



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

**SERVED: April 21, 1998**

Issued by the Department of Transportation  
on the 21st day of April, 1998

**Applications of**

**TRANS STATES AIRLINES, INC.  
AMERICA WEST AIRLINES, INC.  
SIMMONS AIRLINES, INC.  
d/b/a AMERICAN EAGLE  
ATLANTIC COAST AIRLINES, INC.**

For exemptions from 14 CFR Part 93,  
Subparts K and S, pursuant to 49 U.S.C.  
§ 41714

**Dockets OST-97-2368  
OST-97-2970  
OST-97-2985  
  
OST-97-3259**

**ORDER GRANTING AND DENYING APPLICATIONS AND PETITIONS FOR  
RECONSIDERATION FOR SLOT EXEMPTIONS AT CHICAGO O'HARE AIRPORT  
AND DIRECTING PARTIES TO SHOW CAUSE**

After considering applications for exemptions from 14 CFR Part 93, Subparts K and S for slots at Chicago O'Hare Airport filed by America West Airlines, Atlantic Coast Airlines, Simmons Airlines and Trans States Airlines, the Department has decided to grant five slot exemptions to America West for nonstop service between O'Hare and Phoenix, AZ; 16 slot exemptions to Atlantic Coast for nonstop service between O'Hare and Charleston, WV, Springfield, MO, and Wilkes-Barre, PA; and 16 slot exemptions to Trans States for nonstop service between O'Hare and Chattanooga, TN, Roanoke, VA, and Tri-Cities, TN. Grant of the exemptions to Atlantic Coast and Trans States is conditioned on their being used solely for the markets designated in the carriers' applications, with regional jet aircraft. We have also decided to grant, on an interim (six-month) basis, 16 slot exemptions to Simmons for specified Essential Air Service (EAS) operations, to replace slots that we are permitting Simmons, by this order, to use to implement nonstop regional jet services between O'Hare and Duluth, MN, Fayetteville, AR, Montgomery, AL, and Shreveport, LA. Grant of these exemptions to Simmons is conditioned on their being used solely to provide the specified EAS operations and on Simmons' implementation of an equal

number of scheduled nonstop frequencies with regional jet aircraft between O'Hare and the cities designated above.<sup>1</sup> We will also direct interested parties to show cause why we should not extend the foregoing exemptions to Simmons on a permanent basis.

Our action here supersedes our decision in Order 97-10-16 to the extent that that order granted Trans States eight slot exemptions to serve certain O'Hare markets on a two-year, experimental basis. We will deny the remainder of ACA's, Simmons' and Trans States' applications to the extent that they contemplate service in other markets or a higher number of slot exemptions.

## **REGULATORY AND LEGISLATIVE BACKGROUND**

The High Density Rule, 14 CFR Part 93, Subparts K and S, designates Chicago's O'Hare International Airport, among others, as a high density traffic airport and prescribes air traffic rules for operating aircraft, other than helicopters, to or from those airports. These regulations limit the hourly number of allocated Instrument Flight Rule (IFR) operations (take-offs and landings) that may be reserved for specified classes of users. The authority to conduct a single operation (either a take-off or landing) at one of these airports is commonly referred to as a "slot".

On August 23, 1994, Congress enacted the Federal Aviation Administration Authorization Act of 1994 which, among other things, authorized the Department to grant exemptions from the High Density Rule for the provision of basic Essential Air Service (EAS) at eligible communities, for international air service, and for service by new entrant carriers.<sup>2</sup> As applied to Chicago O'Hare and as relevant here, the Act provides for exemption authority as follows:

§ 41714(a) states with regard to basic essential air service that if an eligible community relies on service to a high density airport, the Department must ensure that an air carrier has sufficient operational authority at that airport to provide the required service. It also states that the operational authority shall allow flights at reasonable times taking into account the needs of passengers with connecting flights.

§ 41714(b) authorizes the Department to grant exemptions, based on a public interest finding, to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft. Additional provisions apply regarding slot withdrawals from air carriers for use by foreign air carriers.

§ 41714(c) authorizes the Department to grant exemptions to new entrant air carriers, based on a public interest finding and under circumstances determined by the Secretary to be exceptional.<sup>3</sup>

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<sup>1</sup> Simmons' obligation to maintain Essential Air Service operations in full conformance with the service levels guaranteed to cities affected by this order is not diminished in any way.

<sup>2</sup> Codified as 49 U.S.C. § 41714(a), § 41714(b) and § 41714(c), respectively.

<sup>3</sup> For these purposes, a "new entrant air carrier" may generally be defined as an air carrier or commuter operator that holds or operates (or held or operated, since December 16, 1985) fewer than twelve slots at the airport in question, not including international, EAS, or certain

In conjunction with the Department's fiscal year 1997 appropriations bill, Congress also directed the Department to "use exemption authority to improve service to nonhub airports where significant improvements can be achieved." (S. REP. No. 325, 104th Cong., 2d Sess., at 12, 1996). It also specified that "This directive is limited to O'Hare International Airport and aircraft carrying less than 60 passengers." ACA, Trans States and Simmons note that expression of congressional intent in seeking their exemptions here.

## **FRAMEWORK FOR EVALUATING SLOT EXEMPTION REQUESTS**

The Federal Aviation Administration Authorization Act of 1994 establishes, as criteria for the grant of an application for slot exemptions, that it be in the public interest and, for a new entrant carrier, that exceptional circumstances be found. Since 1994 the Department has approved six new entrant applications, in whole or in part, while denying three others<sup>4</sup>.

For those exemptions that we granted, we found them to be in the public interest and found that exceptional circumstances existed because the applicant's proposal would address a significant service void or because the applicant's entrance into a market would likely produce substantial competitive benefits. In the latter regard, in Orders 97-10-16 and 97-10-17 we expanded our definition of exceptional circumstances from that used in previous cases by recognizing the need for competitive service in a market, especially low-fare competitive service. We determined that awarding slot exemptions for such service could provide substantial public benefits and would meet the statutory exceptional circumstances test. In doing so we noted that our reexamination of the exceptional circumstances test and our decision that the test could be met by proposals for competitive service, especially low-fare competitive service, was consistent with statements by members of Congress, the General Accounting Office (GAO), and numerous community groups that we should more vigorously use our statutory authority to promote airline competition. For example, the GAO's 1996 study, Airline Deregulation: Barriers to Entry Continue in Several Key Domestic Markets (the GAO Report) stated that the "control of slots by a few airlines greatly deters entry at key airports in Chicago, New York and Washington." We made clear our support for increased competition and our willingness to invoke available tools to promote competition

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nighttime slots at Ronald Reagan Washington National Airport or LaGuardia Airport. See 49 U.S.C. §41714(h).

<sup>4</sup> Orders 94-9-30, 95-4-33, 95-8-38, 96-5-33, 97-10-16 and 97-10-17. With regard to the latter two orders, in 97-10-16 the Department granted O'Hare slot exemptions to Reno Air (two slots for O'Hare-Reno, NV nonstop service) and to Trans States Airlines (eight slots, experimentally, for nonstop service between O'Hare and the market or markets of its choice among Asheville, Chattanooga, Roanoke and Tri-Cities); and in 97-10-17 we granted LaGuardia slot exemptions to Frontier Airlines (six slots for LaGuardia-Denver nonstop service), ValuJet Airlines (eleven slots for LaGuardia-Atlanta nonstop service) and AirTran Airways (four slots for LaGuardia-Knoxville nonstop service). In addition, in an order being issued simultaneously with this one, the Department is granting LaGuardia slot exemptions to American Trans Air (five slots for LaGuardia-Chicago Midway nonstop service and Spirit Airlines (four slots for LaGuardia-Melbourne, FL nonstop service). The City of New York is seeking judicial review of Order 97-10-17. City of New York v. Slater et al. 2d Cir. No. 97-4358 (filed December 22, 1997)

when we stated in our January 6, 1997, response to the GAO Report that “the Department intends to be more receptive to considering competition as a factor in granting slot exemptions to new entrants under the exceptional circumstances criterion.”

Our actions in this order conform to the decisional guidelines that were first explained in detail in Orders 97-10-16 and 97-10-17 and are consistent with the congressional expectation stated in the Senate Report to the Department’s Fiscal Year 1997 Appropriations Act that we will use our exemption powers as a means of achieving significant improvements in air service for nonhub communities.<sup>5</sup> Thus, we favor proposals that are based on jet aircraft that meet Stage 3 noise requirements;<sup>6</sup> there should be a reasonable expectation that the proposed service would be operationally and financially viable; and we will place a premium upon the introduction of (a) new nonstop services where none exist and (b) new competitive services, especially by applicants that have the demonstrated potential to offer low-fare competition, where there is single-carrier service and the market could support entry, or where existing services do not produce meaningful price competition.

In generally requiring the use of jet aircraft for all slot exemption operations (except essential air service), the Department is recognizing the public benefit of deploying scarce resources in a manner that makes them available to the highest number of users. Favoring the use of Stage 3 aircraft is consistent with language in those sections of the Act pertaining to essential air service, international air service, and the special rules that are applicable to Ronald Reagan Washington National Airport (National), although the requirement was omitted from the provision applicable to new entrant carriers. Thus, our decision that the public interest requires these aircraft for all slot-exemption approvals is based on the overall emphasis on Stage 3 equipment in most of the provisions of the Act and in similar provisions of the Airport Noise and Capacity Act of 1990, which called for the elimination of Stage 2 aircraft by December 31, 1999.

We previously placed all parties on notice, and we emphasize again, that the number of available slot exemptions is very limited and that we may have to deny applications that otherwise meet the standards we have established for the grant of such exemptions. We are adhering in this order to the limit of sixty slot exemptions at O’Hare on which we based the related environmental assessment issued with order 97-10-16.

### **Application of America West**

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<sup>5</sup> As we explain in the Decision section of this order, *infra*, we find compelling public interest and equity reasons to award exemptions to Simmons and we are relying on our authority under section 41714(a), regarding Essential Air Service slot exemptions, as a means to facilitate such an award through the transfer of slots it is currently using for EAS purposes.

<sup>6</sup> 14 CFR Part 36, Subpart C and Appendix C.

On October 3, 1997, America West filed an application for five slot exemptions to enable it to increase its service between Chicago O'Hare and Phoenix to five round-trips a day.<sup>7</sup> America West now operates three O'Hare-Phoenix round trips a day and two O'Hare-Las Vegas round trips a day, all with a total of four slots during the slot-controlled hours. Thus, much of its O'Hare service consists of arrivals and departures outside the controlled hours. The City of Phoenix filed an answer in support of America West's application. United and TWA, who oppose the application, and America West filed two rounds of answers and replies to each other, together with motions for leave to file. We will grant the motions.

America West asserts that it meets the statutory definition of a limited incumbent and that its proposal meets both the public interest and exceptional circumstances criteria applicable to slot exemptions. It states that it is unable to purchase additional O'Hare slots at any price, that the O'Hare-Phoenix market is underserved (America West notes that despite operating its existing O'Hare-Phoenix schedules at off-peak times, load factors on those flights are over 80 percent), and that as a low-fare carrier, it would use its exemptions to spur competition in that market, as well as those Western markets it serves beyond its Phoenix hub. America West serves 37 cities in the Western United States and it projects that the increased service it proposes here would give Chicago travelers access to 95 new connections each day at Phoenix. It asserts that grant of its application would promote important public interest considerations that are contained in the Airline Deregulation Act and have been stressed more recently by members of Congress.

United argues that the O'Hare-Phoenix market is competitive and well served, that America West's application thus fails to establish exceptional circumstances, and that America West is attempting to circumvent the slot marketplace. United and TWA both expressed the position that both of Chicago's major airports, O'Hare and Midway, serve the same relevant market and they argue on that basis that it would be more appropriate for America West to use Midway Airport to expand its Chicago-Phoenix service, which would not require the Department to take any action. United also contests America West's assertion that its proposed expansion of O'Hare-Phoenix service would produce lower fares. Rather, it contends that fares in that market are already competitive, due primarily to Southwest's and American Trans Air's schedules between Midway and Phoenix, more so than America West's existing presence. Finally, United and TWA both note that America West currently holds three additional slots that it is leasing to American Airlines in exchange for two slots at LaGuardia and one at National, which it could redeploy for the O'Hare-Phoenix market.

America West replies that it is the only major airline without reasonable access to O'Hare from its primary hub, and that the high load factors on its existing O'Hare-Phoenix and O'Hare-Las Vegas schedules demonstrate that many consumers are being deprived of the low fares that America West offers. It reiterates its position that O'Hare and Midway are separate markets, on the grounds that Midway offers very little in network or connecting services, and in fact has no international services at all, and that there are significant fare differentials between services at the two airports.

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<sup>7</sup> America West states that, by adjusting its slot positions, it anticipates eventually increasing its O'Hare-Phoenix service to six round trips a day.

### **Application of Simmons**

On October 9, 1997, Simmons filed an application for a total of 60 slot exemptions to enable it to operate three roundtrips per day between each of ten cities and Chicago O'Hare using 50-seat Embraer 145 regional jet aircraft. The cities are: Charleston, West Virginia; Chattanooga, Tennessee; Duluth, Minnesota; Fayetteville, Arkansas; Montgomery, Alabama; New Haven, Connecticut; Roanoke, Virginia; Shreveport, Louisiana; Springfield, Missouri; and Wilkes-Barre/Scranton, Pennsylvania. Simmons proposes initially to use either Saab 340B or ATR 42 aircraft, if the Department awards the requested slot exemptions before the carrier has taken delivery of its regional jets.

A series of responsive documents have been filed, including answers by Trans States and United Air Lines, as well as by Comair, and replies by Simmons and American Airlines, together with motions for leave to file: Trans States and United on October 24 and November 24; Comair on December 30; and Simmons and American on November 4, December 4, and January 9. We will grant the motions.

Answers in support of Simmons' application have been filed by Charleston and West Virginia Parties, Fayetteville and North Arkansas Parties, Alabama and Montgomery Parties, and Springfield-Branson Regional Airport.

In support of its application, Simmons notes that each of the ten communities it would serve is a nonhub and has no nonstop roundtrip access to O'Hare at present. Simmons contends that its proposal is consistent with the congressional intent that the Department facilitate increased access to O'Hare for small and medium-sized communities. It notes that Trans States also has a pending application for slot exemptions that would include service to Chattanooga and Roanoke. Simmons argues in that respect that if the Department selects only one applicant to serve those cities it should select Simmons because its proposal is superior and because it would help to balance overall competition at O'Hare. Simmons notes that the Department has granted a total of 48 O'Hare slot exemptions to Great Lakes Airlines d/b/a United Express, and that United and its commuter partners have 1,016 O'Hare slots compared to only 898 held by American and its commuter subsidiary Simmons.

United argues that American Airlines and its wholly-owned subsidiaries are not appropriate candidates for exemption slots either under the essential air services provisions of section 41714 or as a new entrant.

Trans States and United dispute Simmons' contention that its proposal for Chattanooga and Roanoke is superior. Rather, they argue that those communities will benefit from the convenience of frequent access to United's connecting services at O'Hare, which is United's principal domestic hub and the focal point of its global network. Trans States also asserts that it is an independently-owned operator and that the comparative slot holdings of United and American are therefore irrelevant in the context of this proceeding.

Comair argues that grant of substantial numbers of slot exemptions to United Express or American Eagle carriers could be disruptive to existing competition that has been developed in certain O'Hare city-pair markets over Comair's Cincinnati hub. Comair recommends in the alternative that the Department either limit any O'Hare slot exemption awards to cities that currently receive no regional jet service or initiate steps to lift all slot restrictions at O'Hare.

Simmons and American, in turn, assert that there is little practical difference between United Express carriers, including Trans States, and American Eagle carriers in terms of the nature and level of control that is exerted over them by United or American, respectively. They also argue that the proposed new O'Hare services would enhance competition between O'Hare and competing nationwide hubs such as Cincinnati, contrary to Comair's contention.

### **Application and Petition for Reconsideration of Trans States**

On November 13, 1997, Trans States filed a petition for reconsideration of Order 97-10-16. In that order the Department granted Trans States eight of a requested 32 O'Hare slot exemptions to enable it to initiate schedules with 30-seat turboprop aircraft in the O'Hare market or markets of its choice among four cities -- Asheville, Chattanooga, Roanoke, and Tri-Cities -- on an experimental basis for two years. We gave Trans States the discretion to operate up to four daily nonstop roundtrip flights a day between O'Hare and one individual city or any combination of services to more than one of the cities that would total four roundtrips. In granting this limited relief we noted that we would be advancing an important congressional goal, using slot exemptions to promote service to medium-sized communities (Order 97-10-16 at 9). However, we also expressed reservations about whether Trans States' use of 30-seat turboprop aircraft could benefit the maximum number of consumers, and it was for that reason that we made the exemptions temporary and experimental.

In its petition Trans States requests that we consider a modified proposal for 18 O'Hare slot exemptions to provide three nonstop roundtrips a day with 50 seat Canadair regional jets (CRJ) to each of three cities: Chattanooga, Roanoke, and Tri-Cities. Trans States asserts that its revised operating proposal comports fully with the decisional criteria for slot exemptions delineated for the first time in Order 97-10-16, including the use of jet aircraft, its financial viability, and the service benefits it will produce, i.e., the introduction of new nonstop services where none exist. For that reason, it also asks that we eliminate the two-year, experimental limitation that we previously placed on its slot exemptions.

In support of its request, Trans States maintains that in order to maximize public benefits it is necessary that the Department award the full 18 slots it is requesting; it asserts that, because it now has no operations at O'Hare, the utility of the much smaller number, eight slots, dedicated to only a single route, does not enable an efficient use of resources. Trans States projects that with the necessary slot access to serve its three proposed cities it will carry approximately 165,000 passengers in the first full year and realize an operating profit of \$2.4 million.

On November 24 American filed an answer to the Trans States petition, and on December 4 Trans States filed a reply, with a motion for leave to file. On December 30 Comair filed an answer in

opposition to all of the pending O'Hare slot exemption applications, accompanied with a motion for leave to file. We will grant both motions filed in the pertinent docket. Answers in support of Trans States' application were filed by the Chattanooga Parties, the Roanoke Regional Airport Commission, and the Tri-Cities Airport Commission.

American contends that Trans States is effectively abandoning the initial service proposal on which the Department had granted it eight restricted slot exemptions and that the Department should therefore vacate that award. American also argues that Trans States' amendment of its application is procedurally deficient, and that Trans States should be required to file a new application or resubmit its amendment with a motion for leave to file in accordance with 14 CFR 302.5, and thus afford interested parties 15 days to file answers. American asserts that, if Trans States' pleadings are treated as an amended application, the Trans States and Simmons applications should be given contemporaneous consideration under the Ashbacker doctrine. In the latter respect American argues that the Department should not attach relevance to Trans States' statement that it is independent of United, which American maintains is not a valid representation.

Trans States responded that its petition for reconsideration and amended application contribute to an orderly basis for determining the most efficient use of the limited number of slot exemptions that the Department has stated it may grant, and that, in view of Trans States' reduction in the number of slot exemptions it is requesting from 32 initially to 18 now, American's opportunity for favorable action on its own exemption application is improved, not prejudiced.

Comair's answer is summarized above, under our discussion of Simmons' application.

### **Application of Atlantic Coast Airlines**

On December 17 and December 30, respectively, ACA filed an application and an amendment thereto, requesting a total of 42 slot exemptions to enable it to operate three roundtrips per day between each of seven cities and Chicago O'Hare using 50-seat Canadair Regional Jet (CRJ) aircraft. The cities are Charleston, West Virginia; Duluth, Minnesota; Fayetteville, Arkansas; Montgomery, Alabama; Shreveport, Louisiana; Springfield, Missouri; and Wilkes-Barre/Scranton, Pennsylvania.

By separate motion, also filed on December 17, ACA requested that the Department consolidate its application with that of Simmons in Docket OST-97-2985 for mutual consideration.

Simmons filed answers to ACA's motion on December 29 and to both the application and motion on January 14. On December 30 Comair filed comments in opposition to all pending applications for O'Hare slot exemptions. ACA filed replies, together with motions for leave to file, on December 31 and January 9. An answer in support of ACA's proposal was filed by the Springfield-Branson Regional Airport.

In support of its application ACA submits that its proposal comports fully with the congressional directive to make slots available at O'Hare to the maximum extent possible for service to small

and medium-size communities, and that it fully meets all of the factors the Department has established as criteria for the grant of slot exemptions. ATA would use 50-seat, Stage 3 regional jet aircraft (CRJs); it estimates that traffic responses during the first full year of service will range from 54,000 to nearly 78,000 in each city-pair market, producing profitable load factors ranging from 49 percent to 71 percent; it will be introducing nonstop service to underserved markets that do not have nonstop roundtrip service now; and, as a byproduct, it will be able to add service from Washington Dulles Airport to both Charleston and Wilkes Barre.

In support of its motion to consolidate, ACA acknowledges the Department's previous admonition that we may not be able to grant all slot exemption applications that otherwise meet our guidelines for approval, and argues that Ashbacker principles require contemporaneous consideration of mutually exclusive applications.<sup>8</sup>

Simmons argues that ACA's application was not timely and that contemporaneous consideration of ACA's request with Simmons' application would be contrary to orderly administrative procedures and governing case law.

Simmons also argues that United and its United Express affiliates enjoy the largest number of O'Hare slots, that ACA's claim of independence from United is artificial, and that ACA therefore does not merit any advantage in its slot exemption application over an American Eagle. In addition, it asserts that grant of slot exemptions to any of the pending United Express applicants at the expense of American and American Eagle would exacerbate the United carrier group's existing dominance of O'Hare slots. Simmons notes that ACA's slightly earlier proposed start-up dates are not significant and are offset by the competitive considerations favoring Simmons.

Comair's comments are summarized above under our discussion of Simmons' application.

ACA replied that it would be inconsistent for the Department to grant Simmons' motion to consolidate its own application with that of Trans States and to deny ACA's similar motion for consolidation. ACA asserts that the Department has full discretion under section 302.12 of its procedural regulations to consider contemporaneously two or more proceedings that involve substantially related issues. In response to Comair, ACA notes that ACA's proposal is directly responsive to the congressional directive to make O'Hare slots available for service to small and medium-sized communities.

### **Petition for Reconsideration of American Airlines and American Eagle**

On November 13 American and American Eagle filed a petition for reconsideration of Order 97-10-16 to the extent that language in that order may be construed as a signal that the Department does not intend to act favorably on Simmons Airlines' pending application in Docket OST-97-2985. The Department stated at page 10 of the order that "the exemption powers conferred upon the Department by the Act contemplated a limited pool of additional capacity and were not intended to benefit an airline group with large slot holdings such as American and its corporate

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<sup>8</sup> Ashbacker Radio Corp. v. F.C.C., 327 U.S. 327 (1945).

affiliates.” American argues that the degree of control exercised by United over its regional affiliates is no less than that exercised by American over its American Eagle carriers, and that it is irrational to distinguish between franchisees and corporate affiliates in framing slot exemption policy.

On November 24 United filed an answer to the American petition. United notes that the Department has not yet acted on Simmons’ exemption application and thus argues that American’s objections are premature. United also contends that the distinction between independent and corporately-related carriers has both economic and operational ramifications and that the High Density Rule recognizes that distinction for purposes of slot allocation and administration of the Buy-Sell Rule.

On November 24 American and American Eagle filed an amendment to their petition for reconsideration, together with a motion for leave to file, asking that the award in Order 97-10-16 of eight slot exemptions to Trans States be vacated. We will grant that motion. American’s arguments are described above in our discussion of Trans States’ application and petition for reconsideration.

#### **Petition for Reconsideration of United Air Lines**

On November 13 United filed a petition for reconsideration of Order 97-10-16 to the extent that that order revised the Department’s guidelines for granting slot exemptions to new entrants. United argues that the Department should grant new entrants slot exemptions at O’Hare only for services that cannot be operated at Midway Airport. It reasons that O’Hare and Midway are largely substitutes for one another for domestic passengers and thus, in most cases, a new entrant airline could operate equally successfully from either airport. Thus, it argues that slot exemptions for new entrants at O’Hare should be limited to those applicants who can demonstrate that they could not effectively serve the proposed city-pair market via Midway. United asserts that international and essential air services (EAS), on the other hand, generally cannot be operated successfully out of Midway -- international services because Midway has no Federal Inspection Services available on a full-time basis, and EAS because the needs of passengers in those communities for access to the national air transportation network are better accommodated via O’Hare.

United argues that the fare analysis contained in Order 97-10-16 does not demonstrate that new, low-fare entry is necessary at O’Hare in order to achieve price competition in Chicago markets. It cites the Department’s observation that in city-pair markets where there was low-fare service at Midway, the average fare at O’Hare was \$113, and where there was no low-fare service at Midway the average fare at O’Hare was \$220. United concludes that that observation suggests that fare savings can be achieved equally through low-fare access at either airport, O’Hare or Midway, and that consequently the Department would more effectively serve the public interest by giving slot exemption priority to international operations and EAS.

#### **Availability of Regional Jet Aircraft and Proposed Start-Up Dates**

In response to Order 97-12-9, in which the Department requested applicant carriers to supply specific information on their regional jet operating proposals, we received the following responses:

Atlantic Coast Airlines advised that it would have seven 50-seat CRJs in its fleet in March 1998, and an additional eleven are on firm order for delivery by January 1999.

Simmons stated that it had a firm order for the delivery of 42 Embraer EMB 145 regional jet aircraft, with 50-seat capacity. The first two were to be delivered by March 1, 1998, two more are to be delivered in April 1998, and beginning May 1998 two aircraft are to be delivered each month for a period of 19 months.

Trans States' response to Order 97-12-9 was amended by letter dated March 5. As amended, Trans States informed us that it had firm orders for nine 50-seat Embraer EMB 145 aircraft, with scheduled delivery dates of April, June and August 1998 for the first three, later in 1998 for the fourth, and various dates in 1999 for the remaining five.

The applicants submitted proposed start-up dates as follows:

**Proposed Start-Up Dates for Proposed Regional Jet Services at Chicago O'Hare**

	<u>Atlantic Coast</u>	<u>Simmons</u>	<u>Trans States</u>
Charleston, WV	3/98	7/1/98	
Duluth, MN	3/98	7/15/98	
Wilkes-Barre, PA	4/98	10/1/98	
Fayetteville, AR	4/98	Late 1998 *	
Montgomery, AL	5/98	8/15/98	
Shreveport, LA	5/98	9/1/98	
Springfield, MO	6/98	8/1/98	
Chattanooga, TN		6/15/98	6/10/98
New Haven, CT		N/A	
Roanoke, VA		9/15/98	7/7/98
Tri-Cities, TN			9/98

\* When new airport opens.

**DECISION**

We have decided to grant America West five slot exemptions to serve the O'Hare-Phoenix market. We have decided also to grant 16 slot exemptions each to Atlantic Coast and Trans States, to be used to provide nonstop service with regional jet aircraft between O'Hare and the cities designated below; and we have decided to grant Simmons 16 slot exemptions to be used in specified Essential Air Service operations, provided that Simmons transfer an equal number of existing slots from those EAS markets to enable implementation of nonstop, regional jet services between O'Hare and the cities designated below. We find that grant of these exemptions is in the public interest and is consistent with our guidelines on exceptional circumstances as delineated in this order and in previous orders.

In the event that any carrier fails to initiate or discontinues the regional jet services specifically enabled under the slot exemptions granted here, the effectiveness of the exemptions will terminate. In Simmons' case, suspension of the regional jet services it would be operating under slots transferred from its existing EAS markets would likewise result in termination of the effectiveness of its EAS slot exemptions, but would not relieve it of any of its EAS obligations.

**Grant of Exemptions to America West**

America West's application meets the statutory requirements and the Department's guidelines for the grant of slot exemptions to new entrants. The carrier currently holds a total of only seven slots at O'Hare and has never held as many as twelve slots. Thus it meets the definition of a

limited incumbent (see definition contained in footnote 2), as required for eligibility for exemptions under section 41714(c). It also meets each element of our guidelines: it will use Stage 3 aircraft to provide substantial low-fare, competitive service benefits in a market that it has demonstrated to be underserved, and its service should be operationally and financially viable.

Grant of America West's application will enable it to provide a low-fare stimulus for O'Hare travelers to and from Phoenix, Las Vegas and other West Coast destinations. Its ability to do so is clearly impaired by the difficulty of gaining slot access at O'Hare, and we agree with America West's comment that among all major carriers it is uniquely disadvantaged in that respect. Specifically, it notes that the seven other major hub-and-spoke carriers average twelve departures a day between O'Hare and their primary hubs, and America West has only three. It also notes that although less than ten percent of all departures at O'Hare are outside the slot controlled hours, America West's total O'Hare operations are both very small in number (ten round trips a day) and largely confined (sixty percent) to those off-peak times. As a result, service between O'Hare and America West's principal hub, Phoenix, as well as its secondary hub, Las Vegas, is not fully responsive to demand, as reflected in the very high load factors on service that does exist in those markets.

America West states in its application that load factors on O'Hare-Phoenix and O'Hare-Las Vegas scheduled flights are among the highest of all O'Hare markets, averaging 81 and 83 percent, respectively, for the twelve months ended March 1997 for the three carriers now serving the markets, American and United, in addition to America West. (Application, Exhibit 4). America West's own load factors for those flights departing O'Hare at peak hours averaged 85 and 82 percent, with the largest aircraft in their fleet. (Application, Exhibit 5). These statistics are an indication that both markets are underserved.

America West's relatively limited presence in the O'Hare-Phoenix and O'Hare-Las Vegas markets has had a positive effect on fares, but the severe limits on its access to O'Hare constrain the degree of its ability to influence price in those markets and other markets it serves with connections over Phoenix and Las Vegas. Average fares in these markets are materially lower than average fares in other hub markets of comparable distances. America West notes that United has matched its fares to Phoenix and Las Vegas, but, in view of the high load factors on flights serving those markets, it seems clear that competition is constrained by an insufficient supply of seats for many travelers, both in the local markets and in West Coast connecting markets, especially on peak-period flights. We conclude, therefore, that America West's additional service that will be enabled by the grant of slot exemptions in this order will make significant price competition available for a substantial number of travelers.

United argues that fares in these markets are already adequately disciplined, not by America West's service but by Southwest's at Chicago Midway. Both United and TWA further argue that O'Hare and Midway both serve the same relevant market. We disagree on both counts.

United's argument and its own behavior are contradictory, *i.e.*, United serves the Chicago-Phoenix market out of O'Hare, and it has chosen to match America West's fares, also out of O'Hare, not Southwest's lower fares via Midway. Similarly, America West has shown in its

pleadings that there are numerous other Chicago markets served by both United via O'Hare and Southwest via Midway in which there are very large fare differentials between the two carriers, ranging from 30 percent to over 100 percent. (America West Reply, Exhibit A, November 21, 1997). Conversely, in airport-to-airport markets served by both carriers, the discrepancies between fare levels are very small or nonexistent. The significance of these observations is that the disciplining effect that low-fare Midway service has on O'Hare fares is by no means great enough to make the fare levels comparable in many markets.

The logical explanation for this phenomenon is the differences in the makeup of the O'Hare and Midway markets. First, there is no comparison in the available connecting opportunities. O'Hare is the premier connecting complex in the United States, both domestically and internationally. Midway has no international operations, and very little in domestic network services. Second, there is clear evidence that many consumers prefer O'Hare, for a variety of reasons: connecting opportunities, choice among a greater number of frequencies, location, and miscellaneous matters of personal preference. America West makes the point that, although it competes as a low-fare carrier, it is also a full-service airline, catering to both business and leisure travelers, with a range of services that it cannot effectively make available at Midway for the reasons stated above. In short, many consumers are willing to pay a higher price in order to fly to or from O'Hare rather than Midway, a fact that is reflected in the significant average fare differentials between either airport and common end-point cities. We reject, therefore, United's and TWA's contention that Midway is a ready substitute for O'Hare.

Finally, United and TWA argue that if America West wishes to expand its O'Hare-Phoenix operations it has the ability to do so with the three slots it now holds but is leasing to American Airlines in exchange for slots at LaGuardia and National airports. We do not find that position reasonable. America West faces the same barriers and disadvantages in its attempts to gain access to those slot-controlled airports as it faces at O'Hare. In an order we are issuing simultaneously with this order, we found that we are unable to grant slot exemptions to America West for new LaGuardia service, notwithstanding our finding that America West's proposal there would have produced substantial transportation benefits. Thus, viewing America West's system in the aggregate, which we find an appropriate perspective, moving slots from one pool to another would serve only to compound an existing shortage at one location to effect a minor improvement at another.

Based on these considerations, we will grant America West five slot exemptions to enable it to increase its nonstop service between O'Hare and Phoenix, subject to the conditions stipulated in this order.

### **Grant of Exemptions to ACA, Simmons and Trans States**

The operations proposed by these three air carriers would provide substantial transportation benefits in the form of nonstop jet service in markets that now do not have such service. Over the past year the Department has participated in numerous meetings throughout the nation on the subject of needed air service improvements, and we are keenly sensitive to the problems that many consumers have experienced in seeking access to responsive air service or reasonable fares. Many members of Congress have voiced equal concern about that issue.

Our decision in this order to grant slot exemptions for the purpose of enabling the designated regional jet operations reflects our resolve to take steps within our power to enhance air transportation for underserved, nonhub cities, consistent with the guidelines we have established in this and previous orders on exceptional circumstances.

A number of responsive pleadings in these dockets contain arguments that our decision on these applications should be dictated in large part by the slot holdings of American and United at O'Hare. United argues that Simmons, as a wholly owned subsidiary of AMR Holdings, is not eligible for slot exemptions as a new entrant under section 41714(c). American argues that there is no substantive distinction between corporately-related carriers and franchise arrangements in terms of the degree of control exerted by itself or United, and that, in fact, it would be inappropriate for the Department to grant exemptions to a United Express carrier because United is the single largest slot holder at O'Hare. Comair argues that American and United and their feed carriers are already the major beneficiaries of regulated slots at O'Hare, and that the effect of granting exemptions for any of the regional jet proposals would be to divert connecting traffic away from uncongested hubs such as Cincinnati. Comair states that it provides multiple regional jet frequencies now between Cincinnati and a number of the cities for which regional jet service to O'Hare is being proposed. Thus, Comair's position is that none of the three applications should be granted.

We disagree with Comair. We recognize that Comair's regional jet schedules at Cincinnati provide valuable benefits to the markets they serve, and that some of those markets involve cities that are at issue here. However, the access that they provide to O'Hare is limited to connecting services only, and although we recognize the vital competitive effect that connecting services exert in many markets, the pertinent city-pair distances here are relatively short, and connecting services are not as responsive to most travelers' needs in that circumstance. Rather, the Department reads its primary obligation in this context to be to promote the public interest, not by affording protection to existing route structures, but by allowing competitive market forces to provide efficiency, innovation, and low prices. 49 U.S.C. section 40101(a)(6), (12). We believe that, in opening O'Hare to these additional limited regional jet operations, we expand service to new passengers and promote competition and innovation in exactly the manner contemplated by Congress.

We are also mindful of the dominant slot holdings of American and United at O'Hare, and we have carefully considered the applicants' affiliations with those carriers in reaching our decision. Together American and United, including their code-share commuter partners, hold the overwhelming majority, 82 percent, of all O'Hare slots. On the other hand, our goal here is to

enhance the access of underserved, nonhub cities to more responsive air transportation, and the new regional jet proposals are uniquely directed toward that goal. They would provide substantially enhanced access for over 630,000 passengers a year, based on the applicants' estimates,<sup>9</sup> and having the support of one of the major carriers' network systems will strengthen the proposed operations. Moreover, any concern about our strengthening American's or United's slot holdings by our action in this order is mitigated by the fact that we will tag the slot exemptions for use only in the designated markets and only with the specified, regional jet aircraft or as otherwise specified in this order. Thus, neither American nor United -- or, for that matter, any of the commuter applicants themselves -- will be at liberty to use the slot exemptions for any purpose whatsoever other than as explicitly conditioned in this order.

We are granting exemptions to ACA and Trans States under the provisions of section 41714(c). Both of these applicants meet the statutory definition of a new entrant, *i.e.*, neither carrier holds, or has held, as many as twelve slots at O'Hare. Moreover, we find that there are compelling public interest considerations, as discussed below, and exceptional circumstances that support their applications. In the latter regard, both carriers would be introducing new nonstop services where none currently exist, with Stage 3 aircraft, in markets of substantial size that should support financially viable operations. Thus their proposals meet the guidelines for exceptional circumstances described in this order.

Simmons does not meet the definition of a new entrant carrier, and thus does not qualify for slot exemptions under section 41714(c). However, as we will discuss below, in our judgment there are compelling public interest considerations that support the facilitation of a portion of Simmons' application, commensurate with the grant of authority we are conferring on ACA and Trans States, and we are relying on other statutory authority to achieve that result.

First we will address the standing of ACA and Trans States, compared to that of Simmons, for consideration as new entrants under section 41714(c). Simmons itself holds a substantial number of slots at O'Hare, and thus fails to qualify as a new entrant for that reason. Moreover, we disagree with American's contention that its corporate relationship with Simmons has no significance in terms of its level of control by comparison to United's degree of control through its franchise arrangements over ACA or Trans States. As a legal matter, section 41714(c) defines a new entrant as an air carrier or commuter carrier that holds fewer than twelve slots at the airport in question, and the High Density Rule unequivocally treats corporately related carriers as one.<sup>10</sup> There are also practical distinctions. Both ACA and Trans States are independent carriers who assume the full economic risk in their own operations. Their code-share arrangements with

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<sup>9</sup> Simmons did not submit traffic forecasts, but ACA and Trans States submitted passenger forecasts for the first full year of operations as follows: ACA -- Charleston 54,020; Duluth 77,672; Wilkes-Barre 72,726; Fayetteville 60,714; Montgomery 63,510; Shreveport 68,335; Springfield 69,350; Trans States -- Chattanooga 56,871; Roanoke 54,684; Tri-Cities 52,497.

<sup>10</sup> The High Density Rule provides that "if a single company has more than a 50-percent ownership or control of two or more air carriers and/or commuter operators or any combination thereof, those air carriers and/or commuter operators shall be considered to be a single operator." 14 C.F.R. section 93.213(c).

United are arms-length contracts that are subject to renegotiation. Indeed, Trans States has marketing arrangements with TWA as well as with United. In short, we do regard ACA and Trans States as independent entities and we find that they qualify for exemption eligibility as new entrants under section 41714(c), while Simmons does not.

On the other hand, notwithstanding Simmons' ineligibility for relief under section 41714(c), we find a compelling case for giving equal consideration to Simmons' proposal with those of ACA and Trans States. First, we view the affected mid-sized cities as the most important beneficiaries of the proposed services, and it is in their best interests that we seek the most operationally efficient system of awards for implementation of those services. Each applicant's transition to regional jet operations is a substantial undertaking, both in terms of its incorporating a new aircraft type into its system and in terms of its financial commitment (the acquisition cost of each aircraft approaches \$20 million). It is sound policy to spread our reliance for these important services among several carrier applicants. Second, the cities that we are designating for Simmons to serve would appear to fit more efficiently into Simmons' route system, and the prospects for successful service implementation to those cities are thus enhanced through an award to Simmons. Third, as noted above, in the unique circumstances of these applications, we regard the network support of American or United behind the applicants' direct services to O'Hare as beneficial to travelers, not detrimental. Thus, we perceive some competitive benefit in dividing the awards in a manner that relies to an extent on the system support of both of the dominant major carriers at O'Hare. And finally, we applaud the willingness of all three commuter applicants to undertake the major commitment of financial and operational resources contemplated in their applications and to deploy those resources in underserved, medium-size, medium-range markets, in response to the pleas of such communities for restoration of the service quality many of them have lost. We recognize a significant element of equity in that respect that weighs in favor of awarding an appropriate number of slot exemptions to each of the applicants. There are consistent aspects to all of the applications: each applicant proposes to operate three round trips a day to each of the cities it would serve; each would use Stage 3, 50-seat regional jet aircraft; each would be introducing roundtrip, nonstop service in markets where none now exists; each would expect to generate traffic ranging from 50,000 to nearly 80,000 passengers a year per city; and each has a sound operating and financial record, as reflected in the reports they routinely file with the Department. In brief, each of the three applicants brings to this proceeding a meritorious proposal, and by considering all three the Department maximizes its opportunity to facilitate the major transportation benefits we expect the proposed services to produce.

Given these strong public interest factors, we have reviewed the statutory authorities available to us and find that subsection 41714(a), together with Congressional direction given the Department in utilizing that authority, fully supports the approach described below to grant Simmons temporary exemption authority under the circumstances presented.

Subsection 41714(a) requires the Secretary to ensure that air carriers providing basic essential air service from slot-controlled airports (other than National) have sufficient operational authority to provide those services. If necessary to carry out those objectives, the Secretary was ordered to grant slot exemptions at such airports.

Senate Appropriations Committee Report No. 104-325, on the Department's 1997 Appropriations Bill, directed the Department to utilize the authority under this section, where appropriate, to meet essential air service needs while at the same time improving service to nonhub cities. As the Report stated:

“In some cases, however, it may be possible to maintain and improve essential air services without significantly increasing funding requirements by providing for additional exemptions under the Secretary's existing powers and to improve service to nonhub cities as well. Where that is the case, the Secretary is directed to make the fullest possible use of those powers....

“The Secretary is also directed to use exemption authority to improve service to nonhub airports where significant improvements can be achieved. This directive is limited to O'Hare International Airport and aircraft carrying less than 60 passengers.” (at pp. 11-12)

In reviewing Simmons' existing services, we noted that it is providing EAS services with O'Hare slots to Bloomington, IL, Champaign, IL, and La Crosse, WI. In following the Congressional direction to make fullest use of our existing powers, we have decided to allow Simmons, for an interim six-month period, to reassign 16 of the slots it is currently using to provide these services for the regional jet operations we are designating in this order. In turn, we invoke our authority under section 41714(a) to replenish Simmons' capability to maintain its EAS obligations at Bloomington, Champaign, and La Crosse through O'Hare slot exemptions earmarked for those specific markets. Reassignment of these slots will have no material effect on the EAS operations at the three cities, and in fact our temporary grant of authority is conditioned upon that being the case.<sup>11</sup> We will also direct interested parties to show cause why we should not grant these exemptions to Simmons on a permanent basis.

We turn now to the designation of cities to be served by each applicant.

The applicants have submitted proposed start-up dates for every city with the exception of New Haven. New Haven is located in closer proximity to low-fare service (Southwest at Providence and Kiwi at Newark) than any other proposed city, and it is generating by far the least total traffic among those cities (140,250 origin-and-destination passengers in the twelve months ended September 1996, compared to total O & D ranging from 215,760 to 612,250 for the other ten cities). In these circumstances we will not designate scarce slot exemptions for O'Hare-New Haven service.

The remaining cities are more isolated from low-fare service -- a consideration we find relevant to the carriers' ability to attract sufficient traffic to support their regional jet schedules, which will have higher unit operating costs than the larger jets now in service in larger markets. We find that it is in the public interest to select an applicant to serve each of those ten cities to O'Hare. In

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<sup>11</sup> We expect Simmons and the FAA to work closely together to assure that the flight operations for the three communities are satisfactorily timed to meet their EAS needs.

recognition of the comparatively equal strength and viability of the applicants we have decided to grant each carrier the same number of exemptions, sixteen, for a total of 48.

While we are pleased that American and United are lending their endorsement to the commitments of their affiliated commuter carrier applicants to deploy the new “baby jets” to currently underserved, medium-sized communities, we note that they also have the ability to support the proposals themselves through their very substantial O’Hare slot holdings. We have decided to allot sufficient slot exemptions to enable each applicant to initiate slightly over two round trips a day to each of three or four cities. The carriers may be able to augment those operations through the use of slots outside the controlled hours (6:45 a.m. to 9:15 p.m.), and we would encourage American and United as well to assist in enabling the carriers to implement the full three-roundtrip service patterns they have proposed.

### **Trans States**

Trans States seeks through its petition for reconsideration of Order 97-10-16 to amend its exemption application as described above. We concur with Trans States’ argument that our consideration of its amended application will contribute to the orderly resolution of all similar proposals in the most efficient manner. Accordingly, we grant its petition. As explained below, our decision in this order will supersede the action we took with regard to Trans States in Order 97-10-16, including our imposition of limitations on its slot exemptions, which will no longer be applicable.

Trans States has announced that it will begin service to Chattanooga on June 10, with regional jet aircraft, using six of the eight slot exemptions it was given in Order 97-10-16. Trans States’ announcement thus implements the outstanding authorization it was previously awarded. The Chattanooga Parties had filed answers in support of Trans States, both in response to its initial turbo-prop aircraft proposal and in response to the petition for reconsideration at issue here, and there is no substantive reason for the Department to disallow Trans States’ scheduled start-up in favor of a different carrier. We want to make clear that our decision to act favorably on Trans States’ petition for reconsideration is based on the merits of its regional jet service plan. Thus, its Chattanooga-O’Hare service must be performed with the regional jet equipment.

Trans States is the only applicant proposing to serve Tri-Cities, and we will designate it to serve that city as well. The Tri-Cities Airport Commission supports Trans States’ application, and the carrier forecasts an operating profit in the first year of service, based on an estimate of over 52,000 passengers.

We find Trans States and Simmons equally qualified to serve Roanoke, with Trans States prepared to begin service slightly earlier than Simmons (June 1998 vs. September 1998). While that consideration is not dispositive, it strengthens the choice of Trans States. We also note that the Roanoke Regional Airport Commission filed an answer in support of Trans States.

In summary, we will grant Trans States’ petition for reconsideration of Order 97-10-16 and we will grant it a total of sixteen slots for its use in providing at least two nonstop round trips a day

between O'Hare and Chattanooga, Tri-Cities and Roanoke, with regional jet aircraft. This action supersedes our grant of eight slot exemptions to Trans States in Order 97-10-16. Thus, the two-year, experimental limitation we had placed on the exemptions awarded in that order will no longer apply.

### **Atlantic Coast**

ACA and Simmons are competing applicants for the seven remaining cities. ACA is in a position to implement its proposal relatively expeditiously in terms of aircraft availability. ACA stated in its application that its receipt of O'Hare slot exemptions would enable it, as a corollary benefit, to enhance services to and from Washington Dulles for certain communities, specifically Charleston, where it would upgrade its existing turboprop schedules to regional jets, and Wilkes-Barre, where it would inaugurate new service. Geographically, Charleston and Wilkes-Barre lie within ACA's primary area of operations. ACA is also prepared, according to the responses to Order 97-12-9, to begin serving Charleston and Wilkes-Barre four to six months earlier than Simmons. Based on these considerations, we will designate ACA to serve Charleston and Wilkes Barre.

In the interests of matching city designations with the applicants' most viable proposals, we have also decided to select ACA to serve Springfield, Missouri. The Springfield-Branson Regional Airport's answer does not express a preference for either ACA or Simmons, but supports either and does relate an expectation of strong support from United's system. The passenger and financial forecasts contained in ACA's application similarly reflect traffic and operating profits that are exceeded among ACA's proposed routes only by those it has estimated for Wilkes-Barre and Duluth. For these reasons, we will designate ACA to serve Springfield.

In summary, we will grant ACA a total of sixteen slot exemptions for its use in providing at least two round trips a day between O'Hare and Charleston, Springfield and Wilkes-Barre, with regional jet aircraft.

### **Simmons**

Simmons' application included two cities for which its proposal was tentative: Fayetteville, Arkansas, where a new airport is under construction, and New Haven, Connecticut, for which the carrier did not project a start-up date. For the reasons stated above, we will not designate New Haven for O'Hare slot exemptions. We also note that Simmons did not project a startup date for service to Fayetteville, presumably because of the uncertainty of a completion date for the ongoing airport construction. However, Simmons has expressed unequivocal intentions to serve the market, subject to favorable action on its slot exemption request, and the city of Fayetteville has aggressively supported Simmons. We have decided therefore to designate Simmons to serve Fayetteville, along with three other cities.

We previously noted that, in light of Trans States' scheduled inauguration of Chattanooga-O'Hare service with slot exemptions that are already authorized, it would be counter-productive for the Department to intervene in that commitment, notwithstanding that Chattanooga is the earliest priority among Simmons' proposed start-up dates. We found also that Charleston, one of

Simmons' next two proposed start-ups, is more appropriately designated for service by ACA. Duluth, however, which Simmons proposed to begin serving at approximately the same time as Charleston, is within Simmons' geographic area of operations and more logically fits within its system. Thus, we will select Simmons to serve Duluth, along with Montgomery, Alabama, and Shreveport, Louisiana. The Montgomery Parties filed an answer in support of Simmons. Shreveport, which is the highest historical traffic generator among all proposed cities, with over 612,000 O & D passengers for the twelve months ended September 1996, did not submit a formal answer expressing a preference for either carrier. However, both it and Montgomery appear to fit well into Simmons' present and proposed operations, and we find reasonable Simmons' representations that its O'Hare service for those cities will be financially viable.

In summary, we will permit Simmons to reassign sixteen slots from its current EAS operations at Bloomington, IL, Champaign, IL, and La Crosse, WI, for its use in providing at least two nonstop round trips a day between O'Hare and Duluth, Fayetteville, Montgomery and Shreveport, and we will grant Simmons an equal number of slot exemptions for EAS purposes to enable it to maintain its obligations under that program.

### **Petition for Reconsideration of United Air Lines**

United has asked the Department to reconsider its guidelines on slot exemptions by subordinating new entrant applications at O'Hare to international and EAS proposals and by requiring O'Hare applicants to demonstrate that their proposed services would not be equally efficient if operated at Midway Airport.

We will grant United's petition for reconsideration but, on review, we affirm the guidelines contained in Order 97-10-16 and in other orders.

The core of United's position is its contention that O'Hare and Midway serve identical markets and are therefore fully sufficient substitutes for each other. We disagree. We have noted in this order, in awarding slot exemptions to America West, that many consumers prefer to use O'Hare for a variety of reasons, and have demonstrated a willingness to pay a premium to do so. The larger network airlines that serve only one Chicago airport from their own hub cities serve O'Hare rather than Midway. Moreover, in those instances where network carriers serve both Chicago airports, they consistently charge significantly higher average fares to O'Hare travelers than to Midway travelers. In addition, low-cost airlines provide substantial service to Midway Airport and, while their presence in any given city-pair market tends to result in reductions in O'Hare average fares, O'Hare average prices nevertheless remain significantly higher than Midway average prices. Clearly, service to O'Hare has materially greater revenue potential than service to Midway and the latter does not discipline prices for a significant number of O'Hare passengers.

Based on these observations, we will deny United's request that we revise the guidelines contained in Order 97-10-16 for granting slot exemptions to new entrants.

### **ENVIRONMENTAL IMPACT**

The additional flights operated as a result of the slot exemptions granted in this order represent only a small percentage of the total current operations at O'Hare and represent a *de minimis* increase in noise contours. The Department has prepared an Environmental Assessment on these slot exemptions and concluded that the exemptions would not have a significant effect on the human environment. We note that no party has filed a pleading with the Department disputing the factual findings and analysis set forth in that assessment. The complete Environmental Assessment is available in Dockets OST-95-368, OST-97-2368, and OST-97-2771.

## **FUTURE CHANGES**

As the FAA slot regulation makes clear "(s)lots 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 CFR section 93.223(a). This order should not be construed as conferring on these carriers any ability to sell, trade, transfer, or convey the operating authorities granted by the subject exemptions.

The Department is granting slot exemptions by this order on the ground that the services proposed by the applicants meet the statutory public interest and exceptional circumstances criteria. The Department reserves the right to modify or terminate such exemption authority if the Department determines that, due to changed circumstances, these criteria are no longer satisfied by an applicant's use of the authority.

This Order is issued under authority delegated in 49 CFR 1.56(l).

## **ACCORDINGLY,**

1. The Department grants an exemption from 14 CFR Part 93, Subparts K and S, to America West Airlines, Inc., to enable it to conduct five flight operations a day (departures or arrivals) at Chicago O'Hare Airport during the slot-controlled period of 6:45 a.m. to 9:15 p.m. This authority may be used only to provide nonstop service between Phoenix, AZ and Chicago O'Hare Airport;
2. The Department grants an exemption from 14 CFR Part 93, Subparts K and S, to Atlantic Coast Airlines, Inc., to enable it to conduct 16 flight operations a day (departures or arrivals) at Chicago O'Hare Airport during the slot-controlled hours of 6:45 a.m. to 9:15 p.m. This authority may be used only to provide nonstop service with regional jet aircraft between Chicago O'Hare Airport and the cities of Charleston, WV, Springfield, MO, and Wilkes-Barre, PA;
3. The Department grants an exemption from 14 CFR Part 93, Subparts K and S, to Trans States Airlines, Inc., to enable it to conduct 16 flight operations a day (departures or arrivals) at Chicago O'Hare Airport during the slot-controlled hours of 6:45 a.m. to 9:15 p.m. This authority may be used only to provide nonstop service with regional jet aircraft between Chicago O'Hare Airport and the cities of Chattanooga, TN, Roanoke, VA, and Tri-Cities, TN;

4. The Department grants a temporary, interim exemption from 14 CFR Part 93, Subparts K and S, to Simmons Airlines, Inc., to enable it to conduct 16 flight operations a day (departures or arrivals) at Chicago O'Hare Airport during the slot-controlled hours of 6:45 a.m. to 9:15 p.m. This authority is effective for a six-month period from the effective date of this order or until further order of the Department, whichever occurs later, and may be used only to provide Essential Air Service operations, comparable in quality to existing services, between Chicago O'Hare Airport and the cities of Bloomington, IL, Champaign, IL, and La Crosse, WI, and only to the extent that Simmons performs an equal number of flight operations during the slot-controlled hours each day with regional jet aircraft between Chicago O'Hare Airport and the cities of Duluth, MN, Fayetteville, AR, Montgomery, AL, and Shreveport, LA;
5. The Department directs interested parties to show cause within 20 days of the service date of this order why the interim authority granted to Simmons in ordering paragraph 4 should not be made effective for an indefinite period;
6. Except to the extent granted in ordering paragraphs 2, 3 and 4, the remainder of the applications of Atlantic Coast and Simmons and the petition of Trans States is denied;
7. The Department directs America West, Atlantic Coast, Trans States and Simmons to contact the Airspace and Traffic Law Branch of the Office of Chief Counsel in the Federal Aviation Administration as soon as possible following the issuance of this order to determine with the FAA the actual times for arriving and departing flights as authorized by this order;
8. The authority granted under these exemptions is subject to all of the other requirements delineated in 14 CFR Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use or lose requirements;
9. The Department grants United Air Lines' petition for reconsideration of the guidelines contained in Order 97-10-16 for grant of slot exemptions for new-entrant airlines and, on review, affirms the guidelines; and
10. We will serve this order on all persons on the service lists in Dockets OST-97-2368, 2970, 2985, and 3259.

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at  
<http://dms.dot.gov/dotinfo/general/orders/aviation.html>.*