

**BEFORE THE DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Application of the Communities of the Virginia Peninsula)	
For an exemption from 14 C.F.R. Part 93,)	Docket No. OST-98-
Subpart K and S, 49 U.S.C. §41714 as to allow)	
non-stop service to Chicago O’Hare Airport)	

APPLICATION OF THE COMMUNITY OF THE VIRGINIA PENINSULA

Introduction

The communities of the Virginia Peninsula along with other municipalities and businesses from the Virginia Peninsula¹ (“Parties”) respectfully request that the Department of Transportation (“Department”) grant an exemption from the requirements of Subparts K and S of Part 93 of the Federal Aviation Regulations (14 C.F.R.) so that they may obtain direct non-stop service to Chicago’s O’Hare Airport. The Parties request six slots at O’Hare to allow three daily Virginia Peninsula-O’Hare round-trip flights.²

Background

Since 1968, the Federal Aviation Administration’s (“FAA”) high density traffic airport rule (“HDR”) (14 CFR Section 93.12 et seq.) has restricted the number of aircraft operations at JFK, LaGuardia, Reagan Washington National and O’Hare airports. Under the HDR, in order to conduct any IFR operation (arrival or departure) at an HDR airport, the operator must have a slot for the particular time frame during which the particular operation will be conducted. Although

¹ The Parties are set forth in Exhibit 1.

most slots are controlled by air carriers, under the HDR, any party – including municipalities or airport authorities may purchase or “own” a slot. In some cases, carriers have sold or provided slots to financial institutions to be used as collateral for financing.

Service to O’Hare can only be initiated if slots are secured for the service. Therefore, to obtain service between Newport News/Williamsburg International Airport and O’Hare, the Parties are filing for an exemption for six slots under 49 U.S.C. §41714. That section authorizes the Department to grant exemptions from the high density rule for proposed service that is found to be in the public interest. The “public interest” is statutorily defined to include the following:

- avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier...unreasonably to increase prices.
- encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.³

In responding to recommendations of the U.S. General Accounting Office (“GAO”) that the legislative standard governing the granting of landing slots to accommodate new service should be broadened to include competition as a key criterion,⁴ the Department stated:

In our past approvals and denials of slot exemptions, we have recognized as an exceptional circumstance the existence of markets that were demonstrably large enough to support nonstop service but had no nonstop service. Here we have determined to define “exceptional circumstances” more broadly by recognizing the need for competitive service in a market...In expanding the range of exceptional circumstances, we are concurring with the concerns that have been raised by members of Congress, numerous

² The specific times when slots are requested are set forth in Exhibit 2.

³ 49 U.S.C. §40101()(4), (10), (13). The Secretary has broad authority to grant exemptions from the high density rule. That authority can be exercised even without the authority set forth in Section 49 U.S.C. §41714.

⁴ U.S. General Accounting Office, Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets, RCED-97-4 (Oct. 1996).

community groups, new entrant airlines, the General Accounting Office and within the Department about the state of competition in the airline industry. As an example, in an October 1996 study entitled Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets, the General Accounting Office found that control of slots by a few airlines greatly deters entry at key airports in Chicago, New York, and Washington.

The Department added:

We find that substantial benefits can be achieved through increasing competition at slot controlled airports where consumers would be able to obtain significantly lower fares in noncompetitive or underserved markets.⁵

The Virginia Peninsula fits this description.

Small-Medium Communities Need Access to High Density Airports To Be A Part of the Nation's Air Transportation System Since Deregulation.

The grant of this request for slots is consistent with Congressional intent and statements by Department officials that the Department intends to increase access to high density airports for small-medium sized communities, and to bring those communities into the nation's air transportation system. As noted in Order 97-1-7, January 13, 1997, p. 1, Congress has directed the Secretary "to make the fullest possible use of existing exemption powers under 49 U.S.C. § 41714 ... 'to improve service to nonhub airports where significant improvements can be achieved,'" citing the Conference Report to the Department FY 1997 Appropriations Bill, Public Law 104-205.

The Airline Deregulation Act requires:

- placing maximum reliance on competitive market forces and on actual and potential competition.

⁵ U.S. Department of Transportation, Order 97-10-16

- avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier to unreasonably increase prices, reduce services, or exclude competition in air transportation.
- encouraging, developing, and maintaining an air transportation system relying on actual and potential competition.
- encouraging entry into air transportation markets by new and existing air carriers.

The Department should be taking all of those steps necessary to encourage the entry and competition envisioned by the Deregulation Act. Freezing communities out of some of the nation's largest airports and cities -- including O'Hare -- is not consistent with the goals and objectives of the Deregulation Act.

The Department's 1996 *Low-Cost Airline Service Study* emphasized that there were a number of positive developments attributable to the growth of competition although a number of markets were not enjoying the benefits of a truly competitive system. That study found:

- since deregulation, in the 112 cities served, the number of flight departures since deregulation has decreased in 12 of 49 small communities and 7 of 38 medium-sized communities.
- average fares, adjusted for inflation, have increased in 12 of 49 small communities and 14 of 38 medium-sized communities.
- the number of destinations served by nonstop flights declined in 28 of 49 small communities and 16 of 38 medium-sized communities.
- consumer benefits of increased competition are enormous -- \$6.3 billion annually.
- one of every seven domestic passengers is flying because of the increased competition.

The importance of airline service to small-medium communities has been the subject of a number of additional forums. In 1997, the National Air Service Roundtable brought together state, local, and federal officials including from the Department, to discuss market-based solutions to local air service problems.⁶ Several Department officials attended that conference. The genesis for the conference was the need to provide focus on local air-service problems and to finish “the unfinished business of the Airline Deregulation Act of 1978 by bringing a competitive mix of service to all communities,” particularly those that lack adequate airline competition or service quality. The conference recognized the direct linkage between air transportation and job creation, economic growth and quality of life. The significance of airline service to the economic growth of small communities was best summarized by the following 1997 Chattanooga Conference statement:

The evolving aviation marketplace in mid-size communities was revealed to have tremendous implications for major employers at the roundtable. For example, testimony delivered by an official from Eastman Chemical, Tennessee’s largest employer and exporter, identified substandard local service as an obstacle to: organizing sales meetings; recruiting a talented workforce; deploying sales personnel to field locations; and maintaining personal contact with valued clients.

At the end of the conference a number of issues including slot availability were highlighted in a summary report. While the conference identified a number of marketing steps that can be taken by communities and carriers, the participants agreed that “if local efforts to enhance competition are to succeed,” the federal government must address barriers to entry including the availability of slots. The report stated that:

⁶ The 1997 conference was held in Chattanooga, Tennessee. A similar conference was held in 1998 in Jackson, Mississippi.

The control of airline “slots” is also deleterious to competition. This problem is pervasive at the “big four” airports, Chicago’s O’Hare, New York’s Kennedy and LaGuardia, and Washington’s National airports. It can put the expansion of air service in mid-size cities into the hands of a few major carriers, which own the slots, precluding mid-size cities from working effectively with new entrants to establish service to major airports.

Deregulation was supposed to apply to the entire country and not to only certain areas. The purpose of deregulation was not to freeze certain communities out of the nation’s air transportation system, nor was it to place air service determinations solely in the hands of air carriers. The 1996 GAO study, “Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets,” stated that “the full benefits of deregulation have yet to be realized” because of the persistence of barriers to entry, which include . . . slot restrictions at the major airports. . . As a result of these barriers, competition suffers, leading to higher airfares.”

Also in the 1996 study, “Airline Deregulation: Changes in Airfares, Service, and Safety at Small, Medium-Sized, and Large Communities,” GAO stated, “the airports serving several communities -- particularly small- and medium-sized communities in the Southeast and the Appalachian region -- have experienced sharp increases in fares since deregulation.” The report also states: “While the number of one-stop connection possibilities has increased, the number of nonstop destinations and the percentage of departures involving jets have decreased.”

In a 1990 report, “Airline Competition - Industry Operating and Marketing Practices Limit Market Entry” (GAO/RCED-90-147, August 1990), GAO stated:

When the Congress passed the Airline Deregulation Act of 1978, one of its policy objectives was to foster competition in the airline industry. . . . As a result, in listing the various criteria which the Civil Aeronautics Board (CAB) should consider in the public

interest, the act included "maximum reliance on competitive market forces and on actual and potential competition" and "[t]he encouragement of entry . . . by new air carriers, the encouragement of entry into new markets by existing air carriers, and the continued strengthening of small air carriers so as to assure a more effective, competitive, airline industry."

Many of the above stated findings apply to air service at Newport News/Williamsburg International Airport. While the residents of the area are able to enjoy some of the new services brought about by deregulation, they do not have the level of service enjoyed by others throughout the country and elsewhere in Virginia. Moreover, the area lacks significant service to the Midwest, including Chicago. While the community is willing to play its part in attracting and supporting new service, the service sought by the Parties to O'Hare is not obtainable -- regardless of community action -- without slot exemptions.

Virginia Peninsula air travelers wishing direct service to Chicago must presently travel to other airports in Virginia over often-congested highways and through more-congested bridge tunnels. It was not the intent of the supporters of deregulation that if you lived, worked, or were creating new businesses in a certain city, you would be required to drive hours to obtain nonstop service to important business markets. Forcing residents and those wishing to do business in the area to drive hours for a nonstop flight puts the citizens, businesses, and local convention/tourism officials at a distinct disadvantage

The Department's April, 1996 "Low-Cost Air Service Revolution" report best states why competition is the key to better service and reasonable fares. That study notes that the expansion of competition "is a watershed development in domestic aviation that is having a profound effect on efficiency, competition, consumers, and industry structure." The people of the Virginia Peninsula also deserve these benefits and the expansion of service.

Community Has Had Prior O'Hare Service

This petition would allow the Parties to return jet service between O'Hare and Newport News/Williamsburg International Airport. The Virginia Peninsula has had successful service to O'Hare in the past. United Airlines previously provided service in the market but subsequently chose to consolidate its service to O'Hare from other airports in Virginia. Without the possibility of obtaining slots, there is no ability to return O'Hare service to the community. As the Southeastern Virginia area is increasing in business and leisure traffic, O'Hare enplanements are on the rise. Much of this increase is attributable to the growth of the Virginia Peninsula area as a first-class leisure destination and to the expansion to businesses throughout the region.

United chose to discontinue Virginia Peninsula-Chicago service and to funnel traffic over other Virginia airports less convenient to Virginia Peninsula passengers. This is a primary problem with O'Hare service for small and medium communities. As a result of slot limitations at O'Hare, the two O'Hare hub carriers are often forced to increase frequencies to larger markets while dropping service to smaller markets.

Those carriers are forced to take these steps because of slot limitations and the failure to increase the total number of permanent slots since 1986. As a result, the O'Hare hub operators are competing with other hubs that have no such limitations. Therefore, as carriers at those other hubs increase service to major markets to remain competitive, the O'Hare operators are forced to take slots utilized to serve smaller markets and designate them for service to larger markets. This further complicates the opportunities for airports such as Newport News/Williamsburg International Airport to obtain slots needed to establish nonstop service.

The Virginia Peninsula Deserves O'Hare Service

The growing economy and population of the Virginia Peninsula demonstrates that nonstop O'Hare service would be supported and successful for the following reasons:

1.) Newport News/Williamsburg International Airport is the closest commercial airport to more than 600,000 people in Southeastern Virginia (Exhibit 3).

2.) An air service study conducted by the Virginia Department of Aviation found that Newport News/Williamsburg International Airport captures only 37% of air passengers in its market area due to a lack of direct air service (Exhibit 4).

3.) In calendar year 1997, more than 50,000 air passengers traveled between Hampton Roads Airports (including Norfolk) and Chicago's O'Hare Airport (Exhibit 5). More than 20,000 of the passengers between Hampton Roads and O'Hare were from the Virginia Peninsula. Without direct service, only 2,310 passengers utilized Newport News/Williamsburg International Airport to get to during that period. This demonstrates the problem with this less than satisfactory air service. (Exhibit 5a).

4.) Newport News/Williamsburg International Airport is the closest commercial airport to major tourist attractions in southeastern Virginia, including Colonial Williamsburg and Busch Gardens which host 5 million visitors annually (Exhibit 6). These attractions compete with attractions in other areas of the country that have frequent service to major markets as well as service to important Canadian destinations.

5.) Newport News/Williamsburg International Airport is the closest commercial airport to major military installations in Southeastern Virginia employing more than 30,000 military and civilian personnel (Exhibit 7).

6.) Newport News/Williamsburg International Airport is the closest air carrier airport to major corporations in Southeastern Virginia with strong business ties to Chicago including

Canon Virginia, Siemens Automotive, Gateway 2000, and Newport News Shipbuilding (Exhibit 8).

7.) Hampton Roads in Southeastern Virginia is among the fastest growing metropolitan areas of the United States with population growing at 124% of the national average (Exhibit 9).

8.) Hampton Roads is a leader in retail sales and effective buying income in the Commonwealth of Virginia (Exhibits 10 and 11).

9.) The index of leading economic indicators on the Virginia Peninsula increased substantially in recent years (Exhibits 12 and 13).

10.) AirTran began serving Newport News/Williamsburg International Airport in 1995 and quickly proved that non-stop service could quickly stimulate the air travel market. With the addition of monthly service, Newport News/Williamsburg International Airport's share of Atlanta passengers grew from 2% in the quarter prior to AirTran's entry to 31% in one quarter (Exhibit 14)! Atlanta grew from the number three origin and destination market in Hampton Roads (including Norfolk) in 1994 to the number one market in 1996 (Exhibits 15, 16, and 17).

11.) The geography of Southeastern Virginia divides the area into two distinct regions, the Virginia Peninsula and South Hampton Roads (Exhibit 18).

12.) The thriving economy of the Virginia Peninsula and population forecasts (Exhibits 19 and 20) allow for impressive traffic projections between Newport News/Williamsburg International Airport and Chicago O'Hare (Exhibit 21).

13.) As a result of the Open Skies agreement with Canada, a significant number of connecting opportunities are available to Canada from O'Hare. This would help attract the growing Canadian presence in the Virginia Peninsula, both for leisure and business markets.

Moreover, a significant number of international destinations are available at O'Hare, particularly with the international connections offered by United and American.

Benefits of New Entry and Competition

Economic development for the Virginia Peninsula cannot exist when its service is limited and those wishing to travel to, or do business in, the area do not have reasonable access to major parts of this country and to the world. True deregulation can only exist when all markets can take part fully in the domestic system and in the international transportation system.

In *The Low-Cost Airline Service Revolution* (April 1996), the Department states:

We encourage communities to promote their own interests by undertaking efforts to encourage low cost new entry. Awareness of the benefits of low cost service where it has succeeded should be adequate incentive for communities to pursue low cost service.

Aviation in this part of the country is concentrated. Most small and medium communities only receive service through a few large hubs. While those hub operators provide important service, it leaves most small and medium communities with limited service. If existing service is going to continue to grow, it is important that new service be added. Additional hub service is essential. Adding service to O'Hare would give the community first-time access to major parts of the country and would increase the passenger base for all existing flights. At the current time, Newport News/Williamsburg International Airport has service to several East Coast hubs:

- AirTran – Atlanta
- United Express – Washington Dulles
- US Airways Express: Charlotte and Philadelphia

As the Department has suggested, the Virginia Peninsula has taken a number of important steps to attract service. As shown above in connection with AirTran's successful service to

Atlanta, the service that has started at Newport News/Williamsburg International Airport has been successful. In some cases carriers started with a few flights and added service to accommodate growing demand. The Parties have spent funds to attract new service and to generate business for those carriers initiating service.

The residents of Southeastern Virginia want competition and will support it. As service grows, business people and leisure travelers will be spared congested surface transportation to access air service. The community has been successful with these efforts, and it is appropriate that the Department facilitate additional growth by opening government-imposed slot restrictions.

For those communities without O'Hare service – including the Virginia Peninsula – the options are for travelers to drive to those markets with nonstop service or to board connecting flights to one of the hubs with service. This adds costs and time to any trip, which is particularly tolling on families and business people who need to take frequent trips. Moreover, these cost and time burdens have a significant impact on those who might consider the Virginia Peninsula for conventions or for the location of businesses.

A letter from airport managers in the northwestern United States to various Members of Congress explained the importance of competitive air service to communities throughout the United States. In the letter they stated, “Competitive air service is vital to the economic health of our northwestern communities as it is for most small towns and cities in America.”

In a filing in response to the Department's “Enforcement Policy Regarding Unfair Exclusionary Conduct in the Air Transportation Industry” (Docket OST-98-3713), representatives of twenty-five attorneys general of states throughout the United States, including Virginia, stated:

The deregulation of the airline industry which took place in the nineteen seventies has had many positive results when assessed on a nationwide basis. On many travel routes prices have remained at reasonable levels and in comparison to inflation have actually declined. The number of passengers carried is high and keeps on rising, and major airlines are getting stronger financially. Moreover, the value and importance of a financially strong airline industry composed of companies capable of providing reliable service nationwide and competing on an international basis is well recognized.

Yet those points must not obscure the fact that in quite a large number of markets there are serious competitive problems. Business travelers report a significant level of exasperation and anger at the many situations in which they find little choice of service, high prices and differences in the prices for similar services that are impossible to explain or accept. Throughout the country it is common for citizens to drive hundred of miles to other cities and states to fly. Prices are rising in many areas at a double digit pace,⁷ and new start up airlines have dwindled to almost none in the last few years.

The results are high costs and inconvenience for many citizens and local businesses, and a significant deleterious effect on the local economies of numerous small and medium sized cities that do not enjoy the benefits of competition in air services. Businesses will not locate in an area which lacks good air service at reasonable prices. Tourist and convention trade is diverted from cities that have high airfares. High travel prices take a disproportionate share of the income which would under more competitive conditions be available for other purposes. Supracompetitive prices and the resulting lower demand for the product cause economic and allocative inefficiencies which distort our economy in many ways beyond the higher prices paid by the actual travelers.

⁷ In the May 4, 1998 issue of *Business Week* magazine, in an article entitled "The Power to Raise Prices," Michael J. Mandel reports at page 39, "Now the airlines are showing major pricing clout: Typical domestic business fares rose 9% in February from the previous year, reports American Express Travel Related Services Co., as carriers benefited from strong demand, little capacity growth, and a lack of low-fare competition." He adds that the Bureau of Labor Statistics reported ticket prices rose at a 37% annualized rate in the first quarter of the year. And the National Business Travel Association credits American Express with the report that its index of city pairs shows fares have advanced 34% since February of 1996.

The economic growth of small and medium communities is directly related to convenient and competitive airline service. This is particularly essential for a community such as the Virginia Peninsula that has increasing amounts of leisure and business travel and a growing need for international service, particularly to Canada. By adding convenient one-stop service to most major Canadian markets, the tourist attractions and businesses in the area would be able to attract a significant number of new customers. Moreover, new service will result in important price competition, making travel more affordable for all. Without that service, the area is disadvantaged as to other areas with service.

As can be seen by Exhibit 5, Chicago is the fifth most popular destination market from the Virginia Peninsula. Exhibit 21 shows that the Parties estimate that more than 100 daily passengers would use O'Hare service. This number will increase once direct service is in place.

The Parties applaud the Department's actions to open O'Hare up to new community service. The applications approved should bring important service to a number of new communities. The applications pending should also help those communities. Unfortunately, deserving communities such as the Virginia Peninsula can not have service critical to their economic development without additional exemptions.

The Department should also consider survival of competition as a factor in granting slot exemptions. As Assistant Secretary Charles Hunnicutt stated before the Senate Commerce, Science and Transportation Subcommittee on Aviation on May 13, 1997, "New entry has almost completely stopped. We have received no new low-fare applications this calendar year and we have licensed only one new low-fare competitor" since May of 1996. Awarding slots to the Newport News/Williamsburg International Airport would be consistent with these principles and would provide additional competitive options for the area and for air carriers.

By denying new competitive service from the growing business and tourism markets of the Virginia Peninsula, the Department would inhibit the economic growth of this region and lessen the likelihood that competition will permanently come to this growing community.

The Parties ask that the Department award slots so that United Express, American Eagle or another airline can start service Between O'Hare and Newport News/Williamsburg International Airport. If the slots are awarded to Newport News/Williamsburg International Airport, the civic and corporate Parties know that they can support service and not have to worry about having the slots transferred to other markets.

By awarding slots to the Newport News/Williamsburg International Airport, the Department would acknowledge the direct link between air service and the economic development of small and medium communities. Those communities should not be told by the government that they may never get service to airports regulated by the Department.

Based upon the data depicting available traffic, marketing and potential growth information for the Virginia Peninsula, there is no doubt that the service proposed in this petition justifies an exemption to allow O'Hare service.

Slot Awards

Today, a community may only obtain service to O'Hare if an air carrier decides to shift slots for use at the community. If O'Hare was not slot controlled, the Parties believe that there would be community service to O'Hare. The community should not have to wait until a carrier decides to operate to this area. The Department has awarded slots through the exemption process for limited new service. Awarding exemption slots for jet operations directly to the community is in the public interest, consistent with the Deregulation Act and the high density regulation.

The Parties are asking the Department to award six slots to the Peninsula Airport Commission. If those slots are not utilized within 120 days from the date of award, the slots would be returned to FAA. Awarding these to the Newport News/Williamsburg International Airport would provide the residents of the area with the assurance that if they support O'Hare service, it will not disappear from use so that the carrier using the slot may serve other markets. Awarding slots to the community is consistent with the high density regulations (allowing communities to own slots), with actions taken by this Administration to work with local and state governments to promote tourism and economic growth, and with airline deregulation. The Department has a responsibility to all of those who depend on air transportation, not just air carriers.

Conclusion

If airline competition is to be a reality for small and medium communities, barriers to entry must be opened. Communities such as the Virginia Peninsula should not be told that the federal government has blocked their ability to have service to the nation's major business markets. These communities must be given opportunities to receive service to high density airports. Approving the slot request in this petition will promote competition, and will:

- provide business travelers from a growing area with options for travel to Chicago, the upper midwest and Canada;
- stimulate enormous business and economic opportunities on the Virginia Peninsula; and
- stimulate other air carrier service in these markets bringing lower prices and more choices for the traveling public.

According to GAO and Department studies, the growth enjoyed by small and medium communities in various parts of the country has not occurred in the Southeast. With award of a

few slots, important growth can occur immediately. It is for this reason why the Department should take the steps necessary to allow communities such as the Virginia Peninsula to benefit from competitive airline service.

Combined with existing service by established and affordable fare carriers, the Virginia Peninsula will become an alternative airport for thousands of passengers traveling to and from the area. Moreover, economic development in this part of the country will be enhanced because of convenient and competitive air service.

The true winners from a Department action to grant this limited exemption would be the consumers and business people of southeastern Virginia and those who obtain jobs as a result of the economic development stimulated by air service. This Administration has spoken of the linkage between transportation and economic growth. By granting this petition, the Department will generate additional opportunities for economic growth in the area. It is time for the Department to empower the businesses, people and civic Parties of the Virginia Peninsula with the ability to control their future economic destiny.

By awarding the slots requested, the Department will help the Virginia Peninsula become a full partner in the national aviation system. As Secretary Slater stated at the American Bar Association Forum on Air and Space Law (January 30, 1998, Washington, D.C.):

. . . there is concern about the disparity in fares, and service to some communities. And this raises questions about access to the nation's aviation system. . . Our aviation system should be inclusive in its service.

For all these reasons, the Parties respectfully request the Department grant it an exemption from the high density slot regulations to allow three nonstop Newport News/Williamsburg International Airport – Chicago O'Hare roundtrips.

Respectfully submitted,

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