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ORDER 2001-4-8

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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 6th day of April, 2001

Served: April 6, 2001

Application of

TWA Airlines LLC

For an exemption from 14 CFR Part 93, under
49 U.S.C. §41718

Docket OST-2001-9185-10

Applications of

Continental Airlines, Inc.
Alaska Airlines, Inc.
United Air Lines, Inc.
America West Airlines, Inc.

For an exemption from 14 CFR Part 93, under
49 U.S.C. §41718

Docket OST-2001-9288-2
OST-2001-9309-3
OST-2001-9310-2
OST-2001-9326-2

ORDER

SUMMARY

By this order the Department grants the application of TWA Airlines LLC (TWA LLC) *pendente lite* authority to continue to operate two slot exemptions at Ronald Reagan Washington National Airport (Reagan National or DCA) for nonstop service to and from Los Angeles, California.

BACKGROUND

On July 5, 2000, pursuant to the provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) the Department issued Order 2000-7-1, which granted a total of 12 slot exemptions at Ronald Reagan Washington National Airport (DCA) for services outside the 1,250 mile perimeter to the following

carriers: America West Airlines, Inc., Frontier Airlines, Inc., National Airlines, and Trans World Airlines, Inc. Under the provisions of that order, Trans World was granted two slot exemptions to provide nonstop service to Los Angeles, California.

On January 10, 2001, Trans World filed for Chapter 11 bankruptcy protection and, concurrently, American Airlines, Inc., proposed to acquire substantially all of Trans World's assets. The two parties subsequently provided materials for competitive review by the Department of Justice. By letter dated January 23, 2001, the Department of Transportation informed American and Trans World that the language of AIR-21 does not permit the exemptions to be transferred or conveyed. The letter further advised that, were Trans World to cease to utilize the exemptions, they would be recalled by the Department. The letter was placed in Docket 2000-7181.

On March 12, the Bankruptcy Court approved American's bid for substantially all of Trans World's assets, over competing offers. Then, on March 16, the Department of Justice announced that it would not oppose the proposed transaction under its antitrust authority. In addition, several air carriers, anticipating the likelihood that the Department would move to select a replacement carrier, filed applications for the exemptions.

On April 3, 2001, the Department issued a notice inviting applications for the two DCA slot exemptions made available by American's acquisition of TWA's assets.

APPLICATION

On March 15, TWA LLC, a wholly-owned subsidiary of American and the entity that would acquire TWA's assets at the conclusion of the bankruptcy proceedings, advised that TWA would cease to utilize the slot exemptions as of the closing date in the bankruptcy case, an event the parties were seeking to have expedited. Given the Department's intention to recall the exemptions at that time, TWA Airlines LLC applied for *pendente lite* authority to operate the Los Angeles route until the Department could select a replacement carrier to utilize the exemptions.

In support of its application, TWA LLC contends that TWA and American are seeking to complete the proposed transaction as soon as possible and that the Department will be unable to make a carrier selection prior to completion of the American-Trans World acquisition. Without the requested authority, TWA would be unable to continue to operate its current DCA-Los Angeles service and that service could end precipitously, to the detriment of many passengers holding tickets and reservations. Also, TWA LLC argues that causing a service hiatus while at the same time letting the two DCA slot exemptions in question go unused would be contrary to the congressional intent of AIR-21. TWA LLC also states that the current service would be operated by TWA LLC employees, the former TWA personnel. Lastly, TWA LLC argues that granting its request would not prejudice the outcome of the selection proceeding since although

American is an applicant for the two available slot exemptions, it cannot use the TWA's operation of DCA-Los Angeles service as a factor in its favor to argue for its selection.

RESPONSIVE PLEADINGS

On March 23, 2001, the Metropolitan Washington Airports Authority (MWAA) filed an answer supporting TWA LLC's application. While taking no position regarding the ultimate carrier selection for the two available DCA slot exemptions, MWAA argues that the selection proceeding is likely to extend beyond the time that TWA would otherwise be forced to terminate its Los Angeles-DCA service. Under these circumstances, MWAA states that it would benefit the traveling public to permit TWA LLC to continue to operate the DCA-Los Angeles service pending a carrier selection.

On March 29, 2001, Continental Airlines, Inc., filed a competing application and an answer opposing the TWA LLC application. Continental argues that while there are compelling reasons to continue the DCA-Los Angeles service, it, rather than TWA LLC, should provide the interim service. Continental asserts that its *pendente lite* selection would increase Continental's relatively small DCA presence, improve competition in the DCA-Los Angeles market, and improve online connecting opportunities in the market. Continental asserts that granting the TWA LLC request would not be pro-competitive since TWA LLC is not independent of American, and that American is already a dominant carrier in the Washington-Los Angeles market.

On March 30, 2001, Alaska Airlines, Inc., filed an answer to the TWA LLC request. Alaska states that the most prudent course for the Department would be to allow TWA LLC to operate the current DCA-Los Angeles service on an interim basis provided that the Department proceeds expeditiously in making its long-term carrier selection decision. Alaska argues that the Department should also apply the appropriate conditions to minimize the prejudicial effect of a *pendente lite* selection. Specifically, those conditions should be that (1) American may not advertise, hold out, or ticket passengers as American, but instead must designate only TWA as the service provider; and (2) the Department must establish a date certain as the last date for which TWA LLC (American) may accept bookings. Alaska also filed a contingent exemption application should the Department decide on an interim basis to transfer the two available slot exemptions for service to another city. In that contingent application Alaska argued for the service benefits of Alaska's DCA-Seattle proposal over competing or potentially competing applications.

On March 30, 2001, United Air Lines, Inc. filed an answer to the TWA LLC application and a contingent application for *pendente lite* authority to operate DCA-Los Angeles service. United states that it is willing to withdraw its objections to the TWA LLC application if certain conditions are met and concurrently would not prosecute its own *pendente lite* application. First, grant of the *pendente lite* authority must be limited in duration, and TWA LLC must not be permitted to sell DCA-Los Angeles beyond the last date of *pendente lite* exemption. Second, the interim exemption should

be in effect for no more than 90 days from the date of issuance. Third, TWA LLC should not be permitted to sell DCA-Los Angeles service using the American code. Fourth, TWA LLC should be required to maintain the DCA-Los Angeles nonstop schedule operated by TWA. Without these conditions, United argues that American would be given an unfair advantage in the longer-term selection proceeding and American would have effectively achieved a transfer of DCA slot exemption authority contrary to the statutory prohibition. In its contingent *pendente lite* application United argues that with its interim selection not only would DCA-Los Angeles service be preserved, but many more consumers would benefit. United argues that it meets all four of the decisional DCA slot selection criteria outlined in AIR-21.

On March 30, 2001, Delta Air Lines, Inc., filed an answer to the TWA LLC request. Delta states that under the circumstances of the TWA LLC application it does not object to granting the request for a short period of time if certain conditions are met. First, the Department must limit the duration of the TWA LLC *pendente lite* authority to no later than August 31, 2001, and must not permit any TWA LLC ticket sales beyond that date for DCA-Los Angeles nonstop service. Second, TWA LLC should be permitted to sell its tickets only under the "TW" designator code. Third, the Department should re-emphasize that grant of the *pendente lite* request will not influence the final decision in the longer-term carrier selection proceeding.

On March 30, 2001, America West filed a contingent *pendente lite* application to operate the DCA-Los Angeles service should the Department not approve the TWA LLC application.

On March 30, 2001, Frontier Airlines, Inc. filed an answer opposing the TWA LLC request. Frontier argues that granting the request would not promote market competition and that a large established air carrier such as American, the parent of TWA LLC should not be permitted to benefit from the grant of the TWA LLC application.

On March 30, 2001, Trans World Airlines, Inc., filed an answer supporting the TWA LLC application. Trans World argues that the TWA LLC application should be approved in order to ensure a smooth transition and continuation of DCA-Los Angeles service.

DECISION

We have decided to grant the TWA LLC application at this time pending approval by the Federal Aviation Administration for the requisite operating authorities. We deny the applications of Continental, Alaska, United, and America West.

We agree with the parties supporting the application that the public interest is best served by granting TWA LLC's request. Without the requested relief, an abrupt service cessation is likely causing substantial inconvenience and confusion for DCA-Los Angeles passengers. While we agree that other applicants could also provide the

interim service until a new carrier is selected, even in these circumstances the transition costs for passengers could be significant. For example, schedules might alter significantly, reservations would have to change, tickets reissued, and passengers informed of the changes.

We also agree with the commenters that the approval be very short-term in nature. In that regard the Department has set a very aggressive timetable: proposals are due April 16, answers are due April 30, and we fully expect to issue a final carrier selection decision in May. The authority granted here will expire 90 days after the issuance date of this order or when a replacement service is selected, whichever is earlier. Finally, we wish to make clear that our action here in no way gives American Airlines any advantage whatsoever in the long-term carrier selection decision.

This Order is issued under authority delegated in 49 CFR 1.56a(f)(1).

ACCORDINGLY,

1. Effective immediately upon any closing of the referenced acquisition by American Airlines, Inc., of substantially all of the assets of Trans World Airlines, Inc., the Department withdraws the grant of two exemptions from 14 C.F.R. Part 93, Subparts K and S, to enable Trans World Airlines, Inc., to conduct operations at Ronald Reagan Washington National Airport to serve Los Angeles, California as described in ordering paragraph 1 of Order 2000-7-1;
2. Immediately upon any such withdrawal, the Department grants the application of TWA Airlines LLC to allow it to use the two DCA slot exemptions granted to Trans World Airlines, Inc., by Order 2000-7-1 for nonstop Los Angeles-DCA service pending a final carrier selection decision;
3. The Department denies the application of Continental Airlines, Inc. for an exemption from 14 CFR Part 93, subparts K and S filed in Docket OST 2001-9288 without prejudice;
4. The Department denies the application of Alaska Airlines, Inc., for an exemption from 14 CFR Part 93, subparts K and S filed in Docket OST 2001-9309 without prejudice;
5. The Department denies the application of United Air Lines, Inc., for an exemption from 14 CFR Part 93, subparts K and S filed in Docket OST 2001-9310 without prejudice;
6. The Department denies the application of America West Airlines, Inc., for an exemption from 14 CFR Part 93, subparts K and S filed in Docket OST 2001-9326 without prejudice;

7. The Department directs TWA Airlines LLC to contact the Slot Administration Office at the Federal Aviation Administration as soon as possible following the issuance of this order to determine with the Federal Aviation Administration the actual times for arriving and departing flights as authorized by this order and to establish the starting date for implementing this schedule;

8. The authority granted by this order will expire 90 days after the issuance date or whenever the Department makes a final carrier selection decision, whichever is earlier; and

9. We will serve a copy of this order on all interested parties.

By:

SUSAN MCDERMOTT
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

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