

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

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Application of)	
)	
LEGEND AIRLINES, INC.)	Docket Nos. OST-00-7176
)	OST-00-7180
For an exemption from Subparts K and S)	
of 14 C.F.R. part 93 pursuant to 49 U.S.C.)	
§§ 41716, 41717 (LaGuardia and O'Hare))	
-----)	

**REPLY OF LEGEND AIRLINES, INC. TO
ANSWER OF AMERICA WEST AIRLINES, INC.**

Communications with respect to this document should be addressed to:

T. Allan McArtor
President & Chief Executive Officer
Legend Airlines, Inc.
7555 Lemmon Avenue
Dallas, TX 75209
Tel: 214-358-8200
Fax: 214-358-8282

Edward P. Faberman
Michelle M. Faust
UNGARETTI & HARRIS
1500 K Street, NW, Suite 250
Washington, DC 20005-1714
Tel: 202-639-7500
Fax: 202-639-7505

Counsel for Legend Airlines, Inc.

Date: April 18, 2000

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**REPLY OF LEGEND AIRLINES, INC. TO
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It is unfortunate that a carrier that once championed the rights of new entry and competition now raises objections to a new entrant carrier’s application to obtain slots at high density airports, but, sadly, that is what America West Airlines, Inc. (“America West”) has done by filing an Answer opposing new entrant Legend Airlines, Inc.’s (“Legend”) application for slots at Chicago O’Hare and LaGuardia.

In the not so distant past, America West was an advocate of new entry and promoted public interest factors set forth by the Airline Deregulation Act. 49 U.S.C. § 40101. In its filing for O’Hare and LaGuardia slots, America West stated:

Awarding America West the 13 slots it needs to mount a competitive schedule against the dominant incumbent carriers at O’Hare and LaGuardia will advance the public interest by creating a \$51.8 million benefit for consumers in the first year through lower fares.

(OST-97-2970, October 3, 1997, p10)

It went on to state:

Indeed, the carrier's proposed service would advance all of the important statutory public interest criteria by providing increased low-priced services, countering major carriers' market domination at slot-controlled airports, and providing additional competitive options to the travelling public through the additional services of a major low fare carrier's entry into restricted air transportation markets. Simply put, no other new entrant can provide the level of competitive stimulus created by America West with such a limited number of slots.

(p11)

Apparently, America West, now a codeshare partner of Continental and part of the Continental/Northwest alliance, is no longer a champion of new entry.

It is interesting that America West questions Legend's need to operate at O'Hare and suggests that Legend fly to Midway instead:

...particularly in light of the wide range of cities available for Legend to initiate service to, and its ability to operate at least some, if not all, of its Chicago flights at Midway Airport rather than at ORD.

(OST-00-7134-2, p3.)

Legend's exemption application provides no explanation as why it must initially operate a shuttle service to the slot constrained O'Hare as opposed to serving other cities or implementing service to Chicago with flights to Midway.

(p5)

America West's suggestion in its filing that Midway can serve as a substitute for O'Hare is inconsistent with the carrier's previous statements. When applying for O'Hare and LaGuardia slots in October 1997, America West pointed out that those airports could not be substituted with alternative airports:

...as noted by the GAO in explaining the need for service by new entrants such as America West at the slot restricted airports, each airport in the Chicago and New York areas has its own separate market. This is evidenced by the fact that most major airlines serve both airports in the Chicago area and all three airports in the New York area. America West plans to expand existing service at Newark and Chicago Midway in the future, however, this expansion does not address the critical needs of the LaGuardia and O'Hare markets for an increase in low fare options today.

(OST-97-2970, p8.)

The Department has long held that the various New York, Chicago and Washington airports serve distinct markets.

While Legend appreciates America West's input on airports that Legend should serve, Legend prefers to stick to its own business plan and, like America West, offer competitive service to LaGuardia and O'Hare. In light of American Airlines dominance of O'Hare slots and its multiple flights to all "slot-controlled" airports, to be competitive Legend must be able to have a reasonable frequency for the business traveler.

When Congress passed the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("FAIR 21"), it expressly opened up O'Hare and LaGuardia to new entrants and limited incumbents so that they could bring much needed competition to these airports. Each carrier submitting an application under FAIR 21 needs to submit its preferred schedule. Legend believes that qualifying new entrants and limited incumbents need to enter all closed markets.

In order to ensure that new entrants would be awarded slots, Sec. 231(k) of FAIR 21 specifically excludes certain carriers from qualifying as a new entrant or limited incumbent:

AFFILIATED CARRIERS.- For purposes of this section and sections 41716, 41717, and 41718, 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.

Based upon the above language and considering that America West applied for slots (OST-00-7198) under FAIR 21 and has a codeshare affiliation with Continental (see

Attachment 1),¹ America West does not appear to qualify as a new entrant at O'Hare or LaGuardia. Therefore, America West may have no basis to apply for slots. In addition, considering the ownership/alliance relationships that America West holds, the Department should prioritize slot awards to carriers that do not have the access held by the largest carriers and their partners, including America West.

As Legend stated in its application, the Dallas market is in critical need of competition. The Department has recognized the importance of Legend's service in its multiple slot awards to Midwest Express. Smaller new entrants need to know what opportunities for access will be available in order to plan schedules. It is important that the slot awards under FAIR 21 do not get delayed by those opposing competition or new entry. Therefore, Legend urges the Department to grant its application for slots at LaGuardia and O'Hare.

Respectfully submitted,

Edward P. Faberman
Michelle M. Faust
UNGARETTI & HARRIS
1500 K Street, NW, Suite 250
Washington, DC 20005-1714
Tel: 202-639-7500
Fax: 202-639-7505

Counsel for Legend Airlines, Inc.

Date: April 18, 2000

¹ Continental has 29 O'Hare slots and 32 LaGuardia slots.

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2000, a copy of the Reply of Legend Airlines, Inc. to Answer of America West Airlines, Inc. was served upon the parties on the attached service list.

Nancy R. Thompson

Richard M. Daley
Office of the Mayor
121 N. LaSalle Street, Room 507
Chicago, IL 60602

Governor George H. Ryan
207 Statehouse
Springfield, IL 62706

Governor George E. Pataki
Office of the Governor
State Capitol
Albany, NY 12224

Rudolph W. Giuliani
Office of the Mayor
City Hall
New York, NY 10007

Al Graser
General Manager
LaGuardia Airport
Hangar 7C
Flushing, NY 11371

Mary Rose R. Loney
Commissioner of Aviation
O'Hare International Airport
PO Box 66142
Chicago, IL 60666

R. Bruce Keiner, Jr.
Edward B. Glennon
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595

Joanne W. Young
Baker & Hostetler LLP
1050 Connecticut Ave., NW, Suite 1100
Washington, DC 20036-5304

Carl B. Nelson, Jr.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, NW, Suite 600
Washington, DC 20036

Jeffrey N. Shane
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, DC 20037-1420

William C. Evans

Verner, Liipfert, Bernhard, McPherson & Hand
901 15th Street, NW, Suite 700
Washington, DC 20005-2301

Richard Taylor

Steptoe & Johnson LLP
1330 Connecticut Ave., NW
Washington, DC 20036-1795

R. Tenney Johnson

2121 K Street, NW, Suite 800
Washington, DC 20037

Bradley D. Toney

Director of Legal Affairs & Empl. Relations
ProAir, Inc.
101 Elliott Avenue West, Suite 500
Seattle, WA 98119

Anita M. Mosner

GKMG Consulting Services, Inc.
1530 Wilson Blvd., 3rd Floor
Arlington, VA 22209

Jon Waller

Senior VP and General Counsel
Midway Airlines, Inc.
300 West Morgan Street
Durham, NC 27701

Donald T. Bliss

O'Melveny & Myers LLP
555 13th Street, NW, Suite 500 West
Washington, DC 20004-1109

Marshall Sanford Sinick

Squire, Sanders & Dempsey LLP
1201 Pennsylvania Ave., NW
Suite 500
Washington, DC 20004

Robert E. Cohn

Shaw Pittman
2300 N Street, NW, 5th Floor
Washington, DC 20037

Megan R. Rosia

Mng. Dir., Government Affairs
Northwest Airlines, Inc.
901 15th Street, NW, Suite 310
Washington, DC 20005

Patrick P. Salisbury

Salisbury & Ryan LLP
1325 Avenue of the Americas
New York, NY 10019

George J. Aste

Vice President, International Affairs
Trans World Airlines, Inc.
900 19th Street, NW, Suite 350
Washington, DC 20006

Dennis J. Crabtree

Senior VP – Operations
Midwest Express Airlines, Inc.
6744 S. Howell Avenue
Oak Creek, WI 53154-1402

Gary Ellmer

President & Chief Operating Officer
Business Express, Inc.
Suite 300
55 Washington Street
Dover, NH 03820

