

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

_____)	
Application of)	
)	
MIDWEST EXPRESS AIRLINES, INC.)	DOCKET No. OST-99-6240
)	
For an exemption pursuant to)	
the provisions of 49 U.S.C. § 41714(d))	
_____)	

**MOTION OF AIR CARRIER ASSOCIATION OF AMERICA
FOR LEAVE TO FILE RESPONSE OF
MIDWEST EXPRESS AIRLINES**

ACAA hereby moves for leave to file the accompanying Response to Answer of Midwest Express Airlines, which should be accepted in the interest of a complete record for the Department's consideration of the issues in this proceeding.

Respectfully submitted,

Edward P. Faberman
Executive Director

Michelle M. Faust
Legislative Counsel

AIR CARRIER ASSOCIATION OF AMERICA
1500 K Street, NW, Suite 250
Washington, DC 20005-1714
Tel: 202 639-7502
Fax: 202 639-7505

December 7, 1999

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

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**RESPONSE OF THE AIR CARRIER ASSOCIATION OF AMERICA
TO ANSWER OF MIDWEST EXPRESS AIRLINES**

Communications with respect to this document should be addressed to:

Edward P. Faberman
Michelle M. Faust
AIR CARRIER ASSOCIATION
OF AMERICA
1500 K Street, NW, Suite 250
Washington, DC 20005-1714
Tel: 202-639-7502
Fax: 202-639-7505

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**RESPONSE OF THE AIR CARRIER ASSOCIATION OF AMERICA
TO ANSWER OF MIDWEST EXPRESS AIRLINES**

On November 22, the Air Carrier Association of America (“ACAA”) petitioned the Department of Transportation (“Department”) for reconsideration of Order 99-11-4, issued on November 4, 1999. ACAA asked the Department to withdraw its decision to grant the application of Midwest Express Airlines, Inc. (“Midwest Express”) to slide two 9:00 p.m. (2100) slots at Ronald Reagan Washington National Airport (“Reagan National”) to the 2:25 p.m. (1425) period and the 3:00 p.m. (1500) time period and to withdraw all 2100 hour air carrier slots that have been “temporarily” allocated under Part 93 Subpart S and use established lottery procedures to reallocate those slots to new entrants.

On December 2, Midwest Express responded to the ACAA petition. Despite its view of history, Midwest Express has received preferential treatment.

ACAA restates its belief that Midwest Express, all small incumbents and new entrants should be able to fully compete at Reagan National and the other high-density airports. Until

changes are made that bring full competition to Reagan National Airport, however, ACAA opposes any Department decision that creates a special status for Midwest Express. Midwest Express is able to use this authority because it has been at Reagan National for approximately 14 years. In its comments, Midwest Express states that no member of ACAA has filed “a similar application for DCA slot slide authority.” Since there are no 2100 air carrier slots available, no other carrier can petition to slide such a slot.¹

ACAA does not object to an award of slots based upon an open procedure that allows all interested parties to participate. That is exactly what happened at LaGuardia when the Department awarded slot exemptions. All carriers were given an opportunity to apply for and obtain LGA slots. That is not the case at Reagan National. Only those carriers that were able to obtain the 2100 DCA slots (Midwest Express and large incumbent carriers) can apply for authority to move those slots to earlier time periods.² One could hardly claim that the process that Midwest Express is attempting to utilize is the allocation of “a scarce resource such that not all requesting air carriers will necessarily have their route ambitions completely satisfied.” In this case, Midwest Express is competing against itself and its commuter partner — not against any other new entrant carrier. By awarding the available 2100 slots to the largest carriers, the Department has prevented any other carrier from “competing’ in a process that will allow movement of 2100 slots to earlier times during the day. By definition, this has placed Midwest Express in a preferential class.

One cannot dismiss all other new entrants by suggesting that those carriers should have been at National Airport years ago when the 2100 slots were distributed. The overall public

¹ ACAA members Sun Country, Frontier, AirTran, Spirit, Legend Airlines and AccessAir would be delighted to obtain 2100 slots and have an opportunity to move them to earlier time periods.

interest is not served when permanent allocations are made to one carrier because that carrier has been a long-time incumbent carrier and happened to obtain newly available 2100 time slots.

As to whether new entry has occurred at Reagan National Airport in the last 14 years, the record speaks for itself. While two other carriers have obtained access, those situations were both unusual. One carrier was only able to enter the airport because of a special arrangement it had with the nation's largest slot holder. Moreover, the Department's responsibility to implement airline deregulation is not dismissed because three carriers entered an airport in 14 years.

While Midwest Express should be allowed to fully compete, all other new entrants should also be afforded the same opportunities. It will not be in the public interest to allow new entrants to obtain 2100 slots and then announce that they cannot move those slots earlier because Midwest Express and its affiliates have claimed the earlier time frames.

Order 99-11-4 and the refusal to reallocate slots provided to the largest air carrier slot holders departs from the Department's position on new entry and slams the door on new entry at Reagan National while providing Midwest Express with opportunities not given to any other new entrant and increasing the domain of a few large carriers. Therefore, the Department should reconsider its order.

² As Midwest Express understands, identifying available 2100 slots and obtaining them is an informal process with the FAA.

WHEREFORE, ACAA respectfully requests that the Department withdraw the exemption permitting Midwest Express to slide its 2100 hour slots to earlier time periods and withdraw all temporary 2100 hour slots to be reallocated by lottery. The Department and the FAA should utilize public and open procedures to allow all new entrant carriers the opportunity to establish service at Reagan National.

Respectfully submitted,

Edward P. Faberman
Executive Director

Michelle M. Faust
Legislative Counsel

AIR CARRIER ASSOCIATION OF AMERICA
1500 K Street, NW, Suite 250
Washington, DC 20005-1714
Tel: 202 639-7502
Fax: 202 639-7505

December 7, 1999

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 1999, a copy of the Response of the Air Carrier Association of America to Answer of Midwest Express Airlines was served upon the parties on the attached service list.

Nancy R. Thompson

Carl B. Nelson, Jr.
American Airlines
1101 Seventeenth Street, NW
Suite 600
Washington, DC 20036

Richard Taylor
Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, DC 20036

Anita Mossner
Galland, Karasch & Garfinkle
1054 Thirty-First Street, NW
Washington, DC 20007

Robert Cohn
Shaw, Pittman, Potts & Trowbridge
2300 N Street, NW
Washington, DC 20037

Joanne Young
Baker & Hostetler
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036

Robert Ferguson
Chief Executive Officer
Midway Airlines
300 West Morgan Street
Suite 1200
Durham, NC 27701

Marshall Sinick
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, NW
Washington, DC 20044

Megan Rae Poldy
Northwest Airlines, Inc.
901 Fifteenth Street, NW
Suite 500
Washington, DC 20005

Jeffrey Manley
Kirkland & Ellis
655 Fifteenth Street, NW
Suite 1200
Washington, DC 20005

Stephen L. Gelband
Hewes, Morella, Gelband & Lamberton
1000 Potomac Street, NW
Suite 300
Washington, DC 20007

Richard Fahey
Trans World Airlines
1800 Diagonal Road
Suite 600
Alexandria, VA 22314

Thomas Whalen
Condon & Forsyth
1016 Sixteenth Street, NW
Washington, DC 20036

Lawrence Nagin
U.S. Airways, Inc.
Crystal Park Four
2345 Crystal Drive
Arlington, VA 22207

Brian Meehan
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Bruce Keiner
Crowell & Moring
1001 Pennsylvania Avenue, NW
Suite 1100
Washington, DC 20004

Ron Waterman
Waterman & Associates
900 Second Street, NE
Suite 109
Washington, DC 20002

Timothy J. Hannegan
The Wexler Group
1317 F Street, NW
Suite 600
Washington, DC 20004

James A. Wilding
General Manager
Metropolitan Washington Airports Authority
44 Canal Center Plaza
Alexandria, VA 22314-1562

Ed Fagan
Metropolitan Washington Airports Authority
44 Canal Center Plaza
Alexandria, VA 22314-1562

Mr. Nicholas G. Garaufis
Chief Counsel, AGG 1
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Ms. Lorelei Peter
Air Space & Air Traffic Law Branch
Office of the Chief Counsel
Federal Aviation Administration
800 Independence Avenue, SW -- Room 917
Washington, DC 20591

Robert P. Silverberg, Esq.
Bagileo, Silverberg & Goldman, LLP
1101 30th Street, NW
Suite 120
Washington, DC 20007