periods of the day.

Pursuant to 49 U.S.C. 41714(b)(1), if the Secretary of Transportation finds it to be in the public interest at a high density airport (other than Washington National Airport), the Secretary may grant, by order, exemptions from the requirements of subparts K and S of 14 C.F.R. Part 93 (pertaining to slots at high density airports), to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft.

DECISION

The Department has decided to deny PIA's request for exemption authority. As an initial matter, while the parties supporting this request correctly note that PIA's Chicago operations

have been authorized by the Department and are provided for under the U.S.-Pakistan bilateral agreement, we have previously determined that this finding alone is not determinative for purposes of administering the exemption provisions of 49 U.S.C. 41714(b)(1).⁵ Rather, our decision here is based on our consideration of the factors, noted below, that are relevant to its request in this Docket and, based on our consideration of those specific factors, we have decided to deny the request for exemption authority.

As we have previously found,⁶ while 49 U.S.C. § 41714(b)(1) provides the Department with discretionary authority to grant slot exemptions for foreign air transportation at a high density airport, we do not view this authority as a substitute mechanism for the slot-allocation procedures outlined in Subpart S of 14 C.F.R. Part 93. We fully expect air carriers and foreign air carriers to follow and exhaust all appropriate procedures for slot acquisition, including all appropriate/customary industry practices for slot acquisition, before filing a slot exemption request with the Department. In this case, PIA initially followed those procedures and the FAA confirmed PIA's earlier request. Now, as a result of commercial decisions made by PIA subsequent to the FAA's November 1996 confirmation, PIA has filed an untimely new application with the FAA and the Department finds that the applicant's request for exemption authority from the standard slot-allocation procedures is not consistent with the public interest.

In granting previous exemptions to the Slot Rule, the Department has found it appropriate to use its discretionary authority to provide qualified carriers and foreign air carriers an opportunity to compete in the U.S. marketplace. In this case, we find that the FAA's usual slot-acquisition procedures have afforded PIA an opportunity to compete in the Pakistan-Chicago market.

Importantly, the record shows that PIA filed a request with the FAA, consistent with 14 C.F.R. 93.217(a)(6), and that the FAA confirmed PIA's request for slots.⁷ Subsequently, PIA has found it appropriate to take advantage of other business opportunities available to it. As a result of that business decision, PIA finds that its previously confirmed slots at O'Hare Airport do not fully satisfy its amended operational requirements. PIA therefore requests that the Department use its discretionary authority to remedy this circumstance. While we understand Chicago's support for this service and regret any consumer inconvenience if PIA makes a commercial decision to suspend service, we do not agree that the factual bases in this case make it appropriate to use the Department's discretionary authority. Thus, if PIA chooses to suspend Pakistan-Chicago service, that preference is motivated by PIA's own

⁵ See Order 96-3-40 at 3.

⁶ See Order 97-3-31 at 5.

⁷ The FAA confirmed PIA's 1997 summer slot request in November 1996. In granting PIA's request, the FAA withdrew certain slots from the U.S. carriers' slot pool. The withdrawal of these slots from the U.S. airlines required that those carriers readjust their summer schedules. At this late date, American contends that it is now unable to deploy these valuable takeoff and landing assets.

commercial decisions and is not a result of the FAA not providing slots or our not approving this exemption request.

While we are not persuaded to grant the applicant's request, we hope that PIA will be able to arrange for an appropriate exchange of slots at O'Hare Airport to accommodate its revised operational needs.

Regarding the City's concerns about noise abatement at O'Hare Airport, we note that PIA is conducting its Pakistan-Chicago operations using Stage 3 aircraft. As a final matter, while PIA indicates that it intends to suspend its Chicago operations, we are hopeful that the airline will reassess its options and will continue to recognize the significant commercial opportunities available to PIA in the Chicago/Midwest market.

Based on these determinations, we have decided to deny PIA's request for an exemption.

This Order is issued under authority delegated in 49 C.F.R. 1.56(l).

ACCORDINGLY,

1. The Department denies the request of Pakistan International Airlines Corporation for a temporary exemption from 14 C.F.R. Part 93, Subparts K and S under 49 U.S.C. 41714(b)(1) to the extent necessary to permit Pakistan International Airlines Corporation to operate scheduled arrivals at Chicago's O'Hare International Airport on Monday and Thursday at 4:10 P.M.; and to operate scheduled departures from Chicago's O'Hare International Airport on Monday and Thursday at 6:50 P.M. (all times are local time); and
2. We will serve this order on the Ambassador of Pakistan in Washington, D.C.; the City of Chicago; Pakistan International Airlines Corporation; American Airlines, Inc.; the Department of State (Office of Aviation Negotiations); and all other parties served with the application.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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