

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

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Application of )  
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MIDWEST EXPRESS AIRLINES, INC. ) **DOCKET No. OST-00-7189**  
 )  
For an exemption pursuant to )  
the provisions of 49 U.S.C. § 41714(d) )  
(Kansas City-MO. Ronald Reagan )  
National Airport) )  
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**RESPONSE OF THE AIR CARRIER ASSOCIATION OF AMERICA  
TO APPLICATION OF MIDWEST EXPRESS FOR AN  
EXEMPTION TO ALLOW KANSAS CITY – RONALD REAGAN  
WASHINGTON NATIONAL AIRPORT SERVICE.**

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April 18, 2000

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APPLICATION OF MIDWEST EXPRESS FOR AN EXEMPTION TO ALLOW  
KANSAS CITY - RONALD REAGAN WASHINGTON NATIONAL AIRPORT  
SERVICE.**

The Air Carrier Association of America (“ACAA”) hereby opposes the most recent request by Midwest Express under the authority of 49 U.S.C. Section 41714(d) to slide another National Airport 2100 hour slot to the 0700 hour.<sup>1</sup> ACAA requests that the Department of Transportation (“Department”) withdraw all 2100 hour air carrier slots<sup>2</sup> that have been “temporarily” allocated under Part 93, Subpart S and use established lottery procedures to reallocate those slots to new entrants.

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<sup>1</sup> This “slide” would provide Midwest Express with a nonstop slot to Kansas City. Vanguard has just applied for four DCA slots to operate to Kansas City (Docket OST-2000-7155-1). At the same time both carriers are seeking approval for slot allocations, US Airways is already in that market.

<sup>2</sup> Since the Department has approved Midwest Express’ slide of slots numbers 1087 and 1236, those slots would not be subject to this request. The slot that Midwest Express is proposing to move under this request is a permanently allocated slot that Midwest Express obtained from Northwest. Northwest is one of the carriers that holds “temporarily” allocated 2100 slots.

The temporarily allocated DCA 2100 slots have been allocated as follows:

<u>Slot No.</u>	<u>Holder</u>
1022	American
1087	Midwest Express (involved in OST slide)
1126	Midway
1236	Midwest Express (involved in OST slide)
1242	Northwest
1383	Delta
1534	United
1535	Northwest

### **Background**

ACAA believes Midwest Express, all small incumbents and new entrants should be able to fully compete at National Airport and at all airports. However, ACAA opposes Department actions that continue to create a special status for Midwest Express. Midwest Express, which has been at National Airport for approximately 15 years, originally obtained slots in the last lottery held by the FAA in 1986. Although a “limited” incumbent<sup>3</sup> that has sold some slots, Midwest Express has been able to increase its slot holdings. By previously allowing Midwest Express to slide two 9:00 p.m. (2100) slots at National Airport to the 2:25 p.m. (1425) period and the 3:00 p.m. (1500) period, the Department has given Midwest Express preferential treatment not available to any other new entrant. Since Midwest Express initiated operations at National Airport (and LaGuardia), no other new entrant has been able to enter into this lucrative and highly protected national market. The Department’s Order continues to block any other new entrant from entering National Airport. ACAA believes that this reallocation proposal is consistent with Department statements and policy to promote new entry and facilitate a

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<sup>3</sup> Midwest Express codeshares with American Eagle.

competitive environment at all airports (especially at National, where new entrants have been blocked from operating for fifteen years).

In deciding to block new entrants from obtaining slots at National Airport—contrary to Department statements about the importance of new entrants entering high density airports—the Department decided it was preferable to allow the carriers that dominate slots to continue to utilize those slots. In the denial of ACAA’s request to reallocate the 2100 slots, the Department avoided its obligation to promote new entry, stating that:

The FAA **does not find it practical** to hold a lottery solely for eight slots in the same hour. While new entrants and limited incumbents are given preference respectively in a lottery proceeding, the FAA **does not believe that a new entrant would be able to introduce meaningful service** by only using 2100 hour slots.

[Emphasis added.] Order 99-11-4, p4.

The Order goes on to say that the FAA prefers not to “disrupt” the service of carriers who are able to utilize the temporary slot allocations to complement their existing operations at the airport.

### **The Department Should Take Steps to Open All Markets**

The Department should follow its own espoused competition policy and take action to promote new entry at National Airport.<sup>4</sup> At the October 21, 1999 House Aviation Subcommittee hearing, the Department’s General Counsel made a number of important statements identifying those factors blocking new entry and the future of deregulation. In her testimony, she stated:

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<sup>4</sup> ACAA understands that the Department was hopeful that Congress would expand opportunities for new entrants at high density airports. Unfortunately, the recently passed legislation, the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (“FAIR 21”), does not significantly open up National Airport to new entrants and blocks new entrants from competing from large hubs. It is, therefore, essential that the Department take action to promote new entry at National Airport. It is difficult to envision that the public interest is served by allowing multiple carriers to serve DCA from Kansas City when at the same time no new entrant can compete from the much larger hubs, including Atlanta and Minneapolis/St. Paul. DOT could address this inequitable situation by fulfilling its regulatory responsibility of allocating these temporarily allocated slots.

A number of factors still prevent airline passengers and the airline industry itself from enjoying the full benefits of deregulation. These have been documented in a number of studies, including the TRB's. In particular, barriers to entry within the industry include computer-reservation systems, frequent-flyer programs, travel agent commission overrides, exclusionary behavior, airport business practices, and external airport constraints (e.g., the High Density Rule, airport-specific perimeter rules, and environmental constraints).

In addition to certain airport business practices, there are external constraints that directly impact competition. In particular, we view the High Density "slots" Rule as an impediment to competition, especially for new entrants.

At that hearing, the Department also released its response to the Transportation Research Board *Special Report 255, Entry and Competition in the U.S. Airline Industry*, where it further stressed the importance of providing new entrants with access to important airports. In that report, the Department stated:

In its 1999 Federal Aviation Administration reauthorization proposal, the Administration asked Congress to eliminate slot restrictions over a five-year period (by September 30, 2004) at three slot-controlled airports... Once the slot restrictions are eliminated, airport managers would be in a better position to use their facilities more efficiently.

We share the TRB's belief that providing prospective entrants with access to gates and other facilities on reasonable terms results in more competition, which in turn, results in lower average fares and better service for air travelers.

An air carrier's financial viability often depends on serving key business and leisure markets, which requires securing reasonable access to airport gates and other facilities.

When the Department granted JetBlue 75 slot exemptions at JFK Airport, it stated:

We made clear our support for increased competition and our willingness to invoke available tools to promote competition when we stated in our January 6, 1997, response to the GAO Report that 'the Department intends to be more receptive to considering competition as a factor in granting slot exemptions to new entrants under the exceptional circumstances criterion.'

More recently the National Research Council's Transportation Research Board (TRB) addressed the competitive ramifications of slot controls in its Special Report of August 2, 1999. The TRB Report stated that 'increased opportunities for

entry and competition in the domestic airline industry’ are an important public interest goal, but found that there were obstacles to achieving this goal ‘including long-standing rules that curb access to some of the country’s largest airports, among them New York’s JFK Airport. The TRB Report also noted that... ‘slot – controlled airports consistently are among the highest-priced markets in the country.’

(OST 99-5085-215, September 16, 1999)

The four large carriers that the Department apparently feels it must protect control approximately 60 percent of National Airport slots. Both American and United have over 1200 total slots while Delta and Northwest have approximately 300. If their marketing partners are included, the number would increase significantly.<sup>5</sup>

The Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (“FAIR 21”) provides limited access at National Airport for a few new entrants<sup>6</sup> although large carriers, particularly those operating regional jets, also qualify for additional slots. Under FAIR 21, only 12 slots are available for within-perimeter services. By withdrawing the 2100 slots, the Department would increase new entrant opportunities within the perimeter by 50 percent over FAIR 21 and would allow some new entrant service not permitted under the Act. The Department should not even consider “protecting” these mega carriers.

GAO has issued numerous reports advising the Department to take steps to promote new competition at high density airports. In calling for the Department to lower the barriers to entry at slot controlled airports, GAO official John H. Anderson, Jr. stated:

Our October 1996 report recommended that DOT address the operating barriers to entry by (1) **creating a pool of available slots by periodically withdrawing a**

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<sup>5</sup> Total U.S. market share for those carriers are as follows:

American -	18 percent
Delta -	19 percent
United -	20 percent
Northwest -	23 percent
(with Continental)	

<sup>6</sup> A new entrant operating from a large hub within the perimeter rule AirTran is blocked from serving National.

**small percentage from the major incumbents at each of the four slot-controlled airports and redistributing those slots in a fashion that increases competition** . . . DOT stated that it shared our concerns about operating barriers and the dominant position of some established carriers in some markets. DOT indicated that it planned to be more accommodating to new entrant requests for slots and would give serious consideration to our recommendation that the agency periodically hold slot lotteries.

Testimony Before the House Subcommittee on Aviation, Committee, June 25, 1997 (GAO/T-RCED-97-187, p.6)

We have found little progress has been achieved in lowering the barriers to entry since we first reported them in 1990. Slot controls continue to block entry at key airports in the East and upper Midwest. We recommended that DOT take actions to promote competition in regions that have not experienced lower fares as a result of airline deregulation by creating a pool of available slots by periodically withdrawing some grandfathered slots from the major incumbents and redistributing them in a fashion that increases competition.

Testimony Before the Senate Commerce, Science and Transportation Committee, October 28, 1997 (GAO/T-RCED-98-32, p. 2)

The importance to new entrants of gaining access to high density airports was addressed by Tom Miller, Attorney General of Iowa, on behalf of 35 state attorneys general in an letter distributed at the House Aviation Subcommittee hearing on October 20, 1999. In that letter, he stated:

As we have reviewed competition among airlines and its impact on business and leisure travelers, we have determined that there are significant barriers to entry and expansion for low-cost and new entrant airlines, a group that has demonstrated a capacity to generate real competition in markets. Of primary significance to this committee, a number of key airports are essentially closed to low-cost and new entrant airlines. The four high density airports — Chicago O’Hare, New York LaGuardia and Kennedy, and Washington National — are currently slot-controlled, while at a number of major carrier hub airports, competing airlines cannot obtain permanent facilities. This is not what was intended twenty years ago when the airline industry was deregulated.

It is time for the Department to place the future of competition at the top of its priority list. The future of new entrants should be placed ahead of (or at least on the same level) as

Midwest Express (which already has 16 DCA slots), Northwest, Delta, American Airlines, and United Airlines. (The Department has helped these carriers create the largest alliance partnerships in the world.)

WHEREFORE, ACAA respectfully requests that the Department deny Midwest Express' request to slide an existing 2100 slot to the 0700 hour and withdraw all temporarily allocated 2100 hour slots (except for those already moved to earlier times) to be reallocated by lottery. It is time for the Department and the FAA to promote competition and allow new entrant carriers the opportunity to compete at National Airport.

Respectfully submitted,

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April 18, 2000

## **CERTIFICATE OF SERVICE**

I hereby certify that on April 18, 2000, a copy of the Response of the Air Carrier Association of America To Application of Midwest Express for an Exemption to Allow Kansas City – Ronald Reagan Washington National Airport Service was served upon the parties on the attached service list.

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