



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

Issued by the Department of Transportation  
on the 22nd day of February, 1999

Application of

**SCANDINAVIAN AIRLINES SYSTEM**

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-98-4826**

Application of

**LUFTHANSA GERMAN AIRLINES**

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-98-4869**

**ORDER GRANTING EXEMPTIONS**

**APPLICATIONS**

On December 1, 1998, Scandinavian Airlines System (SAS) 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 continue to operate a daily nonstop, round-trip flight between Stockholm, Sweden and Chicago, Illinois (O'Hare International Airport), using Boeing B-767 equipment (a Stage 3 aircraft). SAS requests one slot exemption to accommodate an O'Hare arrival at 5:40 P.M. SAS notes that the Department previously gave it a similar exemption for the 1998/99 winter season, which is now being productively implemented (Order 98-8-26). The instant application seeks to renew the same exemption for the 1999 summer season.<sup>1</sup>

SAS states that on October 14, 1998, it made a timely request for continuation of the additional slot with the Federal Aviation Administration (FAA) for the 1999 summer season, but in November 1998 the FAA notified the carrier that its request, along with those of other carriers, exceeded the number of slots that FAA could allocate and was likely to be denied.

<sup>1</sup> The summer season begins April 4, 1999 and ends October 30, 1999.

Before we granted SAS its winter-season exemption, SAS was operating a daily Copenhagen-O'Hare round trip during slot controlled hours. SAS used the slot exemption granted in Order 98-8-26 to shift its Copenhagen-O'Hare service to a late evening departure, thus freeing the afternoon arrival/departure slots previously held for new Stockholm-O'Hare service.<sup>2</sup> SAS asserts that approval of its current application would continue to advance the objectives of the U.S.-Denmark/Sweden/Norway Open Skies Agreements and is warranted for the same considerations as cited in the Department's grant of its previous exemption application for the winter 1998/99 season.

On December 7, 1998, Lufthansa German Airlines (Lufthansa) 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 one additional round-trip flight per day between Frankfurt, Germany, and Chicago, Illinois (O'Hare International Airport), using Airbus A340 equipment (a Stage 3 aircraft). Lufthansa requests one slot exemption to accommodate an arrival at 7:35 P.M. The corresponding departing flight would be outside the O'Hare slot-controlled period. Lufthansa would intend to commence these operations on or about March 28, 1999. An answer to the application has been filed by American Airlines and separate replies were filed by United Air Lines and Lufthansa. US Airways filed a motion for leave to file a response. We will grant the motion.

In support of its request, Lufthansa says that it had made a timely request for additional slots with the Federal Aviation Administration (FAA) on October 14, 1998, for the 1999 summer season, but the FAA subsequently notified the carrier that the request exceeded the number of slots that FAA could allocate.<sup>3</sup> Lufthansa notes that the Department previously granted an exemption to Lufthansa to provide its proposed service during the 1998 summer season (Order 98-4-28), and asserts that its proposed services for the 1999 summer season would continue to provide the public benefits that justified the grant of its previous request.<sup>4</sup>

On December 21, 1998, American filed an answer opposing the Lufthansa application. American asserts that Airport Coordination Germany (BVM), the German agency charged with the coordination of German slot access, denied American's request for New York-Frankfurt summer season arrival slots times at 8:15 a.m. and for Frankfurt-Dallas/Ft. Worth summer season departure slots at 1:00 p.m. Instead, BVM offered American slot arrival times at 9:00 a.m. for the New York-Frankfurt service and 1:35 p.m. for the Frankfurt-Dallas/Ft. Worth service.

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<sup>2</sup> SAS asserts that its service has been enhanced by the alliance between SAS, a hub carrier at Stockholm and Copenhagen, and United, a hub carrier at O'Hare, and that the scheduling of its new Stockholm service and the rescheduling of its Copenhagen service have preserved a greater portion of the workday for passengers at both Chicago and Copenhagen before their departure.

<sup>3</sup> The FAA allocated four slots (two slots for combination service and two slots for all-cargo service) to support Lufthansa's summer season schedules for 1999, as it had for 1998. In November 1998, the FAA notified Lufthansa that one outstanding slot request was likely to be denied due to the number of new requests received.

<sup>4</sup> Lufthansa states that these would be in the form of additional capacity and travel options for U.S. and European travelers between the largest U.S. hub airport and the largest continental Europe airport. The timing of the proposed new services would enable passengers in either direction to use most of their workdays gainfully before departing on their transocean flights, and would give U.S. passengers many additional connecting opportunities at Frankfurt. Lufthansa also says that its proposed service would provide additional online connecting service to Eastern Europe and Central Asia markets. Lufthansa also points to the high load factors on its Chicago-Frankfurt slot exempt service during the summer of 1998 as evidence that there is heavy demand for its proposed service. Finally, Lufthansa asserts that approval of its request is consistent with the objectives of the U.S.-Germany bilateral agreement.

American contends that the slots offered by BVM are unacceptable and urges the Department to deny the Lufthansa slot exemption request for lack of reciprocity. US Airways filed a response in support of American's answer, asserting that U.S. international air carriers are not receiving reciprocal access to foreign airports.

Lufthansa and United replied that the American objections are not valid because the alternative times offered to American at Frankfurt are reasonable.

On January 20, 1999, the City of Chicago filed a motion to leave and consolidated answer in support of the SAS and Lufthansa applications and other foreign air carrier slot exemption applications at O'Hare.

## **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 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 SAS an exemption to enable it to perform one daily late afternoon Copenhagen-Chicago scheduled flight arrival at O'Hare during the 1999 summer season; and we will also grant Lufthansa an exemption to enable it to perform one daily Frankfurt-Chicago scheduled flight arrival at O'Hare during the 1999 summer season. We find that grant of these exemptions is consistent with the public interest.

Grant of the SAS application will allow the continuance of competitive daily service to Stockholm while preserving existing daily service to Copenhagen. Our previous award by Order 98-8-26 facilitated expanded capacity and broadened the range of travel times available to passengers between Chicago and Scandinavia. Grant of this application continues to be consistent with the objectives of the bilateral air services agreements between the U.S. and Denmark/Sweden/Norway which contemplate access to the market for carriers of either nation.

We will also grant Lufthansa an exemption to enable it to perform one daily Frankfurt-Chicago scheduled flight arrival at O'Hare during the 1999 summer season.<sup>5</sup> We find that grant of this exemption authority is consistent with the public interest.

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<sup>5</sup> In this case Lufthansa has requested that its exemption authority commence on March 28, 1999, rather than the April 4, 1999, summer season commencement date as defined by the Federal Aviation Regulations. March 28, 1999, is the beginning date of the Northern summer season as determined by the International Air Transport Association (IATA). FAA staff has determined that the inauguration of Lufthansa's service on the earlier date would not present operational concerns.

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

In reaching our decision, we recognize that both SAS and Lufthansa filed timely requests with the FAA for their additional slots, and that due to hourly constraints the FAA has not been able to accommodate the requests within the applicants' proposed time frames. Moreover, we note that aviation relations with SAS are governed by the U.S.-Denmark/Sweden/Norway Air Transport Agreement, which provides for the proposed Stockholm-Chicago service, and that SAS has been properly authorized by its government to provide scheduled foreign air transportation in the Stockholm-Chicago market; and we note that aviation relations with Lufthansa are governed by the U.S.-Germany Air Transport Agreement, which provides for the proposed Frankfurt-Chicago service, and that Lufthansa has been properly authorized by its government to provide scheduled foreign air transportation in the Frankfurt-Chicago market.

We agree with American that reciprocal access at foreign airports is a relevant factor in the Department's consideration of foreign carrier slot exemption requests at U.S. slot-controlled airports. However, we do not find that American has been denied corresponding reciprocal access in this case.

Under the High Density Rule, foreign airlines are not guaranteed slots at their requested times. For example, at Chicago's O'Hare Airport, a slot was not withdrawn from a domestic flight to accommodate an international service if a vacant slot was available within one hour on either side of the time requested for the international service. At New York's Kennedy Airport, international services are operated outside the five-hour controlled period, if vacant slots are not available within the period. Thus, BVM's offer of arrival and departure slots at Frankfurt within 45 and 35 minutes, respectively, of the requested times is consistent with our own slot guidelines. On that basis, we do not find that BVM's response to American's slot request reflects a lack of reciprocity.

As we have affirmed,<sup>6</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 before filing a slot exemption request with the Department. In this case, SAS and Lufthansa followed those standard slot-allocation procedures.<sup>7</sup>

Since grant of these exemption authorities are dependent upon SAS's existing U.S.-Denmark/Sweden/Norway operating authority and Lufthansa's existing U.S.-Germany operating authority, we attach the condition that they may be used only in the provision of SAS's scheduled service between Copenhagen and Chicago O'Hare and Lufthansa's scheduled service between Frankfurt and Chicago O'Hare. Furthermore, in accordance with the requirements of the statute, all aircraft operations performed under these exemptions shall be conducted by Stage 3 aircraft. We also note that grant of the exemptions provides SAS and Lufthansa with only temporary slot allocations at O'Hare Airport and does not confer on the applicants any ability to sell, trade, transfer, or convey this exemption authority.

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

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<sup>6</sup> See Orders 97-4-1 at 4 and 97-3-31 at 5.

<sup>7</sup> While our findings in this matter will allow for the improvement of services in the Stockholm-Chicago and Frankfurt-Chicago markets, we emphasize that airline requests for exemption authority will be decided by the Department on a case-by-case basis.

**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 Scandinavian Airlines System to the extent necessary to enable it to operate one daily scheduled arrival at Chicago's O'Hare International Airport between 5:15 P.M. and 5:44 P.M. (local time) in a pattern to be determined in consultation between Scandinavian Airlines System and the Slot Administration Office, FAA;
2. As a condition of approval, Scandinavian Airlines System may use this exemption authority only to provide scheduled service between Copenhagen, Denmark, and the terminal point Chicago, Illinois (O'Hare International Airport);
3. 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 Lufthansa German Airlines to the extent necessary to enable it to operate a daily scheduled arrival at Chicago's O'Hare International Airport in a pattern to be determined in consultation between Lufthansa German Airlines and the Slot Administration Office, FAA between 7:30 P.M. and 7:59 P.M. (local time);
4. As a condition of approval, Lufthansa German Airlines may use this exemption authority only to provide scheduled service between Frankfurt, Germany, and the terminal point Chicago, Illinois (O'Hare International Airport);
5. As a further condition of approval, the Department directs that all aircraft operations granted under these exemptions must be provided by Stage 3 aircraft;
6. The authority granted under these exemptions is subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S;
7. We direct Scandinavian Airlines System 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 exemption authority granted here. The Federal Aviation Administration will assign a slot withdrawal number for the slot exemption time listed in ordering paragraph 1;
8. We direct Lufthansa German Airlines 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 exemption authority granted here. The Federal Aviation Administration will assign a slot withdrawal number for the slot exemption time listed in ordering paragraph 3;
9. The temporary slot allocation provided for in ordering paragraph 1 above is effective commencing on April 4, 1999, and expires on October 30, 1999;
10. The temporary slot allocation provided for in ordering paragraph 3 above is effective commencing on March 28, 1999, and expires on October 30, 1999;
11. We will serve this order on the Ambassadors of Sweden, Denmark, and Norway in Washington, D.C.; the Ambassador of Germany in Washington, D.C.; the City of Chicago; Scandinavian Airlines

System, Lufthansa German Airlines; the Department of State (Office of Aviation Negotiations); and all other parties served with these applications; and

12. We grant all motions to file otherwise unauthorized documents.

By:

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

(SEAL)

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