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Order 99-12-26

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

Issued by the Department of Transportation
on the 27th day of December, 1999

Served: December 27, 1999

Applications of

**AMERICAN EAGLE AIRLINES, INC.
GREATER BATON ROUGE AIRPORT DISTRICT,
THE COMMUNITY OF SAVANNAH, GA/
HILTON HEAD, SC**

For exemptions from 14 CFR Part 93, under 49 U.S.C. 41714

**Dockets OST-99-5587 - 17
OST-99-5532 - 68
OST-98-3603 - 46**

ORDER

By this order the Department grants the petition for reconsideration of Order 99-7-17 filed by American Eagle Airlines, Inc. (American Eagle), and amends its actions in Order 99-7-17 by allocating two additional Chicago O'Hare Airport slot exemptions to American Eagle to provide nonstop regional jet service to Baton Rouge, LA. We are also amending our action in Order 99-3-12 by increasing by two the O'Hare slot exemptions allocated experimentally in that order for the provision of nonstop regional jet service to Savannah, GA/Hilton Head, SC.

These actions are enabled by the announced termination, effective January 4, 2000, of Great Lakes Aviation's use of slots previously authorized for its service between O'Hare Airport and Quincy, IL. (Order 90-5-26) As we stated in Order 99-7-17, as well as in other orders authorizing O'Hare slot exemptions, we have adhered to a limit, based on an environmental assessment issued with Order 97-10-16, of 60 O'Hare slot exemptions from the date of that order forward. Except for the four slots now being returned by Great Lakes, as noted above, the 60-exemption limit has been fully designated.

Consistent with Order 99-7-17, we are deferring action on pending applications for new or additional O'Hare slot exemptions by all other non-airline parties and by National Airlines, Inc. We stated in Order 99-3-12 that we intended our allocations of slot exemptions in that order to community applicants to be a one-time experiment, and we have adhered to that decision. We acknowledged in Order 99-7-17 that National Airlines' application in Docket OST 99-5521 proposing Las Vegas-O'Hare service, was

meritorious but was less compelling than other proposals. National has requested five slot exemptions to serve the Las Vegas-O'Hare market. We find that the continuing absence of direct service in the Baton Rouge-O'Hare market constitutes a more critical need for slot exemption assistance at this time; and the two remaining available exemptions are equally vital to meet the heavy, demonstrated consumer demand in the Savannah/Hilton Head market.

BATON ROUGE

By Order 99-7-17 we reallocated a total of eleven O'Hare slot exemptions that had previously been authorized for, but were subsequently discontinued by American Eagle (eight exemptions) and Great Lakes Aviation (three). Two of the exemptions were redesignated for American Eagle to provide O'Hare-Baton Rouge nonstop regional jet service.¹ We recognized that none of the reallocations, including those for Baton Rouge, would suffice for the full implementation of the service patterns proposed for each relevant market. Because there was a limited number of exemptions available for reallocation, we were not in a position to facilitate, solely through our own actions, the introduction of optimum service patterns in each deserving market. Rather, we allocated those that were available and encouraged American and United, as the code-share major carrier partners of Eagle and Atlantic Coast Airlines (ACA), to assist their code-sharing subsidiaries or affiliates to structure more fully responsive service patterns for the designated markets.

On August 16, 1999, American Eagle filed a petition for reconsideration of Order 99-7-17. It states that it is unable to secure additional slot access to enable it to round out a full Baton Rouge/O'Hare service pattern, and requires two more exemptions in order to do so.

Answers in opposition to American Eagle's petition were filed by ACA, United, and the Community of Savannah, GA/Hilton Head, SC.

ACA and United argue that American Eagle has failed to indicate that it would use self-help measures to provide Baton Rouge-O'Hare service.

Savannah/Hilton Head argues that any additional slot exemptions should be designated for its O'Hare service, based on the demonstrated success of its current schedules, rather than to American Eagle or any other party.

The Greater Baton Rouge Airport District filed an answer in support of American Eagle's petition. It argues that the Department's reasoning in selecting Baton Rouge to be the beneficiary of two slot exemptions also justifies two additional slot exemptions to ensure the success of the projected service.

¹ Six others were designated for American Eagle (three for Huntsville, AL) and ACA (three for Mobile, AL) and three were reserved for service to Charleston, SC, which were later allocated to ACA.

SAVANNAH/HILTON HEAD

By Order 99-3-12 we allocated three O'Hare slot exemptions each to the communities of Savannah/Hilton Head and Greenville/Spartanburg on an experimental basis. Those exemptions have been implemented by ACA, which is currently providing two nonstop regional jet round trips a day.

Savannah/Hilton Head had requested a total of eight slot exemptions. Because of the limited number of slot exemptions available, as discussed in numerous places, we were not in a position to allocate more than three exemptions for Savannah-O'Hare service. However, with the limited service that we were able to facilitate, the community and ACA have since reported that traffic response in the market has been very strong from the outset, and they have urged additional allocations as they may become available.

DECISION

We will grant American Eagle's petition for reconsideration of Order 99-7-17 and, on reconsideration, we will increase its reallocation of O'Hare slot exemptions for service to Baton Rouge from two to four. We noted previously that we accepted American Eagle's marketplace assessment that Baton Rouge will support regional jet service to O'Hare based on historical traffic data for Baton Rouge and other cities within its catchment area.² American Eagle stated in a document filed May 12, 1999, where it discussed its decision to end its Chicago service at Shreveport and Montgomery, that "we fully expect demand to be far stronger at Baton Rouge and Huntsville." American Eagle has implemented its slot exemptions to serve Huntsville, augmenting those exemptions with one additional slot of its own, thus providing the market two daily round trips. With the newly available exemptions occasioned by Great Lakes' aforementioned return of unused slots, and given the fact that only two exemptions could be allocated earlier for this market, we find it in the public interest to authorize two additional exemptions for American Eagle's proposed service between Baton Rouge and O'Hare.³

We also will reallocate two more slot exemptions for O'Hare-Savannah/Hilton Head service. The experimental slot exemptions that we awarded for that market in Order 99-3-12 are being implemented by ACA, with impressive results. ACA is operating two daily round trips with the combination of the three experimental slot exemptions plus one slot that it acquired on its own. The Savannah-O'Hare market has responded extremely well with load factors on the nonstop services averaging 73 percent over the first seven

² In 1998 Baton Rouge, Alexandria, Lafayette and Lake Charles generated nearly 40,000 Chicago origin-destination passengers.

³ Given the relative scarcity of slot exemptions, we expect that if market demand warrants more frequencies American Eagle will look first to its own resources, as others have done, to obtain any needed additional slots at O'Hare. (Conversely, if the expected market demand fails to materialize, we expect American Eagle to promptly so advise the Department so that the exemptions may be more efficiently utilized).

months (May through November). ACA informs us that at these traffic levels it is unable to accommodate all who seek to use its nonstop service. ACA and the community have thus made a compelling case that the market will support additional frequencies. Moreover, ACA has had a record of supplementing any slot exemptions through self-help measures to increase the number of frequencies it provides for designated O'Hare markets,⁴ which we consider a positive factor in making allocation determinations.

Based on these observations, we find it in the public interest to reallocate two of the newly available O'Hare slot exemptions for the provision of increased nonstop jet service between O'Hare and Savannah/Hilton Head.

CONDITIONS

In the event that either American Eagle or ACA (or other carrier that Savannah/Hilton Head acquires to implement its experimental slot exemptions) fails to initiate, or initiates and then discontinues, regional jet services specifically enabled under the slot exemptions allocated here, the effectiveness of the exemptions will terminate. In American Eagle's case, suspension of the regional jet services it will be operating under slots transferred from its existing EAS markets (*see* Order 99-7-17, footnote 4) will likewise result in termination of the effectiveness of its EAS exemptions, but would not relieve it of any of its EAS obligations.

To assure the most beneficial implementation of the slot exemptions we are reallocating in this order, we direct ACA (or other carrier that Savannah/Hilton may secure to implement its experimental slot exemption) and American Eagle to submit in the relevant dockets, no later than February 15, a full service schedule, including date of inauguration, for each designated market. If either carrier responds by that date that it is unable to implement a full schedule, *i.e.*, at least two round trips a day in the Baton Rouge-O'Hare market and three round trips a day in the Savannah/Hilton Head-O'Hare market, we would intend to withdraw the relevant slot exemptions for further allocation.

ADMINISTRATIVE TERMS

As the FAA slot regulation makes clear "slot(s) 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 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.

⁴ It has done so with regard to its services between O'Hare and Wilkes-Barre, Charleston, WV, Springfield, MO, Fargo, Sioux Falls, Mobile and Charleston SC, as well as here at Savannah/Hilton Head.

The Department is allocating 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(a).

ACCORDINGLY,

1. The Department amends ordering paragraph 1 of Order 99-3-12 to increase from three to five the number of Chicago O'Hare Airport slot exemptions reserved therein for the community of Savannah, GA/Hilton Head;
2. The Department amends ordering paragraph 2 of Order 99-7-17 to increase by two the number of slot exemptions authorized to American Eagle, Inc. so as to enable it, in combination with previously authorized exemptions, to operate at least two daily nonstop regional jet round trips between Chicago O'Hare Airport and Baton Rouge, LA;
3. The flight operations authorized in this order remain subject to all terms and conditions imposed in Orders 99-3-12 and 99-7-17;
4. The Department directs Atlantic Coast Airlines and American Eagle Airlines, Inc. to contact the Airspace and Traffic Law Branch of the Office of Chief Counsel in the Federal Aviation Administration as soon as possible following issuance of this order to determine with the FAA the actual times for arriving and departing flights authorized by this order;
5. The Department directs Atlantic Coast Airlines and American Eagle Airlines to submit in the appropriate dockets, no later than February 15, 2000, their complete schedules and dates of inauguration for the markets designated in this order;
6. 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; and

7. We will serve this order on all parties in Dockets OST-98-3603, 98-3982, 98-4604, 99-5475, 99-5521, 99-5532, 99-5587, 99-5614, and 99-5959.

By:

A. BRADLEY MIMS
Deputy Assistant Secretary for Aviation
And International Affairs

(SEAL)

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