

Order 98-6-8

Served: June 8, 1998



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

Issued by the Department of Transportation  
on the 8<sup>th</sup> day of June, 1998

Application of

**IBERIA LINEAS AEREAS DE  
ESPAÑA, 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-98-3597**

**ORDER GRANTING EXEMPTION**

**APPLICATION**

On March 10, 1998, Iberia Lineas Aereas de España, S.A. (Iberia) requested an 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 enable it to conduct a single, nonstop, round-trip flight per day between Madrid, Spain and Chicago, Illinois (O'Hare International Airport), using Airbus A340 equipment (a Stage 3 aircraft). Iberia requests one slot exemption to accommodate an O'Hare arrival at 2:05 P.M. and one slot exemption for a proposed O'Hare departure at 4:55 P.M. Iberia hopes to commence these operations on or about August 1, 1998, and continue them through the 1998 summer season<sup>1</sup>. An answer to the application has been filed by United Air Lines, Inc. (United). American Airlines, Inc. (American) filed a motion for leave to file a response. United then also filed a motion for leave to file a response. We will grant the motions.

In support of its request, Iberia states that it had made a timely request for additional slots with the Federal Aviation Administration (FAA) on October 8, 1997 for the 1998 summer season, but in late January the FAA notified the carrier that Iberia's request, along with those of other carriers, exceeded the number of slots that FAA could allocate.<sup>2</sup> Iberia asserts that its O'Hare

<sup>1</sup> The summer season ends October 24, 1998.

<sup>2</sup> In November 1997, the FAA notified Iberia that Iberia's request for two new slots was likely to be denied due to the number of new requests received.

slot exemption request is similar to those of other foreign carriers recently approved by the Department and that its proposed services would significantly improve service quality in the Madrid-Chicago market. Iberia contends that grant of the slot exemptions would be consistent with the Department's finding in Order 90-3-9, in which it granted Iberia a foreign air carrier permit, that provision of service in the Madrid-Chicago market was in the public interest. Iberia also argues that approval of its request is authorized by the U.S.-Spain bilateral agreement.

## **RESPONSIVE PLEADINGS**

On March 25, United filed an answer, stating that it has no objection to the grant of Iberia's exemption so long as the similar application of Lufthansa (in Docket OST-98-3552) is granted. United noted, however, that American had opposed the Lufthansa application, arguing that, because Lufthansa and United were codesharing partners, Lufthansa should seek any O'Hare slots it may want from United. (The Lufthansa application, in Docket OST-98-3552, was granted by Order 98-4-28, served April 27, 1998).

On April 3 American filed a response. American argued that the Iberia and Lufthansa slot exemption requests are not analogous in that United and Lufthansa's codesharing agreement enjoys antitrust immunity, while American and Iberia's will not, and United holds more O'Hare slots than American. Thus, American reasserted its position that there were grounds for denial of Lufthansa's slot exemption application that are not relevant to Iberia's request.

United filed a response on April 14 expanding on its earlier arguments.

## **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 Ronald Reagan Washington National Airport (National) 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), the Secretary of Transportation may, by order, grant exemptions from the requirements of Subparts K and S of 14 C.F.R. Part 93 (pertaining to slots at high density airports other than National), to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft, if he finds such action to be in the public interest.

## **DECISION**

We will grant Iberia an exemption to enable it to perform one daily Madrid-Chicago scheduled flight arrival and one daily departure at O'Hare during the 1998 summer season. We find that grant of this exemption authority is consistent with the public interest.

Grant of this application is also consistent with the objectives of the U.S.-Spain bilateral air services agreement, which contemplates reasonable access to the market for carriers of either nation.

In reaching our decision, we recognize that Iberia 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 the requested time frames. Moreover, we note that aviation relations with Iberia are governed by the U.S.-Spain Air Transport Agreement, which provides for the proposed Madrid-Chicago service, and Iberia has been properly authorized by its government to provide scheduled foreign air transportation in the Madrid-Chicago market.<sup>3</sup>

As we have recently affirmed,<sup>4</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, Iberia followed those standard slot-allocation procedures.

Since grant of this exemption authority is dependent upon the applicant's existing U.S.-Spain operating authority, we attach the condition that this exemption authority be used only in the provision of Iberia's scheduled service between Madrid 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 Iberia 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).

**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 Iberia Lineas Aereas de España, S.A. to the extent necessary to enable it to operate one daily scheduled arrival at Chicago's O'Hare International Airport between 1:45 P.M. and 2:14 P.M. (local time) and one daily scheduled departure at Chicago's O'Hare International Airport between 4:45 P.M. and 5:14 P.M. (local time) in a pattern to be determined in consultation between Iberia Lineas Aereas de España, S.A. and the Slot Administration Office, FAA;

2. As a condition of approval, Iberia Lineas Aereas de España, S.A. may use this exemption authority only to provide scheduled service between Madrid, Spain, 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;

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<sup>3</sup> While our findings in this matter will allow for the improvement of services in the Madrid-Chicago market, we emphasize that airline requests for exemption authority will be decided by the Department on a case-by-case basis.

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

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 Iberia Lineas Aereas de España, S.A. to contact the Federal Aviation Administration's Slot Administration Office in order to determine the start-up date in consultation with that Office for the single exemption granted here. The Federal Aviation Administration will assign slot withdrawal numbers for the slot exemption times listed in ordering paragraph 1;
6. The temporary slot allocation provided for in ordering paragraph 1 above is effective commencing on August 1, 1998, and expires on October 24, 1998;
7. We will serve this order on the Ambassador of Spain in Washington, D.C.; the City of Chicago; Iberia Lineas Aereas de España, S.A., the Department of State (Office of Aviation Negotiations); and all other parties served with the application; and
8. We grant all motions to file otherwise unauthorized documents.

By:

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

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