



**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

**COMPANIA MEXICANA DE AVIACION,
S.A. DE C.V.**

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-98-4946

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-98-4981

ORDER GRANTING EXEMPTIONS

APPLICATIONS

On December 24, 1998, Compania Mexicana de Aviacion, S.A. de C.V. (Mexicana) 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 Mexico City, Mexico and Chicago, Illinois (O'Hare International Airport), using Stage 3 aircraft for the 1999 summer season.¹ Mexicana requests one slot exemption to accommodate an O'Hare arrival during the 11:15 A.M. half-hour slot period and one slot exemption for a proposed O'Hare departure during the 2:15 P.M. half-hour slot period. No answers in opposition to the application have been filed.

In support of its request, Mexicana states that it had made a timely request for additional slots with the Federal Aviation Administration (FAA) on October 13, 1998, for the 1999 summer season, but in December 1998 the FAA notified the carrier that Mexicana's request, along with those of other carriers, exceeded the number of slots that FAA could allocate. Mexicana argues

¹ The summer season begins April 4, 1999, and ends October 30, 1999.

that it has successfully operated the proposed service for several years and until the current winter season has gained the needed slots through the FAA's slot allocation process or through barter arrangements with other airlines. The carrier alleges that despite its best efforts it has been unable to obtain slots.

In that regard, the Department previously granted an O'Hare slot exemption to Mexicana for the 1998/99 winter season (Order 98-10-26).

Mexicana asserts that its O'Hare slot exemption request is similar to those of other foreign carriers recently approved by the Department; that its proposed service has provided significant benefits to Mexico City-O'Hare passengers in the past; and that given its current codeshare agreement with United Air Lines these online service benefits have been extended to numerous O'Hare markets served by United. Mexicana also argues that approval of its request is authorized by the 1960 U.S.-Mexico Air Transport Agreement and under the terms of its foreign air carrier permit (Order 79-6-127). No answers in opposition to the application have been filed.

On January 8, 1999, 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, (O'Hare), using Airbus A340 equipment (a Stage 3 aircraft) for the 1999 summer season. 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, like Mexicana, states that it was also unable to obtain slots for the current winter season and thus sought and was granted an exemption to provide that service (Order 98-10-12). No answers in opposition to the application have been filed.

In support of its request, Iberia states that it had made a timely request for additional slots with the Federal Aviation Administration (FAA) for the 1999 summer season, but by letter dated November 15, 1998, the FAA notified the carrier that its request remained pending and it was unlikely that the request could be granted. Iberia asserts that this designation indicates that Iberia's request, along with those of other carriers, exceeded the number of slots that FAA could allocate.

Iberia asserts, as it did in its exemption application for the 1998/1999 winter season, that its O'Hare slot exemption request is similar to those of other foreign carriers recently approved by the Department; that its slot-exempt seasonal service has improved service quality in the Madrid-Chicago market; and that the public benefits of its current services should be continued. Iberia also argues that approval of its request is authorized by the U.S.-Spain bilateral agreement.

On January 20, 1999, the City of Chicago filed a motion for leave to file and a consolidated answer in support of the Mexicana and Iberia applications and other foreign air carrier slot exemption applications at O'Hare.²

STATUTORY BACKGROUND

² We grant the motion.

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 Mexicana an exemption to enable it to perform one daily Mexico City-Chicago scheduled flight arrival and one daily departure at O'Hare during the 1999 summer season; and 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 1999 summer season. We find that grant of these exemptions is consistent with the public interest.

Grant of these applications is also consistent with the objectives of the U.S.-Mexico and U.S.-Spain bilateral air services agreements, which contemplate access to the subject markets for carriers of both nations.

In reaching our decision, we recognize that both Mexicana and Iberia filed timely requests with the FAA for these additional slots, and that due to hourly slot constraints the FAA has not been able to accommodate either applicant's request within the requested time frames. Moreover, we note that aviation relations with Mexico are governed by the U.S.-Mexico Air Transport Agreement, which provides for the proposed Mexico City-Chicago service, and Mexicana has been properly authorized by its government to provide scheduled foreign air transportation in the Mexico City-Chicago market; and that aviation relations with Iberia are governed by the U.S.-Spain Air Transport Services 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

As we have affirmed,³ 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, Mexicana and Iberia followed those standard slot-allocation procedures.⁴

³ See Orders 98-6-8 at 3 and 98-8-26 at 3.

⁴ While our findings in this matter will allow for the continuation of existing services in the Mexico City-Chicago and Madrid-Chicago markets, we emphasize that airline requests for exemption authority will be decided by the Department on a case-by-case basis.

Since grant of these exemption authorities is dependent upon Mexicana's existing U.S.-Mexico operating authority and Iberia's existing U.S.-Spain operating authority, we attach the condition that the exemptions may be used only in the provision of Mexicana's scheduled service between Mexico City and Chicago O'Hare and 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 these exemptions provides Mexicana and Iberia with only a temporary slot allocation 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)(1).

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 Compania Mexicana de Aviacion, S.A. de C.V. to the extent necessary to enable it to operate one daily scheduled arrival at Chicago's O'Hare International Airport between 11:15 A.M. and 11:44 A.M. (local time) and one daily scheduled departure at Chicago's O'Hare International Airport between 2:15 P.M. and 2:44 P.M. (local time) in a pattern to be determined in consultation between Compania Mexicana de Aviacion, S.A. de C.V. and the Slot Administration Office, FAA;
2. As a condition of approval, Compania Mexicana de Aviacion, S.A. de C.V. may use this exemption authority only to provide scheduled service between Mexico City, Mexico, 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 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;
4. 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);
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 Compania Mexicana de Aviacion, S.A. de C.V. and Iberia Lineas Aereas de España, S.A. direct 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 slot withdrawal numbers for the slot exemption times listed in ordering paragraph 1 and ordering paragraph 3, respectively;

8. The temporary slot allocations provided for in ordering paragraphs 1 and 3 above are effective commencing on April 4, 1999, and expire on October 30, 1999;

9. We will serve this order on the Ambassador of Mexico in Washington, D.C.; the Ambassador of Spain in Washington, D.C.; the City of Chicago; Compania Mexicana de Aviacion, S.A. de C.V.; Iberia Lineas Aereas de España, S.A.; the Department of State (Office of Aviation Negotiations); and all other parties served with the application; and

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

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document will be made available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*