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Order 2001-1-10



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

Issued by the Department of Transportation  
on the 17<sup>th</sup> day of January, 2001

**Applications of**

**AMERICA WEST AIRLINES, INC.  
and MESA AIRLINES, INC.**

**LEGEND AIRLINES, INC.**

**NATIONAL AIRLINES, INC.**

**SUN COUNTRY AIRLINES, INC.**

**SPIRIT 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. § 41714 (c)

Served: January 17, 2001

Dockets OST-2000-7180 - 43  
OST-2000-7198 - 6

OST-2000-7134 - 10  
OST-2000-7180 - 43

OST-1999-5521 - 16  
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OST-2000-7180 - 43  
OST-2000-7284 - 6

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**Application of**

**SPIRIT 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. § 41714 (c)

Docket OST-2000-8330

**ORDER**

**Summary**

By this order the Department grants the application of Spirit Airlines, Inc., for four Chicago O'Hare slot exemptions for service to and from Myrtle Beach, South Carolina.

## Background

As directed by the provisions of 49 U.S.C § 41717(c) of the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (AIR-21), by Order 2000-5-20 the Department awarded a total of 30 slot exemptions to six new entrant or limited incumbent air carriers to provide air transportation to and from Chicago O'Hare International Airport. For those purposes, a new entrant air carrier or limited incumbent air carrier was defined as an air carrier or commuter operator that held or operated (or held or operated, since December 16, 1985) fewer than 20 slots and slot exemptions at O'Hare.<sup>1</sup>

Among the carriers granted O'Hare slot exemptions was Spirit Airlines, Inc., which received six slot exemptions to provide nonstop service between Chicago O'Hare Airport and any of the five airports in Florida and South Carolina that Spirit proposed in Docket OST-2000-7180, to be allocated based on its assessment of market conditions and system needs. Spirit had requested 19 slot exemptions for nonstop services to Orlando, Tampa, and Ft. Myers, Florida (four slot exemptions each); Ft. Lauderdale, Florida (three slot exemptions); and West Palm Beach, Florida, and Myrtle Beach, South Carolina (two slot exemptions each). By Order 2000-9-28, Spirit was later granted two additional O'Hare slot exemptions that had been relinquished by Sun Country Airlines, Inc.

Legend Airlines was also granted four O'Hare slot exemptions under the provisions of Order 2000-5-20 to provide nonstop service to Dallas (Love Field). However, Legend Airlines did not institute O'Hare service and the four awarded slot exemptions have never been used. On December 3, 2000, Legend filed for Chapter 11 bankruptcy protection and suspended scheduled operations. News reports and informal discussions with Department staff have indicated that Legend hopes to resume service in the near future, but nothing in these accounts show that the carrier intends to inaugurate O'Hare service as part of its service resumption plan.

Order 2000-5-20 notes, *inter alia*, that, "Qualified applicants who were not awarded here the total number of slot exemptions they sought under this § 41717(c) priority may re-apply for the balance of their request under 49 U.S.C § 41717(i)." On this basis, Spirit applied for four additional O'Hare slot exemptions to serve Myrtle Beach, South Carolina, on November 15, 2000.

In support of its application, Spirit states that it is a limited incumbent air carrier under 49 U.S.C § 41717 since it holds only eight O'Hare slot exemptions, that its proposed

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<sup>1</sup> 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."

services will be operated using Stage 3-compliant aircraft, and that its proposed services are in the public interest by stimulating traffic, strengthening small air carriers, offering new low-fare service and enhancing competition in the O'Hare-South Carolina market. Spirit argues that its entry in Detroit-Florida markets in competition with larger carriers has resulted in lower average fares. Spirit asserts, for example, that after its entry in the Detroit-Orlando market, the incumbent carrier's average fare dropped over 17 percent to \$103.82. Spirit argues that the discontinuance of service by low-fare carrier Vanguard in the Chicago (Midway)-Myrtle Beach market makes the need for Spirit's proposed service more compelling.

Answers in support of Spirit's application were filed by the Horry County Department of Airports, the Myrtle Beach Area Chamber of Commerce, and Myrtle Beach Golf Holiday, a trade association representing the Myrtle Beach area golf tourism industry. On December 22, 2000, the City of Chicago filed a motion for leave to file a late answer in support of the Spirit application. We will grant the motion.

### **Decision**

We have decided to grant Spirit's request for four O'Hare slot exemptions for nonstop Myrtle Beach service by reassigning the four O'Hare slot exemptions awarded to Legend by Order 2000-5-20. This action will not preclude Legend from reapplying for these four slot exemptions plus additional slot exemptions that the carrier might require. As we noted in Order 2000-5-20, qualified applicants such as Legend may apply for O'Hare slot exemptions under the provisions of 49 U.S.C. § 41714(i).

Moreover, we note that under the terms of 49 U.S.C § 41717(a), effective July 1, 2001, the period of slot controlled operations at O'Hare will narrow from the current 6:45 a.m.-9:15 p.m. period to a much more limited 2:45 p.m.-8:14 p.m. period and under the provisions of 49 U.S.C § 41715(a)(1), effective July 1, 2002, the High Density Rule (Subparts K and S of Part 93 of Title 14 Code of Federal Regulations pursuant to 49 U.S.C. § 41714 (c)) will no longer be in effect for O'Hare operations. These statutory provisions will make additional O'Hare access available to Legend.

As noted in Order 2000-5-20, Spirit certified in accordance with 14 C.F.R. 302.4(b), that it met the statutory criteria as a new entrant or limited incumbent; *i.e.*, that it and any affiliates pursuant to § 41717(k) hold or operate (or held or operated since December 16, 1985) fewer than 20 slots and slot exemptions at Chicago's O'Hare airport. In the instant application Spirit reaffirms that it operates only eight slot exemptions and that it will operate Stage 3 compliant aircraft. Nonetheless, to be consistent, we will require that Spirit certify that its proposed operations comply with the requirements outlined in Order 2000-4-15.

We find that grant of Spirit's request would improve competition in the Myrtle Beach-O'Hare market by providing new, lower-fare offerings and by operating additional

service in a market with a strong, leisure-fare component. In addition, given the loss of Vanguard's service in the Midway-Myrtle Beach market, we agree that Spirit's proposal would significantly address a potential service shortfall in the overall Chicago-Myrtle Beach market.

### **Administrative Terms**

As the FAA slot regulations make 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). Under the provisions of 49 U.S.C. § 41714(j) Spirit may not sell, trade, transfer, or convey the operating authorities granted by the subject exemptions. Further, granting of these exemptions in no way is to be construed as allowing a carrier to operate services that it otherwise could not, *i.e.*, Spirit 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 withdraws the grant of four exemptions from 14 C.F.R. Part 93, Subparts K and S, to enable Legend Airlines, Inc., to serve Chicago O'Hare International Airport during the slot-controlled hours of 6:45 a.m. to 9:15 p.m. as described in ordering paragraph 1 of Order 2000-5-20;
2. The Department grants exemptions from 14 C.F.R. Part 93, Subparts K and S, to Spirit Airlines, Inc., (four slot exemptions to serve Myrtle Beach, South Carolina) to enable Spirit to conduct the operations described in this order at Chicago O'Hare International Airport during the slot-controlled hours of 6:45 a.m. to 9:15 p.m. at times to be determined in consultation between Spirit and the Federal Aviation Administration;
3. The Department directs Spirit Airlines, Inc., 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 the schedule;
4. The Department grants all motions to file otherwise unauthorized documents; and

5. The Department will serve this order on all interested parties.

By:

**FRANCISCO J. SANCHEZ**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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