



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

Order 97-4-11

SERVED: April 9, 1997

Issued by the Department of Transportation  
on the 8th day of April, 1997

Application of

**POLSKIE LINIE LOTNICZE LOT S.A.**

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-97-2135**

**ORDER GRANTING EXEMPTION**

**APPLICATION**

On February 14, 1997, Polskie Linie Lotnicze LOT S.A. ("LOT") requested an exemption from 14 C.F.R. Part 93, Subparts K and S, under 49 U.S.C. 41714(b)(1). Specifically, LOT seeks the exemption to the extent necessary to enable it to conduct three additional round-trip flights per week between Warsaw, Poland, and Chicago, Illinois (O'Hare International Airport), using Boeing 767 equipment (a Stage 3 aircraft). LOT's application indicates that the carrier intends to commence these operations on or about June 9, 1997.

In support of its request, LOT says that it has been providing service in the Warsaw-Chicago market for over twenty years, and that these proposed operations are an expansion of its 1996 summer schedule.<sup>1</sup> LOT conducts these services consistent with its foreign air carrier permit. Order 95-2-33. The applicant maintains that its proposed expanded operations will ensure the continued enhancement of air services between Poland and the United States, and that the proposed services are fully authorized by the U.S.-Poland Air Transport Agreement. LOT states that it filed a timely request with the FAA for these takeoff and landing slots at O'Hare International Airport for the 1997 summer season, consistent with 14 C.F.R. 93.217(a)(6).<sup>2</sup>

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<sup>1</sup> The Federal Aviation Administration ("FAA") notified the Department that it had allocated fourteen slots to the applicant to support LOT's 1996 summer season schedule. The FAA further confirmed that it had again allocated these fourteen slots to the applicant for the 1997 summer season.

<sup>2</sup> In October 1996, LOT filed with the FAA a request for ten slots more than LOT operated during the 1996 summer season. In January 1997, the FAA notified LOT that it had confirmed the carrier's request for the allocation of four additional slots. However, at that time, the FAA also informed LOT that the remainder of its request (the six additional slots that LOT requested in its application) could not be accommodated because it exceeded the total number of slots that the FAA was able to allocate, consistent with 49 U.S.C. 41714(b)(2).

LOT further maintains that the inability of the carrier to commence these additional flights will be disruptive to a traveling public that is asking for additional service between Poland and Chicago.

## **RESPONSIVE PLEADINGS**

On March 3, 1997, the City of Chicago, owner and operator of O'Hare International Airport, filed in support of the application. The City notes that the Chicago Metropolitan area is home to over one million Polish-Americans, the largest Polish population in the world outside of Warsaw, and that there exists a "vibrant" and "expanding" community of interest between Chicago and Poland. The City also argues that passenger traffic in the market justifies additional flights during the peak summer travel period.<sup>3</sup> The City states that Chicago-Poland passenger traffic represented about 43 percent of the total U.S.-Poland passenger traffic, and that Chicago-Poland passenger traffic has been growing at an annual rate of about 15 percent. For these reasons, the City says that the proposed flights will provide significant benefits to passengers and shippers in the Chicago region and throughout the Midwest.

## **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**

We find that grant of this exemption authority is consistent with the public interest. The record shows that during the 1996 summer season, LOT offered daily nonstop operations in the Warsaw-Chicago market and, for certain summer periods, average load factors exceeded 90 percent. The record clearly supports the applicant's claim that there is a need, particularly during the peak-travel period, for increased capacity in the Warsaw-Chicago market. Our

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<sup>3</sup> On March 7, 1997, LOT filed a reply that provided data relating to passenger traffic demand in the Warsaw-Chicago market (June-August 1996). The data shows that during the 1996 summer season the average load factor between Chicago and Warsaw was about 95 percent for westbound travel, and about 80 percent for eastbound travel. LOT says that these high average load factors provide further justification for its proposed expanded summer schedule.

actions here will help provide for more adequate passenger capacity between Poland and the United States.

In reaching this decision, we recognize that LOT filed a timely request with the FAA for these additional slots, and that due to hourly constraints the FAA has not been able to accommodate the applicant's request within reasonable times of LOT's proposed operations. Moreover, we note that aviation relations with Poland are governed by the U.S.-Poland Air Transport Agreement, which provides for the proposed Warsaw-Chicago service, and LOT has been properly authorized by its government to provide scheduled foreign air transportation in the Warsaw-Chicago market.<sup>4</sup>

As we have recently affirmed,<sup>5</sup> 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 industry practices for slot acquisition, before filing a slot exemption request with the Department. In this case, LOT followed those standard slot-allocation procedures. Moreover, the additional passenger operations made possible by our action here will ensure continued enhancement of air services between Poland and the United States,<sup>6</sup> and continue to provide the public with improved passenger and shipping options.

Since grant of this exemption authority is dependent upon the applicant's existing U.S.-Poland operating authority, we attach the condition that this exemption authority be used only in the provision of LOT's scheduled service between Warsaw and Chicago O'Hare. Furthermore, in accordance with the requirements of the statute, all aircraft operations performed under this exemption shall be conducted by Stage 3 aircraft. We also note that grant of this exemption provides LOT with only a temporary slot allocation at O'Hare Airport and does not confer to the applicant any ability to sell, trade, transfer, or convey this exemption authority.

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

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<sup>4</sup> While our findings in this matter will allow for the further enhancement of services in the Warsaw-Chicago market, we emphasize that airline requests for exemption authority will be decided by the Department on a case-by-case basis.

<sup>5</sup> See Orders 97-4-1 at 4 and 97-3-31 at 5.

<sup>6</sup> See Orders 97-3-31 and 96-3-40.

**ACCORDINGLY,**

1. The Department grants a temporary exemption from 14 C.F.R. Part 93, Subparts K and S under 49 U.S.C. 41714(b)(1) to Polskie Linie Lotnicze LOT S.A. to the extent necessary to permit Polskie Linie Lotnicze LOT S.A. to operate scheduled arrivals at Chicago's O'Hare International Airport on Monday, Tuesday and Wednesday at 1:10 P.M. and to operate scheduled departures from Chicago's O'Hare International Airport on Monday, Tuesday and Wednesday at 3:00 P.M. (all times are local time);
2. As a condition of approval, Polskie Linie Lotnicze LOT S.A. may use this exemption authority only to provide scheduled service between Warsaw, Poland, and the terminal point Chicago, Illinois (O'Hare International Airport);
3. As a further condition of approval, the Department directs that all aircraft operations granted under this exemption must be provided by Stage 3 aircraft;
4. The authority granted under this exemption is subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S;
5. We direct Polskie Linie Lotnicze LOT S.A. to notify the Federal Aviation Administration's Slot Administration Office as to the start-up date for the six exemptions granted here. The Federal Aviation Administration will assign slot withdrawal numbers for each slot exemption time listed in ordering paragraph 1;
6. The temporary slot allocation provided for in ordering paragraph 1 above is effective commencing on June 9, 1997, and expires on September 15, 1997; and
7. We will serve this order on the Ambassador of Poland in Washington, D.C.; the City of Chicago; Polskie Linie Lotnicze LOT S.A., 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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