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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 5th day of July, 2000

Applications of

**ACCESSAIR, INC.
AIRTRAN AIRWAYS, INC.
AMERICAN TRANS AIR, INC.
ATLANTIC SOUTHEAST AIRLINES, INC.
CENTRAL ILLINOIS REGIONAL AIRPORT
(OZARK AIRLINES)
LEGEND AIRLINES, INC.
MIDWAY AIRLINES CORPORATION
PRO AIR, INC.
SPIRIT AIRLINES, INC.
MIDWEST EXPRESS AIRLINES, INC.

VANGUARD AIRLINES, INC.**

for exemptions from Subparts K and S of Part 93 of
Title 14, Code of Federal Regulations pursuant to
49 U.S.C. § 41718(b), Special rules for Ronald
Reagan Washington National Airport (within
perimeter slot exemptions)

Docket OST-2000-7182 - 66

Docket OST-2000-7182 - 66
OST-2000-7187 - 2
Docket OST-2000-7155 - 5
OST-2000-7182 - 66

**ORDER GRANTING WITHIN-PERIMETER SLOT EXEMPTIONS AT
RONALD REAGAN WASHINGTON NATIONAL AIRPORT**

Summary

By this order, the Department grants the following requests for slot exemptions at Ronald Reagan Washington National Airport (hereafter DCA), to be operated with Stage 3 aircraft: (1) American Trans Air, Inc., four slot exemptions to provide nonstop service to Chicago-Midway Airport (MDW); (2) Midway Airlines Corporation, two slot exemptions to provide nonstop service to Raleigh/Durham International Airport (RDU); (3) Midwest Express Airlines, Inc., two slot exemptions to provide nonstop service to Des Moines International Airport (DSM); and (4) Spirit Airlines, Inc., two slot exemptions to provide nonstop service to either Melbourne or Myrtle Beach, and two slot

exemptions to provide nonstop service to any of the airports in Florida and South Carolina that it proposed.

Background

On April 5, 2000, the President signed into law the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21). Among other things, AIR-21 liberalized slot and slot exemption access at the four airports now subject to the provisions of the High Density Rule, 14 C.F.R. 93 Subparts K and S. Specifically, at DCA, § 41718(b) provides that the Secretary shall grant 12 slot exemptions¹ to any air carrier using Stage 3 aircraft for providing air transportation to airports that were designated as medium hub or smaller airports² within the 1,250 mile perimeter established for civil aircraft operations at DCA under 49 U.S.C. §49109.

Section 41718(b) directs the Secretary to distribute these 12 slot exemptions in a manner that promotes air transportation (1) by new entrant air carriers and limited incumbent air carriers; (2) to communities without existing nonstop air transportation to DCA; (3) to small communities; (4) that will provide competitive nonstop air transportation on a monopoly nonstop route to DCA; or (5) that will produce the maximum competitive benefits, including low fares. A new entrant air carrier or limited incumbent air carrier is defined as an air carrier or commuter operator that holds or operates (or held or operated, since December 16, 1985) fewer than 20 slots and slot exemptions at DCA.³

By Notice dated April 14, the Department notified interested parties that requests under this section had to be submitted to the Secretary not later than May 5; that comments with respect to any timely filed request for a slot exemption had to be filed by May 22; and that the Secretary's decision on these requests would be made not later than July 5.

Applications

A. AccessAir, Inc. (AccessAir)

On May 5, AccessAir requested two slot exemptions to provide nonstop service between DCA and Des Moines International Airport (DSM), using Stage 3 compliant aircraft (Boeing 737-230). AccessAir states that it is a new entrant airline, and that its application

¹ Of this allocation, 49 U.S.C. §41718(c)(3)(A) provides that four shall be for air transportation to small hub airports and nonhub airports; and 49 U.S.C. §41718(c)(3)(B) provides that eight shall be for air transportation to medium hub and smaller airports.

² Hub or airport definitions are provided under 49 U.S.C. §41714(h)(7), (8), and (9).

³ 49 U.S.C. §41714(h). In addition, under 49 U.S.C. § 41714(k) "...an air carrier that operates under the same designator code, or has or enters into a code-share agreement, with any other air carrier shall not qualify for a new slot or slot exemption as a new entrant or limited incumbent air carrier at an airport if the total number of slots and slot exemptions held by the 2 carriers at the airport exceed 20 slots and slot exemptions."

satisfies the criteria outlined in §41718(b). AccessAir states that, in November 1999, it filed for protection under Chapter 11 of the Bankruptcy Code and suspended its scheduled operations. The airline says that it expects to resume these operations this summer.

B. AirTran Airways, Inc. (AirTran)

On May 5, AirTran requested eight slot exemptions to provide nonstop service between Atlanta-Hartsfield International Airport (ATL) and DCA, and beyond to Gulfport-Biloxi, Mississippi; Fort Walton Beach, Florida; and Savannah, Georgia, using Stage 3 compliant aircraft (Boeing 717-200). AirTran states that it is a new entrant carrier at DCA; it intends to offer low fare competition in the proposed markets; and its operations will provide the first direct service between DCA and Fort Walton/Gulfport/Savannah.

C. American Trans Air, Inc. (ATA)

On May 5, ATA requested six slot exemptions to provide nonstop service between Chicago-Midway Airport (MDW) and DCA, and beyond to Los Angeles and San Francisco, using Stage 3 compliant aircraft (Boeing 757). ATA maintains that no other applicant in this case can match its average fares on a sustained basis or carry as many passengers per flight. ATA states that it has a proven reputation as a low fare carrier; and its proposed operations will maximize competition with American Airlines and United Air Lines the dominant airlines in the DCA-Chicago market. ATA states that its operating costs are the lowest of any U.S. scheduled carrier. ATA notes it will operate with B-757 aircraft configured for 216 passengers; and that its proposal to serve Los Angeles/San Francisco as beyond points will also bring competitive pricing to these markets. Finally, ATA maintains that its proposed service will increase travel options,⁴ reduce travel delays, and stimulate employment.

D. Atlantic Southeast Airlines, Inc. (ASA)

On May 5, ASA requested six slot exemptions to provide nonstop service between Jacksonville International Airport (JAX), Florida, and DCA, using Stage 3 compliant aircraft (Bombardier CRJ-200). ASA says that it will operate on the route as "Delta Connection." The carrier states that Jacksonville is classified as a medium hub; and ASA says that it would "consider" using low fares on its proposed route. ASA states that it will provide competitive service on an existing monopoly nonstop route.

⁴ ATA now serves 25 markets from its Midway Airport hub. See Consolidated Comments (Exhibit TZ-R-12) filed May 22.

E. Central Illinois Regional Airport (CIRA)

On May 5, as amended,⁵ CIRA requested four slot exemptions for nonstop service between Bloomington/Normal Airport (BMI), Illinois, and DCA, using Stage 3 compliant aircraft (Fairchild 328Jet aircraft). CIRA states BMI is a nonhub airport, serving a population of 800,000; that CIRA does not now have nonstop DCA service; Ozark Airlines is a new entrant carrier; the proposal will provide through-plane service to Columbia/Jefferson City, Missouri; and CIRA will generate sufficient traffic and revenue to support the DCA operations.

F. Legend Airlines, Inc. (Legend)

On May 5, Legend requested four slot exemptions to provide nonstop service between Dallas Love Field (DAL) and DCA, using Stage 3 compliant aircraft (DC-9-32) with single-plane service beyond Dallas to Los Angeles. Legend states that it is a new entrant airline at DCA. Legend says that it meets each of the requirements for a grant under §41718(b). Legend says that its proposed service frequency will allow it to provide consumers with meaningful and convenient new service to DCA; its proposed service will provide increased competition in the market; its proposed service will bring not only fare competition in the market, but also competition in terms of quality of service; Love Field is an underserved airport; and its proposed service will bring new-entrant competition not only to the Dallas metroplex, but also to consumers in the Los Angeles area as well.

G. Midway Airlines Corporation (Midway)

On May 4, Midway requested four slot exemptions to provide nonstop service between Raleigh-Durham International Airport (RDU), North Carolina, and DCA, using Stage 3 compliant aircraft (Boeing 737-700, Canadair regional jets, or Fokker F100s). Midway maintains that its request is consistent with §41718(b). It maintains that it qualifies as a limited incumbent carrier at DCA.⁶ Midway argues that grant of its request will ensure the maintenance of Midway's existing RDU-DCA operations and will maintain competition in what otherwise would be a monopoly market.

⁵ On May 11, CIRA notified the Department that Ozark Airlines would operate the proposed operations.

⁶ At DCA, Midway states that it holds two slots in its own name, and leases ten slots. Additionally, Midway states that it is the "beneficial holder" of 13 commuter slots, and that it intends to renounce "some or all" of these commuter slots for return to the Department to satisfy the terms of AIR-21. Application at 5.

H. Midwest Express Airlines, Inc. (Midwest Express)

1. Des Moines

On April 5, Midwest Express requested four slot exemptions to provide nonstop service between DSM, and DCA, using Stage 3 compliant aircraft (DC-9/MD-80). The applicant argues that its request is fully consistent with §41718(b). Midwest Express states that it is a limited incumbent airline; there is no existing nonstop service in the DSM-DCA market; Des Moines is a small hub; and the Washington, DC area is Des Moines's third largest O&D market. Midwest Express has forecasted that the proposed service will generate profits in excess of \$1 million on \$14 million in segment revenues.

2. Indianapolis

On May 5, Midwest Express requested four slot exemptions to provide nonstop service between Indianapolis International Airport (IND), Indiana, and DCA, and beyond to Springfield/Quincy, Illinois, using Stage 3 compliant aircraft (DC-9/MD-80). Midwest Express states that it is a limited incumbent airline and its proposed service will provide competition on an existing monopoly route. The applicant states that the Washington, DC area is Indianapolis' sixth largest O&D market.

I. Pro Air, Inc (Pro Air)

On May 5, Pro Air requested four slot exemptions to provide nonstop service between Detroit City Airport (DET), and DCA, using Stage 3 compliant aircraft (Boeing 737-300/400). Pro Air states it meets the statutory criteria for the grant of slot exemptions. It states that it is a new entrant carrier; its proposed service will not increase operations by more than two in any 1-hour period at DCA; DET is a "nonhub airport"; it will provide competitive nonstop service on an existing monopoly route; and it is a low-fare airline.

J. Spirit Airlines, Inc. (Spirit)

On May 4, Spirit requested ten slot exemptions to provide nonstop service between DCA and Fort Lauderdale/Hollywood International Airport (FLL); Southwest Florida International Airport (RSW) in Fort Myers; Melbourne Regional Airport (MLB); Palm Beach International Airport (PBI) in West Palm Beach; and Myrtle Beach International (MYR), South Carolina, using Stage 3 compliant aircraft (MD-80). Spirit maintains that its proposed service satisfies all relevant statutory criteria. Spirit states that it is a new entrant airline. It notes that each of the requested routes either lacks nonstop service or is served by a single monopoly airline. Finally, Spirit states that as a low-fare carrier, its proposed operations will stimulate substantial new traffic, promoting economic development in each of the affected communities.

K. Vanguard Airlines, Inc. (Vanguard)

On March 28, Vanguard requested four slot exemptions to provide nonstop service between Kansas City International Airport (MCI), Missouri, and DCA, using Stage 3 compliant aircraft (Boeing 737-200). Vanguard maintains that its request meets the requirements for the grant of slot exemptions under §41718(b). The applicant states that it is a new entrant carrier at DCA; it is a low-cost airline; and Kansas City is classified as a medium hub. It argues that its proposal will provide low-cost competitive service in the Kansas City-DCA market, a monopoly nonstop market. Vanguard asserts that its proposed operations will promote lower fares, service improvements, and stimulate traffic.

Responsive Pleadings

On May 22, AccessAir, ATA, ASA, the City of Kansas City, Missouri (Kansas City), Legend, Midway, Midwest Express, Spirit, and Vanguard filed answers.

On May 22, the Metropolitan Washington Airports Authority (MWAA), as proprietor of DCA and Washington Dulles International Airport (IAD) filed a consolidated response, stating that it was not taking a position on the relative merits of these applications. However, MWAA stated that it continues to consider the High Density Rule and Perimeter Rule at DCA to be important to both Ronald Reagan National and Dulles Airports, and to the communities that the airports serve.

Subsequently, Melbourne International Airport (Melbourne), the Metropolitan Airport Authority of Rock Island County, Illinois, and Gulfport-Biloxi Regional Airport each filed motions to file an otherwise unauthorized document and comments or responses.⁷

A. AccessAir

AccessAir argues that the Des Moines community deserves new nonstop service to DCA, and that the public interest supports its request. AccessAir asserts that it is Des Moines's "home" airline, noting that the Des Moines business community primarily funds it. It states that it will offer more capacity than Midwest Express and it will offer low-fare service. AccessAir also maintains that its proposal will provide greater benefit to the U.S. economy in terms of jobs within the company, acquisition of additional equipment, and the economic activity that its service will engender at Des Moines.

ASA, ATA, Midway, Midwest Express, and Spirit urge the Department to deny the application. They question whether AccessAir can achieve the competitive benefits sought by AIR-21. They note that the applicant does not now operate scheduled airline service, cannot demonstrate when it might be operating scheduled airline service, and is not likely to be operating scheduled airline service this summer. Midway, Midwest

⁷ We will grant all of these motions.

Express, and Spirit note that the applicant is currently operating under the protection of Chapter 11 of the Bankruptcy Code.

Kansas City and Vanguard oppose the request, arguing that the Kansas City-DCA market is larger and therefore more deserving of an award in this proceeding than the DCA-Des Moines market. Vanguard argues that, unlike the AccessAir proposal, its proposal can bring expanded network benefits to travelers between DCA and the four cities served on a nonstop basis by Vanguard beyond Kansas City.

Melbourne maintains that Spirit's proposed DCA-Melbourne service should be given priority over Des Moines because Melbourne is a nonhub airport and Des Moines already has more than a dozen daily TWA/United flights to Washington (Baltimore-Washington International and Washington Dulles Airports), connecting through Chicago and St. Louis.

B. AirTran

ASA, ATA, Kansas City, Melbourne, Midway, Midwest Express, Spirit, and Vanguard filed in opposition to AirTran's application, arguing that AirTran's request does not qualify under AIR-21, since Atlanta is a large hub and one of the best served from DCA. Moreover, these parties note that AirTran's one-stop proposal to Fort Walton, Gulfport-Biloxi, and Savannah via Atlanta is contrary to AIR-21's intent that carriers provide nonstop service under the exemptions granted pursuant to §41718. Melbourne also states that Savannah already has nonstop Delta/United Express service to Washington Dulles, and that Spirit's MD-80 aircraft would carry 55-66 more passengers per flight than the equipment proposed by AirTran.

On June 12, the Metropolitan Airport Authority of Rock Island County, Illinois, owner and operator of Quad City Airport, filed in support of the request. The Metropolitan Airport Authority states that the passenger and shipping public served by the Quad City Airport would benefit greatly by being able to connect in Atlanta for service to Washington, DC.

On June 15, Gulfport-Biloxi Regional Airport filed in support of the request. Gulfport-Biloxi states that DCA is an important destination for the community and that the proposed one-stop service will mean that consumers will realize significant savings and competitive benefit from the low-fare competition.

C. ATA

ATA contends that its application to serve Chicago-Midway Airport is superior to the other requests in terms of the number of aircraft seats offered, provision of low fares, and its low-cost structure. Further, ATA states that it has on order 47 Boeing aircraft that will allow it to accommodate anticipated growth throughout its system, particularly at both DCA and Chicago-Midway Airport.

ASA, Kansas City, Melbourne, Midwest Express, Spirit, and Vanguard oppose the request. They note that ATA already serves the DCA-Midway Airport route, and that the DCA-Chicago market already has extensive nonstop service from three airlines. ASA also states that ATA submitted no proposed fares.

Legend opposes the request, stating that the DCA-Chicago market is already served by three airlines with 31 daily flights, twice as many as in the DCA-Dallas market.

Midway filed in opposition, arguing that the Department should not grant DCA slots for an "untested" service, especially to the Chicago community that already enjoys nonstop DCA service by two other competing airlines.

Midwest Express asserts that the Department must dismiss the request because the applicant proposes to start service between DCA and a "large market." Midwest Express maintains that the Congress intended that "small communities" enjoy the benefits of §41718(b) slots. Midwest Express maintains that Chicago receives substantial service to and from DCA from O'Hare Airport. Midwest Express also asserts that approving the request would not produce maximum competitive benefits, even considering ATA's low fare claims.

On May 22, the City of Chicago filed in support of the request. Chicago argues that the proposed service would bring price competition in the Chicago market and there is sufficient demand for air transportation between DCA and Midway Airport to support these new services. Chicago states that the granting of slots to ATA at DCA would lower fares, stimulate demand, maximize slot use, encourage economic efficiency, and provide substantial economic benefits to Chicago, the Midwest region, and the United States.

D. ASA

ASA argues that its request to serve Jacksonville should be given priority consideration over the applications filed by AirTran, ATA, Legend or Pro Air, since each of these applicants propose to offer service between DCA and large cities. ASA maintains that the intent of Congress was to reserve the within-perimeter slots for smaller cities.

ATA opposes the request, noting that ASA proposes serving Jacksonville with 50-seat regional jet aircraft, while ATA is proposing to serve Midway Airport with 216-seat B-757 aircraft. Moreover, ATA states that ASA operates all of its flights as a Delta Express operation. ATA and Legend maintain that the applicant is indistinguishable from Delta Air Lines and therefore should not be considered for additional slots.

Kansas City, Melbourne, Midway, Spirit, and Vanguard filed in opposition, arguing that ASA's parent company, Delta Air Lines, controls almost 100 slots at DCA. Melbourne, Midway and Spirit argue that if ASA/Delta want to provide Jacksonville-DCA service, they should reallocate the slots from their current slot holdings.

Midwest Express argues that the Department must dismiss this request. Midwest Express states that ASA is a wholly owned subsidiary and code-share partner of Delta Air Lines at DCA, and as such the slots of Delta and ASA should be amalgamated for the purpose of determining ASA's new entrant and limited incumbent status.

E. CIRA

ASA, Kansas City, Melbourne, Midwest Express, the MWAA, and Vanguard urge the Department to dismiss CIRA's application as incomplete and untimely. They argue that §41718(b) authorizes the Secretary to make slot awards only to "air carriers." They argue that CIRA is not an air carrier.

ASA and Melbourne note that Ozark Airlines' service to Bloomington, Illinois, would be with the smallest aircraft of any applicant to the smallest market of any involved in this case. ASA states that the DCA-JAX market is ten times as large as the DCA-BMI market.

F. Legend

Legend urges the Department to grant its request, noting that the DCA-Dallas market is the second largest market in this proceeding, and contending that DCA-Dallas fares are the highest of any of the proposed markets. Legend maintains that those applicants arguing that slots should only be provided to carriers with large numbers of aircraft are asking the Department to ignore the need to promote new entry and to ensure the future of deregulation. As to the size of its proposed equipment, Legend argues that Section 29 of the International Air Transportation Competition Act of 1979 Public Law 96-192 (1979), the "Wright Amendment," requires that all airlines operating long-haul service from Dallas Love Field are restricted to carrying no more than 56 passengers.

ASA, Kansas City, Melbourne, Spirit, and Vanguard note that the Washington, DC-Dallas market already has extensive nonstop service from two airlines. Melbourne and Spirit note that Legend now provides scheduled service from Love Field to Dulles International Airport. ASA notes that Legend's aircraft are older than ASA's, and that Legend submitted no passenger forecast and no proposed fares.

Midway filed in opposition, arguing that two airlines already provide nonstop service in the Dallas-DCA market; that Legend has only four aircraft in its fleet; and that, while offering a unique product, Legend fails to show that it offers low fares.

Midwest Express asserts that the Department must dismiss the request because the applicant proposes to start service between DCA and a "large market." Midwest Express maintains that the Congress intended that "small communities" enjoy the benefits of §41718(b) slots. Midwest Express maintains that Dallas/Ft. Worth receives substantial service to and from DCA from DFW International Airport. It also argues that Legend's

proposal will not maximize competitive benefits; in fact, Midwest Express views the proposal as having a potential self-diversionary effect on Legend's recently inaugurated service between Washington's Dulles Airport and Dallas Love Field.

G. Midway

Midway states that it has made a long-term commitment to DCA and has \$7.5 million in lease costs to date to support its five daily flights in the DCA-Raleigh/Durham market. The carrier states that the elimination of this cost is a prime objective of Midway and would permit it to provide "maximum consumer benefits" by expanding its existing service or launching new service to small and underserved communities.

ASA, Kansas City, Legend, Melbourne, Midwest Express, Spirit, and Vanguard filed in opposition to Midway's application, noting that the Raleigh-Durham market already receives substantial nonstop service, eleven daily nonstop roundtrip operations (five operated by US Airways and six operated by Midway). Legend, Melbourne, and Midwest Express maintain that awarding slot exemptions to Midway would not benefit a community without existing nonstop service nor would it provide competitive nonstop service on a monopoly nonstop route.

ATA also filed in opposition, asserting that Midway does not qualify as a limited incumbent because it either holds or operates more than twenty slots at DCA. ATA asserts that Midway is not a low-fare airline, and therefore its product is not consistent with the qualifying criteria established under AIR-21. Finally, ATA argues that Midway's "indecision" on its use of equipment in the DCA market makes it "impossible" for the Department to evaluate Midway's application on a comparative basis.

H. Midwest Express

As an initial matter, Midwest Express argues that the Department should dismiss any application that does not satisfy all of the qualifying criteria established by §41.718(b), as being legally insufficient.⁸ Midwest Express also maintains that its DCA-Des Moines and Indianapolis applications come closest of all the pending requests in satisfying the decisional criteria established by AIR-21 for a grant of slot exemptions at DCA.

Kansas City and Vanguard note that Midwest Express is an existing operator at DCA. Vanguard also maintains that Midwest Express is not a low-fare carrier, arguing that its principal business focus is on the high-yield business traveler.

Legend argues that because of the applicant's current slot holdings at DCA and its expanding partnership with American Airlines, Midwest Express should not be awarded additional slots.

⁸ See Consolidated Comments at 4-5.

Spirit maintains that the request should be denied because Midwest Express has already received relief at DCA, and states that Midwest Express already holds 16 slots at DCA.

1. Des Moines

Midwest Express states it is a limited incumbent carrier at DCA. It notes that Des Moines is a small community that lacks nonstop service.

ASA argues that its proposal to serve DCA-JAX would benefit over 45,000 more passengers than DCA-DSM.

2. Indianapolis

Midwest Express states that its proposal will introduce competitive nonstop service to the market and increase by "two-thirds" the number of daily roundtrip flights in the DCA-Indianapolis market. The applicant states that its proposed service will allow Skyway Airlines, its code-share partner, to provide two daily nonstop roundtrips between Indianapolis and Springfield, Illinois, and continue on to Quincy, Illinois.

ASA and Melbourne oppose the application, noting that US Airways already provides three daily roundtrips in the DCA-Indianapolis market. The parties also maintain that the applicant's proposal for beyond service to Quincy and Springfield should not have any decisional significance for the Department, since, in their view, the proposal cannot depend for economic viability on service beyond Indianapolis to DCA. Melbourne states that the Springfield/Quincy operations would be connecting service via Indianapolis, not nonstop as required by AIR-21, and that the operations would be provided by Skyway Airlines not Midwest Express.

ATA and Midway argue that Midwest Express should not be awarded slots at both Des Moines and Indianapolis. They view the two applications as mutually exclusive, since Midwest Express already holds or operates sixteen slots at DCA, and that the granting of either application would increase its slot holdings to 20, above the threshold for limited incumbent status.

Midway argues that while Midwest Express may offer a unique product, like Legend, it does not offer low fares to consumers.

I. Pro Air

ATA notes that Pro Air recently announced a 50 percent reduction in its service system-wide and question's Pro Air's current financial status.⁹

⁹ See ATA's consolidated comments filed May 22, fn. 12.

ASA, Kansas City, Midway, Midwest Express, and Spirit oppose the request. The carriers question the long-term financial and operational viability of Pro Air. ASA and Midway note that Northwest Airlines now conducts nine daily flights in the Detroit-DCA market, offering over 2,000 daily nonstop seats. Midwest Express notes that Pro Air already serves the Washington area from Detroit City Airport through Baltimore/Washington International Airport.

Midwest Express asserts that the Department must dismiss the request because the applicant proposes to start service between DCA and a "large market." Midwest Express maintains that the Congress intended that "small communities" enjoy the benefits of §41718(b) slots. Midwest Express maintains that Detroit receives substantial service to and from DCA via Metro Wayne County Airport.

Vanguard and Melbourne oppose the request, arguing that the DCA-Detroit market does not suffer from a lack of adequate and competitive nonstop service. Melbourne states that granting this request would not promote air transportation to a small community.

J. Spirit

Spirit maintains that its proposal would offer important public benefits. It says that it proposes to offer service to three communities, Melbourne, Myrtle Beach, and Fort Myers, which receive no daily nonstop service to DCA. Spirit argues that the other markets it proposes to serve, Fort Lauderdale and West Palm Beach, are served only by US Airways, the dominant carrier at DCA. It states that these services will have a larger competitive impact than any of the other proposals pending in this case.

Melbourne supports the request, stating that it is the only non-hub airport for a small community that lacks nonstop DCA service.

ASA recognizes that Spirit proposes service to "underserved" and "deserving" communities; nevertheless, ASA maintains that Spirit's "shotgun" approach will have limited market impact, since there will be limited flexibility for passengers and minimal schedule convenience.

ATA maintains that its DCA-MDW proposal is superior to Spirit's proposal for DCA-Fort Lauderdale/Fort Myers/West Palm Beach operations, since Spirit does not have a hub operation at any of these Florida points and cannot claim the single-plane beyond and one-stop connecting benefits ATA's DCA passengers would enjoy to twenty-five nonstop destinations beyond ATA's MDW hub.

Midway filed in opposition, arguing that Spirit's request would be used to serve either a very small segment of the populace or to provide additional service to communities that already receive competitively priced services from another airline.

Midwest Express argues that the DCA-Fort Lauderdale market does not satisfy the §41718(b) qualifying criteria because both US Airways and American Airlines serve it on a seasonal basis (December through April). It also maintains that each of the Florida city proposals already enjoys access to low fares, that they are primarily leisure markets, and that Washington, DC-Florida fares are already disciplined by the low-fare operations of other competitors. As to Myrtle Beach, Midwest Express argues that it is also primarily a leisure market, and Spirit offers no persuasive marketing imperative for DCA-MYR service. Midwest Express asserts that Myrtle Beach can be well served from either BWI or IAD Airports.

Kansas City and Vanguard filed in opposition, arguing that Spirit's failure to state which markets it would serve if it were awarded less than ten slots precludes the Department from assessing the public service and competitive benefits of a lesser award. Vanguard states that Spirit's proposal to offer one roundtrip flight in each of the proposed markets assures that Spirit's service will have a negligible competitive impact in any of these markets.

On May 22, the Broward County Aviation Department, the Horry County Department of Airports, the Lee County Port Authority, and the Palm Beach International Airport filed in support of Spirit's request. These parties state that Spirit's proposed service would bring needed air transportation competition to each of their communities; stimulate demand for air transportation; encourage economic efficiency; and provide substantial economic benefits to Fort Lauderdale, Fort Myers, Myrtle Beach, and West Palm Beach, as well as the United States.

K. Vanguard

Vanguard argues that it is a new entrant carrier with no existing operations at DCA. It says that its proposal will bring competitive nonstop service to an existing monopoly market, and will provide improved network service benefits between DCA and four communities that Vanguard will serve on a single-plane or one-stop connecting basis beyond Kansas City.

ASA, Legend, Melbourne, and Spirit oppose the request, noting that US Airways offers three daily nonstop roundtrips in the DCA-Kansas City market. Spirit also asserts that Vanguard's use of B-737 equipment would make it difficult for Vanguard to sustain its low-fare operation.

ATA states that Vanguard's proposal shows that the airline is not prepared to make maximum use of the few available DCA slots.

Legend maintains that the average DCA-Kansas City fare is 26 percent below the average DCA-Dallas fare.

Midway filed in opposition, arguing that Vanguard employs an aging fleet; questioning Vanguard's financial "stamina"; and asserting that Vanguard offers only one convenient connection from Kansas City.

Midwest Express opposes the request, questioning Vanguard's beyond market benefits and low-fare commitment. Midwest Express also argues that Vanguard's service reputation and financial strength compare poorly to those of Midwest Express. For example, Midwest Express asserts that Vanguard -- in just six years of operating -- has abandoned 21 markets, including twelve that served Kansas City. The carrier also questions Vanguard's ability to continue its operations, considering its recent financial results.¹⁰

On April 12 (Docket OST-2000-7155), Kansas City filed in support of the application. Kansas City argues that Vanguard meets all of the criteria for a grant under §41718(b), and it urges the Department promptly to grant the request.

Eligibility of Applicants

We first address the issue of whether an application must meet each of the criterions described in §41718(b). In this regard, Midwest Express asserts, "Unless a carrier can qualify for an inside the perimeter slot under all applicable criteria and procedures as required by statute, the application must be dismissed by the Department as being legally insufficient."¹¹

We disagree with Midwest Express' interpretation.

49 U.S.C. §41718(b) directs the Secretary to develop criteria for distributing slot exemptions for flights within the perimeter of DCA to medium hub or smaller airports in a manner that promotes air transportation:

- (1) by new entrant air carriers and limited incumbent air carriers;
- (2) to communities without existing nonstop air transportation to Ronald Reagan Washington National Airport;
- (3) to small communities;
- (4) that will provide competitive nonstop air transportation on a monopoly nonstop route to Ronald Reagan Washington National Airport; or (emphasis added)
- (5) that will produce the maximum competitive benefits, including low fares.

The statutory requirements for the awarding of within-perimeter slot exemptions in §41718(b) are in the disjunctive. This reading of the statute is evident since the five

¹⁰ See Midwest Express' reply filed on May 1, 2000, Docket OST-2000-7189.

¹¹ See Consolidated Comments at 4-5.

criterion are separated by the term "or" as opposed to the term "and." While the statute provides the Department with specific criteria that it must use in evaluating these applications, the statute also provides the Department with the essential flexibility it needs in comparing these applications, ensuring that its determinations in these matters will maximize public benefits.

The statute does limit the Department to the consideration of applications that propose operations between DCA and airports designated as a medium hub or smaller. Except for AirTran's request, each application satisfies this criterion.¹²

Decision

49 U.S.C. §41718(b) directs the Secretary to grant 12 slot exemptions "to air carriers for providing air transportation to airports that were designated as medium hub or smaller airports within the perimeter established for civil aircraft operations at Ronald Reagan Washington Airport under section 49109." Four of these slots must be for service to a small hub or a nonhub. 49 U.S.C. §41718(d)(3) provides that not later than 90 days following the date of enactment of AIR-21 the Secretary shall issue a decision regarding whether to approve or deny any request that was submitted to the Secretary not later than the 30th day following the date of enactment of AIR-21. AIR-21 was enacted on April 5. Applications for within-perimeter exemptions were required to be submitted by May 5. Accordingly, we are obliged to make a decision regarding whether to approve or deny any timely submitted within-perimeter request by July 5.

Eleven airlines have filed slot-exemption requests with the Department, asking for a total of 60 slots, to be used to provide nonstop service to 15 communities. This circumstance requires the Department to select among competing applications.

A. Small and Nonhub Applications

49 U.S.C. §41718(b)(3)(A) directs the Department to grant four slot exemptions for air transportation to small hub airports and nonhub airports.

AccessAir and Midwest Express applied for two and four slot exemptions, respectively, to serve Des Moines, Iowa. CIRA applied for four slot exemptions to serve Bloomington, Illinois, to be operated by Ozark Airlines. Pro Air applied for four slot exemptions to serve Detroit City Airport. Spirit applied for two slot exemptions to serve Melbourne, Florida, and two slot exemptions to serve Myrtle Beach, South Carolina.

¹² AirTran intends to provide nonstop service to Atlanta-Hartsfield International Airport (ATL), and beyond to Gulfport-Biloxi/Fort Walton Beach/Savannah. We note that the Federal Aviation Administration's Primary Airport Eplanement Activity Summary for Calendar Year 1997 defines ATL as a large hub. Moreover, it is our view that Congress did not intend, for purposes of this §41718(b) process, to consider a service point beyond the primary within-perimeter airport as a qualifying hub.

While each of the proposals would promote air transportation to their respective communities and also provide important public interest benefits, we find that Midwest Express' proposed DCA-DSM operations and Spirit Airlines' proposal to serve either Myrtle Beach or Melbourne most fully satisfy the qualifying criteria provided under §41718(b). Based on a thorough evaluation of each request and consistent with the criteria outlined in §41718(b), we find the promotion of air transportation would be best achieved and the maximum competitive benefits best produced by granting two slot exemptions to Midwest Express for its proposed DCA-Des Moines International Airport (DSM) operations; and two slot exemptions to Spirit for its proposed operations between DCA and either Melbourne (MLB) or Myrtle Beach (MYR).

I. Midwest Express

Midwest Express is a limited incumbent at DCA, as defined by the statute. Midwest Express proposes to initiate nonstop service in the Des Moines-DCA market, using Stage 3 jets (DC-9 and MD-80 series aircraft). Des Moines is a small hub that does not now have nonstop service to DCA.

Legend maintains that Midwest Express' code-share relationship with American Eagle should disqualify it for slot awards at DCA. We disagree. None of the DCA slots held by American Eagle are used for code-share operations with Midwest Express at DCA and, therefore, Midwest Express is a limited incumbent at DCA, consistent with §41714(k).¹³

We are confident that the Midwest Express proposal will promote DCA-DSM air transportation, consistent with §41718(b).¹⁴ Our award here will provide competitive benefits by linking DCA to an important but underserved mid-continent community. Midwest Express has a demonstrated history of offering quality air service. The applicant serves major destinations throughout the United States and Toronto, from Milwaukee, Wisconsin; Omaha, Nebraska; and Kansas City, Missouri. As of December 31, 1999, the airline served 28 cities, including Los Angeles, Milwaukee, Newark, Washington, D.C., and, on weekends, Orlando.

The record shows that the Washington, D.C. area is Des Moines's third largest O&D market, and that strong community interest between Washington, D.C. and Des Moines should provide robust support for these proposed operations.¹⁵ For the year ending 1999, O&D traffic data show a total of 55,980 passengers in the Washington, D.C. (DCA and Dulles Airports)-Des Moines market, or about 77 passengers a day in each direction. Importantly, we note that Des Moines is the second largest O&D market among the small

¹³ See Order 2000-5-20 at 6-7.

¹⁴ The Des Moines community does not benefit from existing nonstop service to the Washington, D.C. area.

¹⁵ Application at 9-10.

and nonhub airport communities under consideration here. We find that these considerations combine to demonstrate that Midwest Express' proposal is consistent §41718(b), and that it will maximize competitive benefits for consumers, thereby meeting §41718(b)(5).

2. Spirit Airlines

Spirit applied for two slot exemptions to serve Melbourne, Florida, and two slot exemptions to serve Myrtle Beach, South Carolina. We find merit in Spirit's proposals. Spirit is a new entrant at DCA. The DCA-Melbourne market is without existing nonstop service. Spirit has a demonstrated history of offering low-fares and its operations would bring price competition to either the Melbourne or Myrtle Beach markets.¹⁶ Spirit's proposals would also promote air transportation to either of these communities and produce the maximum competitive benefits, including low fares. §41718(b)(5). Our grant of two slot exemptions can produce competitive benefits in either of these markets, particularly for the price-sensitive traveler.

3. Other Applications

AccessAir applied for two slots to serve Des Moines with a daily roundtrip flight. The record shows that in late November 1999 AccessAir filed for protection under Chapter 11 of the Bankruptcy Code; that it has suspended its scheduled services; and that it is currently operating charter services while it acquires additional financing and prepares a plan of reorganization.¹⁷ At this time, the Department cannot determine when AccessAir will be able to resume scheduled air transportation, nor can it find that AccessAir's request will promote air transportation and thereby provide maximum competitive benefits, consistent with §41718(b).¹⁸

CIRA applied for a "community slot award" in the Bloomington, Illinois (BMI)-DCA market.¹⁹ While we understand the interest of CIRA for service to DCA, §41718(b) authorizes the Secretary to make an inside the perimeter slot award to "...air carriers (emphasis added) for providing air transportation to airports that were designated as medium hub or smaller airports..." We do not find that CIRA is an "air carrier" for

¹⁶ Comair provides nonstop service in the DCA-MYR market on Saturday and Sunday.

¹⁷ Application at 2-3.

¹⁸ 49 U.S.C. §41110(e) provides that U.S. air carriers must continue to be "fit, willing, and able" in order to hold their operating authority. By letter dated December 2, 1999, the Department reminded AccessAir of this requirement and notified AccessAir that, prior to reinstatement if its scheduled passenger service, AccessAir would have to furnish the Department with certain update and fitness information. To date, AccessAir has not notified the Department of its intent to resume scheduled operations or furnished us with the requested information.

¹⁹ On May 11, CIRA amended its application, requesting that the Secretary award four within-perimeter slots for operation at DCA "to the Central Illinois Regional Airport to be operated by Ozark Airlines. See Amendment at 2.

purposes of the §41718 program.²¹ Even so, DCA-BMI is the smallest O&D market under consideration in this proceeding. For the year ending 1999, a total of 10,460 passengers traveled between Bloomington and the Washington area (DCA and IAD airports), an average of about 29 passengers a day. On the other hand, an average of about 150 passengers a day traveled between Des Moines and the Washington area (DCA and IAD airports). Therefore, on balance we find that Midwest Express' DCA-DSM proposal and Spirit's Melbourne/Myrtle Beach proposals more fully promote air transportation and offer greater competitive benefits for consumers.

Pro Air applied for four slot exemptions to serve Detroit City Airport (DET). Detroit-Washington, D.C. is the largest O&D market in this category of applications. However, we note that Pro Air recently suspended all flights between Detroit and Newark, Philadelphia, Indianapolis and Seattle. This suspension represents all flights to half of Pro Air's nonstop destinations. For this reason, we are reluctant to make an award to Pro Air when the record indicates that it does not have a stabilized route system. Therefore, on balance, we find Midwest Express' proposal to serve DSM and Spirit's proposal to serve either Myrtle Beach or Melbourne as providing greater competitive benefit for consumers.

B. Medium Hub and Smaller Airport Applications

As an initial matter, Midwest Express argues that the Department cannot give the applications filed by ATA and Legend consideration, since they propose to serve "large markets", i.e., Chicago and Dallas, respectively.²¹ We disagree. Chicago-Midway Airport and Dallas Love Field are defined as medium hub airports for purposes of this proceeding.²² 49 U.S.C. §41714(h)(9).

After granting the requisite four slot exemptions for small/nonhub airports, eight remain for air transportation to medium hub and smaller airports.

In addition to the applications discussed above, ATA applied for six slot exemptions to serve Chicago-Midway Airport (MDW); ASA applied for six slot exemptions to serve Jacksonville, Florida (JAX); Legend applied for four slot exemptions to serve Dallas Love Field (DAL); Midway applied for four slot exemptions to serve Raleigh/Durham International Airport (RDU); Midwest Express applied for four slot exemptions to serve Indianapolis International Airport (IND); Spirit applied for two slot exemptions each to serve Fort Lauderdale (FLL)/Fort Myers (RSW)/West Palm Beach (PBI), Florida; and Vanguard filed for four slot exemptions to serve Kansas City, Missouri (MCI).

²⁰ 49 U.S.C. §40102(a)(2) defines air carrier as "a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation."

²¹ Consolidated Comments filed May 22 at 16-18.

²² See the Federal Aviation Administration's Primary Airport Enplanement Activity Summary for Calendar Year 1997.

Except as discussed, we find that each applicant has shown that it would promote air transportation to the respective communities and achieve important public benefits. However, this proceeding allows us to grant a total of only eight slot exemptions for services to this class of applicants. Based on a thorough evaluation of each request and consistent with the criteria outlined in §41718(b), we find the promotion of air transportation would be best achieved and the maximum competitive benefits best produced by granting four slot exemptions to ATA for its proposed DCA-Chicago Midway Airport (MDW) operations; two slot exemptions to Midway for its proposed DCA-Raleigh/Durham (RDU) operations; and two additional slot exemptions to Spirit for its proposed operations between DCA and Fort Lauderdale/Fort Myers/Melbourne/West Palm Beach, Florida, and Myrtle Beach, South Carolina.

1. ATA

ATA's DCA-Chicago Midway Airport proposal meets the §41718(b) criteria for successfully promoting transportation to, and producing maximum competitive benefits for, this medium hub airport. ATA is a limited incumbent airline at DCA.²³ §41718(b)(1). ATA's service will promote air transportation to Chicago-Midway Airport by using Stage 3 compliant jets (B-757, configured for 216 passengers), the largest equipment proposed for use by any applicant. Besides ATA, American Airlines and United Air Lines provide nonstop service in the DCA-Chicago market.²⁴ ATA has shown that its proposal "will produce the maximum competitive benefits, including low fares" given its demonstrated history of offering quality air service at low fares. §41718(b)(5). With regard to the objections that ATA currently has DCA-MDW operations, ATA stated that it fully expects to be forced to surrender its two pairs of leased slots in early October. Granting ATA an exemption for two pairs of permanent slots (*i.e.*, four slots) promotes competition in this otherwise dominated market.

Compared to the other proposals in this docket, ATA's proposal potentially promotes air transportation to the most passengers and produces the maximum consumer benefits, since the Washington, D.C.-Chicago market is the largest market under consideration in this proceeding. For the year ending 1999, O&D traffic data show a total of 1,010,960 passengers in the Washington, D.C. (DCA and IAD)-Chicago market, or about 2,770 passengers a day.²⁵ As we noted above, American and United dominate the Washington,

²³ In April 2000, ATA commenced three daily nonstop DCA-MDW roundtrips, including direct, same-plane service through to Los Angeles and San Francisco. The record indicates that ATA provides its DCA-MDW service using four "short-term" leased slots and two "permanent" slots.

²⁴ American and United are the hub-dominant airlines at Chicago O'Hare Airport (ORD). American offers about 11 nonstop daily DCA-ORD flights and United offers about 16 nonstop daily DCA-ORD flights.

²⁵ For the same period, the Washington, D.C. (DCA and IAD)-ORD O&D traffic was 820,060 passengers, about 2,247 passengers a day. Importantly, we note that over 80 percent of the

D.C.-Chicago market. Our grant here of four slots to ATA will ensure continued low-fare competition in a market that is now dominated by two of the largest domestic airlines.

2. Spirit

Spirit's DCA-Fort Lauderdale/Melbourne/Fort Myers/West Palm Beach and Myrtle Beach proposals meet the statutory criteria of promoting air transportation to these communities by a new entrant airline that will produce the maximum competitive benefits, including low fares. §41718(b)(1). Spirit's Fort Lauderdale, Myrtle Beach and West Palm Beach proposals would meet the statutory criteria of providing competitive nonstop air transportation on DCA monopoly nonstop routes by offering low-fare service to compete with USAirways' monopoly at FLL/PBI and Comair's monopoly weekend nonstop service at MYR. Melbourne does not now have existing nonstop service. §41718(b)(2). Finally, Spirit's Fort Myers proposal would introduce nonstop DCA-RSW service. That Spirit has no "hub" at any of these airports and offers no connecting or beyond service is not determinative in this proceeding. Unlike the statutory criteria for our beyond-perimeter determination, there is no requirement that we find domestic network benefits for granting slot exemptions for within-perimeter operations.

We disagree with the suggestion that Washington, D.C. travelers to leisure markets such as Spirit proposes to serve should use BWI or IAD airports rather than DCA. The AIR-21 slot exemption program at DCA is not limited to business travelers or business markets. Rather, we must award the 12 within-perimeter slot exemptions to applicants for service to medium and smaller hub airports that meet the statutory criteria of promoting air transportation either by new entrant or limited incumbent carriers; to communities without existing nonstop DCA service; to small communities; to a competitor on a monopoly nonstop DCA route; or that will produce the maximum competitive benefits, including low fares. These criteria -- not the business vs. leisure nature of the market -- are determinative.

As we stated earlier, Spirit is a low-fare airline, and Spirit's operations will bring price competition to these communities. Spirit's proposal will promote air transportation to these communities and produce the maximum competitive benefits, including low fares. §41718(b)(5). Our grant of these two additional slot exemptions can produce competitive benefits in any of these markets, particularly for the price-sensitive travelers. Spirit's consistent low-fare offerings will stimulate demand and maximize price competition in these markets, and, therefore, we are awarding Spirit two additional slot exemptions.

Spirit Airlines may allocate these two additional slot exemptions granted here to supply nonstop service from DCA to any of these airports, based on its assessment of market conditions and system needs.

passenger traffic in the Washington, D.C. (DCA and IAD)-Chicago market was to/from O'Hare Airport.

3. Midway Airlines

Midway applied for four slot exemptions to serve DCA-Raleigh/Durham International Airport (RDU). Midway is a limited incumbent at DCA and it provides lower-fare service in the market. Similar to ATA's proposed service to Chicago, Midway's proposal would serve to maintain its DCA-RDU service. The DCA-RDU market currently receives eleven daily roundtrip flights: five by USAirways and six by Midway. The record shows that Midway is able to accomplish this by leasing 10 of the 12 slots that it uses at DCA on the open market.²⁶ However, Midway is concerned that if it were not able to secure renewal of these slots, it would be at a huge competitive disadvantage compared to USAirways' "massive" slot holdings at DCA, and that it might ultimately be driven out of the market given USAirways' ability to out-schedule it. We find that our award here of two slot exemptions to Midway will enhance Midway's ability to continue providing direct competition with the dominant incumbent airline at DCA and thus maximizing competitive benefits between the Southeast regional area and DCA.

4. Other Applications

ASA applied for six slot exemptions to serve the DCA-Jacksonville market. Although ASA would provide competitive nonstop air transportation to USAirway's monopoly DCA-JAX route, its proposal does not meet as many of the statutory criteria as do those of ATA, Midway, and Spirit and therefore would not best meet the goal of "promoting air transportation" in the market, consistent with §41718(b). ASA is not a new entrant to DCA like Spirit, or a limited incumbent like ATA and Midway. It is not a low-fare airline, like ATA and Spirit and therefore would not produce the "competitive benefit" of low fares. §41718(b)(5). The Jacksonville market is not as large as the Chicago or Raleigh/Durham market.²⁷ For the year ending 1999, O&D traffic data show a total of 153,550 passengers in the Washington, D.C. (DCA and IAD)-Jacksonville market, or about 420 passengers a day. Accordingly, we find that the proposals we selected best achieve the goal of promoting air transportation to the medium hub and smaller airport communities.

Legend has proposed service between DCA and Dallas Love Field. While Legend is a new entrant airline at DCA,²⁸ §41718(b)(1), it is not a low-fare airline.²⁹ It proposes to operate jets with only 56 seats, thus reducing the potential competitive benefits of a new entrant. While we recognize that Legend is constrained by law to operate no more than

²⁶ See Application at 5.

²⁷ For the year ending 1999, O&D traffic data show that a total of 239,500 passengers in Washington, D.C. (DCA and IAD)-RDU market, or about 656 passengers a day.

²⁸ In April 2000, Legend commenced operations from Love Field to Washington's Dulles Airport. Legend provides four nonstop operations a day in the Dulles Airport-DAL market.

²⁹ Legend's service is aimed for the business traveler, offering "premier class service." See Application at 11.

56-seat aircraft to Love Field, the size of its aircraft is a relevant factor in considering the service and competitive benefits it will afford relative to the other applicants in this proceeding. This is contrasted with the application of ATA, a well-established low-fare carrier, which would operate 216-seat Boeing 757 aircraft with almost four times the capacity of Legend's 56-seat aircraft.

Midwest Express and Vanguard each applied for four slot exemptions to serve the DCA-Indianapolis and DCA-Kansas City markets, respectively. Midwest Express is a limited incumbent airline and Vanguard is a new entrant airline at DCA, and both proposals would provide competition on a monopoly nonstop route to DCA.³⁰ However, on balance, we find that the competitive benefits promoted by other competing applications outweighed these proposals, as discussed above. For example, for the year ending 1999 O&D traffic data show that the Washington, D.C. (DCA and IAD)-IND market averaged only about 204 passengers a day in each direction; and the Washington, D.C. (DCA and IAD)-MCI market averaged only about 313 passengers a day in each direction, while other competing markets such as the DCA-Chicago and DCA-Raleigh-Durham markets were larger.

Conditions

Unused slots: We are directing American Trans Air, Inc., Midway Airlines Corporation, Midwest Express Airlines, Inc., and Spirit Airlines, Inc. to file in Docket OST-2000-7182 no later than July 14, 2000, the proposed flight schedules and effective date for operations authorized by this Order. Once the Department approves the final times for each of the applicants, the carriers will then have 60 days to inaugurate their service as proposed. If service is not inaugurated within that timeframe, or if service is inaugurated and later the awardee discontinues service for any reason, the slot exemptions will be immediately returned to the Department for redistribution.

Environmental Issues

Although 49 U.S.C. §41718(e) specifically exempts our action here from environmental review,³¹ we remain sensitive to the environmental impact of increased operations at DCA. Consistent with the statute, we will require that all operations authorized by this order will be conducted with Stage 3 aircraft. We also note that 49 U.S.C. §41718(g) requires the Department to submit a study to the Congress in fiscal 2001 comparing noise levels at the four slot-controlled airports with noise levels experienced before 1991. DCA also has, and must give, priority for noise compatibility planning and program grants. 49 U.S.C. §§47117(e), 41718(e)(3).

³⁰ US Airways provides nonstop service in both these markets.

³¹ §41718(e) states, "Neither the request for, nor the granting of an exemption, under this section shall be considered for purposes of any Federal law a major Federal action significantly affecting the quality of the human environment."

Administrative Terms

As the FAA slot regulation makes clear "slots 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). Under the provisions of 49 U.S.C. §41714(j) these carriers may not sell, trade, transfer, or convey the operating authorities granted by the subject exemptions, unless otherwise authorized herein.

Further, granting of these exemptions in no way is to be construed as allowing a carrier to operate services that it otherwise could not otherwise operate, *i.e.*, carriers must still meet all the requirements of the Department of Transportation, the Federal Aviation Administration, and all other statutes and regulations governing air transportation.

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

ACCORDINGLY,

1. The Department grants exemptions from 14 C.F.R. Part 93, Subparts K and S, to American Trans Air, Inc. (four slot exemptions to serve Chicago Midway Airport), Illinois; Midway Airlines Corporation (two slot exemptions to serve Raleigh/Durham International Airport); Midwest Express Airlines, Inc. (two slot exemptions to serve Des Moines, Iowa); and Spirit Airlines, Inc. (two slot exemptions to serve either Melbourne or Myrtle Beach, and two slot exemptions to serve any of the airports in Florida and South Carolina that it proposed, to be allocated based on Spirit's assessment of market conditions and system needs) to enable these applicants to conduct the operations described in this order at Ronald Reagan Washington National Airport;
2. The Department directs American Trans Air, Inc.; Midway Airlines Corporation; Midwest Express Airlines, Inc.; and Spirit Airlines, Inc. to file in Docket OST-2000-7182 no later than July 14, 2000, the proposed flight schedules and effective date for operations authorized by this Order. The slot exemptions granted must be conducted with Stage 3 aircraft, may not be used for operations between the hours of 10:00 p.m. and 7:00 a.m., and may not increase the number of operations at Ronald Reagan Washington National Airport in any one-hour period during the hours between 7:00 a.m. and 9:59 p.m. by more than two operations. Carriers are advised to consider maximum flexibility in proposed operating times to ensure compliance with these limits;
3. The Department will make the final determination of slot times as soon as possible after schedules are filed to enable the carriers to conduct the operations authorized herein. The Department directs American Trans Air, Inc.; Midway Airlines Corporation; Midwest Express Airlines, Inc.; and Spirit Airlines, Inc. to contact the Federal Aviation Administration Slot Administration Office after the Department's determination of slot times. The FAA will assign slot exemption numbers, effective dates, and operating times consistent with statutory limitations;

4. If American Trans Air, Inc.; Midway Airlines Corporation; Midwest Express Airlines, Inc.; and Spirit Airlines, Inc. fail to inaugurate service within 60 days of being given their exact slot times by the Department, or if service is inaugurated and subsequently suspended, the Department will reallocate those slot exemptions;
5. We grant all motions to file otherwise unauthorized documents;
6. Except as otherwise granted, we deny all other applications for exemptions from 14 C.F.R. Part 93, Subparts K and S, filed in this docket;
7. The authorities granted under these exemptions are subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use or lose requirements; and
8. We will serve this order on all parties in Dockets OST-2000-7155, OST-2000-7182, and OST-2000-7187.

By:

A. BRADLEY MIMS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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