

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

Application of

NATIONAL AIRLINES, INC.

for an exemption from 14 C.F.R. Part 93,
Subparts K & S, pursuant to 49 U.S.C. § 41714

Docket OST-99-5521

NOTICE OF CONTINUING INTEREST AND SUPPLEMENT TO
APPLICATION OF NATIONAL AIRLINES, INC. FOR AN EXEMPTION

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Dated: April 7, 2000

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APPLICATION OF NATIONAL AIRLINES, INC. FOR AN EXEMPTION

By this Notice, National Airlines, Inc. ("National") is reaffirming its interest in pursuing the application that it filed on April 7, 1999 to obtain slot exemptions enabling it to provide air transportation between Chicago's O'Hare International Airport and Las Vegas' McCarran International Airport. On April 5, 2000, President Clinton signed into law the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR-21"), which directs the Department to grant 30 new slot exemptions to new entrant and limited incumbent air carriers to conduct such operations at O'Hare. 49 U.S.C. § 41717(c)(1).

The Department should grant National's pending application for five O'Hare slot exemptions because, as the Department has already found, National's proposed O'Hare-Las Vegas service is in the public interest. DOT

Order 99-7-17 at 7 (finding National's proposal even satisfied the more exacting "exceptional circumstances" test).

As stated in its application, National proposes using the five slot exemptions to operate three daily round-trip, nonstop flights in the O'Hare-Las Vegas market. This new service would satisfy every applicable criterion for relief from the high density rule at O'Hare, would offer improved transportation benefits for passengers, and would afford the Department an opportunity to promote its pro-competitive goals by reducing excessive market dominance at O'Hare and by authorizing the initiation of economically viable and price competitive service by a new entrant carrier in an underserved market.

National requests that the Department grant National's application for O'Hare slot exemptions within the 45-day period for deciding such applications, as provided in 49 U.S.C. § 41717(c)(2). National also requests that the slot exemptions remain effective through July 1, 2002, when the slot restrictions at O'Hare will be eliminated. 49 U.S.C. § 41715(a)(1).

I. Overview of National's Pending O'Hare Slot Exemption Application

On April 7, 1999, National applied for an exemption from the provisions of 14 C.F.R. Part 93, Subparts K & S, pursuant to 49 U.S.C.

§ 41714(c), to enable National to conduct five flight operations every day during the slot-restricted hours at Chicago O'Hare Airport.

At the time National filed its application, the Department was expressly authorized by the Federal Aviation Administration Authorization Act of 1994 1/ to grant air carriers exemptions from the slot restrictions placed on operations at the O'Hare, John F. Kennedy International, and LaGuardia airports for: (a) essential air service flights, (b) international air transportation, and (c) service by "new entrant air carriers." In the case of a "new entrant air carrier," such as National, 2/ the Department could only grant slot exemptions to enable the carrier to provide air transportation at a high density airport if the Department found "it to be in the public interest and the circumstances to be exceptional." 49 U.S.C. § 41714(c)(1) (prior to enactment of AIR-21).

The Department construed the "exceptional circumstances" standard found in the statute to include situations where customers would be able to

1/ Pub. L. No. 103-305, § 206, 108 Stat. 1569, 1584-87 (1994).

2/ At the time and today as well, the term "new entrant air carrier" is defined to include an air carrier such as National Airlines "that does not hold a slot at the airport concerned and has never sold or given up a slot at that airport after December 16, 1985." 49 U.S.C. § 41714(h)(3).

obtain significantly lower fares in a noncompetitive or underserved market if a slot exemption were granted. 3/ Under this construction, the Department determined that it would accord controlling weight to the following factors when ruling on a new entrant air carrier's slot exemption application: (1) the carrier's proposal must be based on the use of jet aircraft that meet Stage 3 noise requirements; (2) there must be a reasonable expectation that the proposed service will be operationally and financially viable; and (3) the carrier must propose to introduce (a) new nonstop service or (b) new competitive services (particularly if the carrier offers lower fares) where:

- (i) there is only single carrier service and the market could support entry, or
- (ii) existing services do not produce meaningful price competition. 4/

Applying these standards, the Department determined that National's proposed O'Hare-Las Vegas service is in the public interest and satisfies the "exceptional circumstances" test. DOT Order 99-7-17 at 7. The Department deferred granting National's application at the time only because the

3/ Applications of Simmons Airlines, Inc., et al., DOT Order 97-10-16 at 3; Applications of Trans States Airlines, Inc., et al., Order 98-4-21 at 4 (confirming this application of the "exceptional circumstances" standard).

4/ DOT Order 97-10-16 at 4; DOT Order 98-4-21 at 4; Applications of Reno Air, Inc., et al., DOT Order 99-2-26 at 4.

Department viewed itself as having a limited number of slot exemptions available for distribution. DOT Order 99-7-17 at 7 & 9. 5/

As a result, National's application is still pending and is ripe for favorable action by the Department.

II. National's Pending Application Satisfies the Requirements of AIR-21

AIR-21 establishes several standards for the award of the 30 new slot exemptions to new entrant and limited incumbent air carriers under 49 U.S.C. § 41714(c)(1). Overall, these standards are less exacting than the combined public interest and "exceptional circumstances" standards that the Department has applied in the past. As described below, National satisfies all of the new standards established by AIR-21.

1. National Is a New Entrant Air Carrier

First, the applicant must be a "new entrant" or "limited incumbent air carrier." 49 U.S.C. § 41714(c)(1). As amended by AIR-21, the term "new entrant" includes each air carrier "that does not hold a slot at the airport

5/ In 1997, the Department prepared an environmental assessment and adopted the benchmark of 60 slot exemptions as a limit on the total number of slot exemptions that it was willing to grant for operations at O'Hare. Order 98-4-21 at 4; Applications of Simmons Airlines, Inc., et al., Order 98-9-24 at 6 (confirming adherence to 60-slot exemption limitation unless a further environmental review is conducted).

concerned and has never sold or given up a slot at that airport after December 16, 1985.” 49 U.S.C. § 41714(h)(3). National qualifies as a “new entrant” because it does not hold, and never has held, any slots or slot exemptions at O’Hare.

2. All of National’s Aircraft Are Stage 3 Compliant

Second, the applicant must use only Stage 3 aircraft. 49 U.S.C. § 41717(f). National’s proposed service satisfies this requirement because National intends to use only the Stage 3-compliant aircraft in its all-Boeing 757 fleet.

3. National’s Proposed Service Is In the Public Interest

Third, the applicant’s proposed service must be in the public interest. 49 U.S.C. § 41714(c). National’s proposed O’Hare-Las Vegas service is in the public interest because it will: (a) provide a needed increase in capacity in the market; (b) help to lower average ticket prices in the market; (c) reduce excessive market dominance by the incumbent carriers; and (d) create attractive service options for travelers in the market. 6/ 7/

6/ See the definition of “public interest” in 49 U.S.C. § 40101.

7/ To the extent that the Department considers whether National’s proposed service will provide the maximum benefit to the U.S. economy (see 49 U.S.C. § 41715(c)(1)), National notes that its use of an all-Boeing fleet, as well as its employment of over 1,000 employees here in the United States,

[Footnote continued]

a. National's Proposed Service Will Provide a Needed Increase in Capacity

National's proposed O'Hare-Las Vegas service will provide a needed increase in capacity in the market. Specifically, National intends to increase the quantity of passenger seats available in the market by 7,350 seats per week, a 23.8% increase over the number of seats currently made available by the incumbents in the O'Hare-Las Vegas market. See Exhibit NA-1 and Exhibit NA-2. 8/

The need for such an increase in capacity results from the general growth in demand for passenger air transportation to and from Las Vegas combined with the stagnant passenger capacity levels in the O'Hare-Las Vegas market.

Over the past ten years, Las Vegas has continued to grow as one of the leading destinations in the United States for leisure travel and for

[Footnote continued]

provides tremendous benefits for the U.S. economy in addition to the consumer benefits that will be generated by National's proposed service.

8/ Exhibit NA-1 through Exhibit NA-4 attached to this notice correspond to the exhibits that National filed in its April 4, 1999 application and May 3, 1999 consolidated reply in this proceeding. They provide updated information for the Department's consideration. Exhibit NA-5 hereto provides entirely new information for the Department's consideration.

conventions and trade shows. 9/ In 1999 alone, Las Vegas was visited by 33.8 million people, handled 33.7 million enplanements and deplanements, 10/ hosted 3,847 conventions and trade shows for about 3.8 million attendees, and made over 120,000 hotel rooms available to accommodate the visitors. 11/ See Exhibit NA-5. The average rates of growth in these measurements of Las Vegas' business strength and travel needs have been significant over the past ten years. For instance, as indicated in Exhibit NA-5, the number of visitors grew by 5.5% per year from 1990 through 1999. The total number of passengers enplaned and deplaned at McCarran International Airport increased by 6.5% per year. The number of conventions and convention attendees increased by a remarkable 16.0%

9/ According to a survey conducted by the U.S. Tour Operators Association, its members identified Las Vegas as the best-selling domestic tour destination and predicted that Las Vegas will be one of the two fastest growing destinations in the U.S. See Viva Las Vegas! USTOA Ranks City as Top Tour Destination, Travel Weekly, April 1, 1999, at 2.

10/ According to the most recent DOT data available, McCarran International Airport in Las Vegas is the ninth busiest airport in the U.S. in terms of passenger enplanements. See Bureau of Transportation Statistics, Pocket Guide to Transportation: 1999 22 (Dec. 1999) (providing 1997 data).

11/ According to statistics gathered by the Las Vegas Convention and Visitors Authority, 18 of the 20 largest hotels in the United States are found in Las Vegas.

and 9.0% per year, respectively. Finally, the number of available hotel rooms increased by 5.6% per year.

However, while Las Vegas businesses have been growing and working to attract more customers, passenger seating capacity in the O'Hare-Las Vegas market has remained relatively stagnant. For instance, National estimates that the seats offered by the incumbent carriers in the O'Hare-Las Vegas market increased over the past year by only 235 seats, or less than 1%. ^{12/} Such small increases in available passenger seats are plainly inadequate to facilitate the continuing health of the Las Vegas economy given the business and travel growth rates discussed above.

This disconnect between the trends in the quantity of passenger seats being supplied and demanded is further reflected in the above-average load factors that the three incumbent carriers realize for their O'Hare-Las Vegas service. See Exhibit NA-3. For example, American's load factor for its O'Hare-Las Vegas service averaged 89.5% during the 1999 calendar year. During that same period, its average load factor for all of the markets that it serves was only 69.6%. Similarly, United's average load factor for its O'Hare-

^{12/} Compare Exhibit NA-2 hereto with Application of National Airlines, Inc., Docket OST-99-5521, dated April 7, 1999, Exhibit NA-2.

Las Vegas service was 85.2% while its average load factor for all markets was only 71.7%. America West's O'Hare-Las Vegas load factors are also significantly higher than its system-wide load factor (74.0% versus 68.4%). The Department has previously noted that such comparatively high load factors in the O'Hare-Las Vegas market are an indication that the existing service is inadequate. 13/

b. National's Proposed Service Will Help to Lower Average Ticket Prices in the Market

In addition to providing needed capacity, National's entrance into the O'Hare-Las Vegas market will ensure the availability of lower average ticket prices for passengers. As indicated in Exhibit NA-4, 14/ all of National's proposed fares are significantly less than the comparable fares that the incumbent air carriers are charging. For instance, National's estimated first class fare for nonstop transportation between O'Hare and Las Vegas (\$526 one-way) will be approximately 59.6% less than the \$1,302 fare being charged by American, America West, and United. National also estimates

13/ Order 98-4-21 at 13 (stating that the high load factors in the O'Hare-Las Vegas and O'Hare-Phoenix markets "are an indication that both markets are underserved").

14/ The American, America West, and United fares provided in Exhibit NA-4 were derived from the Sabre reservations system on March 21, 2000.

that its unrestricted fare for tourist class seating (\$376 one-way) will be roughly 54.4% less than American's and America West's current fare of \$825, as well as 59.4% less than United's \$925 fare.

As a result of offering such lower ticket prices for its proposed O'Hare-Las Vegas service, National estimates that it will attract more than 192,000 incremental travelers to the O'Hare-Las Vegas air transportation market over the next year. See Exhibit NA-1.

c. National's Proposed Service Will Reduce Excessive Market Dominance by the Incumbent Carriers

As Exhibit NA-2 shows, the nonstop O'Hare-Las Vegas market is currently served by only three carriers, two of which have made O'Hare a fortress hub and have substantial slot holdings at O'Hare. ^{15/} Together these two carriers control over 93% of the available passenger seat capacity in the O'Hare-Las Vegas market. See Exhibit NA-2. Last year when National filed its application in this docket, American and United only

^{15/} According to FAA records, United Air Lines holds approximately 47.5% of the slots available for domestic air carrier service at O'Hare, and American Airlines holds roughly 36.7% of such slots. FAA, Summary of Holdings by Carrier for Slots Held 5 or More Days (March 14, 2000). Thus, together these two carriers control about 84.2% of the slots available for domestic air carrier service at O'Hare.

controlled 86% of the capacity in this market. See Application of National Airlines, Inc., Docket OST-99-5521, dated April 7, 1999, at 12.

Upon introduction of National's proposed service, American and United will control only 75.3% of the available passenger seat capacity in the market. Significantly, National estimates that a substantial portion of the passenger share that it will gain from entry into this market will come from the incremental increase in the number of passengers interested in traveling between O'Hare and Las Vegas, as discussed above.

d. National's Proposed Service Will Create Attractive Service Options for Travelers

Importantly, National's proposed service also will provide more attractive service options for passengers traveling between O'Hare and Las Vegas. First, National's service will present a more passenger-friendly schedule. As indicated in Exhibit NA-1, all but one of National's proposed flights between O'Hare and Las Vegas will depart one airport between the hours of 8:00 a.m. and 9:00 p.m. and arrive at the other within that same daytime period. In contrast, a significant number of the flights operated by the incumbent carriers require passengers to travel before 8:00 a.m. or after 9:00 p.m. local time. See Exhibit NA-2. America West offers only a single

night flight each way between O'Hare and Las Vegas. 16/ Three of American's seven daily flights and five of United's twelve daily flights also require passengers to travel before 8:00 a.m. or after 9:00 p.m. local time.

Second, the proposed service will be provided using National's spaciouly arranged Boeing 757 aircraft. National's passengers will have more legroom for themselves and more room for their carry-on luggage. 17/

16/ As a result of schedule changes made over the past year, this night flight is the only remaining nonstop service offered by America West between Chicago and Las Vegas.

17/ The desirability of such service evidently has not been lost on American and United. Since National filed its application in this docket, both American and United have begun using Boeing 757 aircraft in the O'Hare-Las Vegas market. In addition, both carriers have begun reducing the number of seats in their aircraft to increase legroom for their passengers.

WHEREFORE, National Airlines, Inc. requests that the Department grant it an exemption from the provisions of 14 C.F.R. Part 93, Subparts K & S, to enable National to conduct five flight operations a day (departures or arrivals) at Chicago O'Hare Airport during the slot-controlled hours of 6:45 a.m. to 9:15 p.m. for the purpose of providing nonstop service between Las Vegas, Nevada and Chicago O'Hare Airport.

Respectfully Submitted,

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Counsel for
National Airlines, Inc.

Dated: April 7, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing
“Supplement to Application of National Airlines, Inc. for an Exemption” on
all persons named on the attached Service List by causing a copy to be sent
by first class mail, postage prepaid.

Ronald P. Brower

Dated: April 7, 2000

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