

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

Application of	)	
	)	
AMERICA WEST AIRLINES, INC.	)	
	)	
for exemptions from 14 C.F.R. Part 93 under	)	Dockets OST-00-7176
49 U.S.C. § 41716(b)	)	OST-00-7178
Columbus - New York LaGuardia Airport	)	
Phoenix/Las Vegas - John F. Kennedy	)	
International Airport	)	

**AMENDED APPLICATION OF AMERICA WEST AIRLINES FOR EXEMPTIONS**

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**AMENDED APPLICATION OF AMERICA WEST AIRLINES FOR EXEMPTIONS**

Pursuant to the Department’s April 14, 2000 Notice establishing slot exemption proceedings under 49 U.S.C. §§ 4176, 41717, and 41718 (the “Notice”) and Orders 2000-4-10 and 2000-4-13, America West Airlines, Inc. (“America West”) hereby files its amended application for exemptions from the requirements of subparts K and S of Part 93 of the Federal Aviation Regulations for slot exemptions to ensure its ability to continue current service with Stage 3 jet aircraft between Columbus, Ohio and New York LaGuardia (LGA), and between Phoenix/Las Vegas and New York Kennedy (JFK) with connecting service to points in the West. The total number of exemptions requested, when added to all existing slots and slot exemptions held at LGA and JFK by America West and its codeshare partners at these airports will not exceed 20. The specific times requested at JFK and LGA are shown on the attached Charts 1 and 2. America West proposes to begin using the slots immediately after consultation with the Federal Aviation Administration through January 1, 2007, when the slot restrictions will be phased out.

America West respectfully requests three exemption slots for flights to Las Vegas and Phoenix from JFK and four exemption slots to continue four daily Columbus roundtrip flights with connections to

points in the West from LGA.<sup>1</sup> This request, as demonstrated below, meets the criteria established for the grant of such authority under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“Air 21”) and the Department’s recently announced implementing rules. The Certification required by 14 C.F.R. § 302.4(b) and Orders 2000-4-10 and 2000-4-13 is attached to the end of this application.

## **I. Background**

America West was compelled to file its initial application for the slot exemptions it seeks well before the April 5, 2000 enactment of Air 21 due to its inability to continue slot exchanges and leases from other major incumbents and their commuter affiliates at JFK and LGA. Loss of America West’s JFK and LGA service would cause substantial harm to the travelling public currently relying on these America West flights, through reduced service options and higher fares. America West provides the only competitive service in the substantial LGA – Columbus market, virtually all the non-stop service in the Phoenix – JFK market, and much of the competitive service in the chronically underserved JFK – Las Vegas market. For example, America West’s average JFK – Los Angeles fare is 50 percent lower than the two largest carriers in that market. *See* Exhibit 1. Similarly, America West’s walk-up fares are 41 percent below those of the other major carriers. *See* Exhibit 2.

America West’s request for slot exemptions amply fulfills both the Air 21 criteria and the Department’s public interest requirement. With the enactment of Air 21, the “exceptional circumstances” requirement for the grant of such slot exemptions has been eliminated, and new, interim slot rules have been established for the allocation LGA and JFK slots by § 41716. Air 21’s loosening

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<sup>1</sup> As indicated on Charts 1 and 2, America West also will consult with the Federal Aviation Administration to request the slide of two JFK slots to times usable for flights to Las Vegas and Phoenix from JFK, as well as the slide of two slots used for America West Express flights operated by Mesa Airlines to more useable times at LGA.

of slot constraints is a welcome, if overdue development. The pernicious effect on slot restrictions at high density airports has been well documented in authoritative studies and Department orders. Public attention focused on the slot problem following publication of the October 1996 report of the General Accounting Office (GAO), *Airline Deregulation: Barriers to Entry Continue To Limit Competition in Several Key Domestic Markets*, GAO/RCED-97-4, at 2 (Oct. 1996) (“1996 GAO Report”). The Report detailed how significant “barriers to entry” continued to persist and “access to airports continue[d] to be impeded by . . . federal limits on takeoff and landing slots at major airports . . . .” GAO found the buy-sell rule instituted in 1985 had led to greater concentration, and the impact of the 1986 lottery was “disappointing,” as most of the original slot lottery winners subsequently went out of business or merged with larger, established carriers.

In response to such concerns, the Department has awarded a limited number of exemption slots at O’Hare, LGA and JFK. *See, e.g.*, Orders 97-10-16, 98-4-21, 98-4-22 and 98-10-29. Despite these awards, slot controls remain a critical barrier to competition. Last year the National Research Council’s Transportation Research Board (TRB) addressed the competitive ramifications of slot controls in its Special Report of August 2, 1999.<sup>2</sup> The TRB Report stated that “increased opportunities for entry and competition in the domestic airline industry” are an important public interest goal, but found there were obstacles to achieving this goal, “including longstanding rules that curb access to some of the country’s largest airport,” among them JFK and LGA.<sup>3</sup>

Air 21 eliminates the current slot restrictions at JFK and LGA effective January 1, 2007. *See* 49 U.S.C. § 41715(a)(2). However, this will not protect America West’s immediate need to insure

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<sup>2</sup> *See* Order 99-9-11, Sept. 16, 1999.

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<sup>3</sup> *Id.*

that it can continue its current service at these airports. America West's service at both LGA and JFK has provided important competitive options for travelers to Columbus and the West. The continuation of this service is critical to ensuring that domestic competition envisioned by Congress and promoted by the Department can be maintained and continues to grow at slot controlled airports until these restrictions are eliminated. Accordingly, America West should be granted the slot exemptions it seeks immediately, effective until slot controls are eliminated at JFK and LGA.

## **II. America West Qualifies for JFK and LGA Slot Exemptions Under Air 21**

Air 21 substantially revises 49 U.S.C § 41714 and creates a new § 41716, which provides interim slot rules for the New York airports. There are two significant substantive changes to § 41714. First, Air 21 redefines the terms "new entrant" and "limited incumbent" by increasing the slot limits for such carriers from 12 to 20. It also counts both regular slots and exemption slots, and slots held by carriers operating code share flights, toward the new 20-slot limit. America West's New York slot holdings, even including Mesa Airlines' slots for America West Express flights at LGA, are well below the 20-slot cap at both JFK and LGA. Second, Air 21 deletes the former requirement under § 41714 that a new entrant or limited incumbent show "exceptional circumstances" to qualify for slots. Thus, under Air 21, all the Department must find is that the service for which new entrant or limited incumbent exemption slots are requested is in the public interest. *See* Air 21 at §231(a)(4)(B).

In evaluating the public interest, the Department may consider the benefit of the service to the U.S. economy by jobs created, and "should give equal consideration to the consumer benefits associated with award of such exemptions." Air 21 at §231(b)(2). As discussed below, America West's application meets the Department's traditional public interest requirement, as well as the particular criteria relating to consumer benefits and job creation set out in Air 21. Of particular import

to America West's application is the wording of the interim exemption rule for allocating slots to new entrants and limited incumbents at LGA and JFK, which states:

[T]he Secretary shall grant, by order, exemptions . . . to any new entrant air carrier or limited incumbent air carrier to provide air transportation to or from LaGuardia Airport or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20.

Air 21 at § 231(c) (emphasis added). The use of the compulsory language "shall grant" is particularly significant since it requires the Department to award these slot exemptions to eligible carriers. The Conference Managers' report on Air 21 states "DOT is also directed to grant exemptions to new entrants and limited incumbents for service to New York. *Id.* at 40 (emphasis added). Thus, allocation of exemption slots to new entrants at LGA and JFK has been made mandatory. Accordingly, as recognized in Orders 2000-4-10 and 2000-4-13, Air 21 requires allocation of exemption slots at JFK and LGA such as requested by America West as long as the Department finds the service America West proposes to operate with the slots to be in the public interest.

### **III. America West's Request Clearly Meets the Public Interest Test**

#### **A. Public Interest Factors**

Granting America West's request for JFK and LGA exemption slots will allow the carrier to maintain its highly valued operations from these airports to Phoenix, Las Vegas, Columbus and Western points and continue the benefits to consumer and the economy resulting from these services. Granting America West's application also would substantially promote key public interest factors set forth in the Airline Deregulation Act which have guided the Department's actions. These factors are:

- Promoting the availability of a variety of . . . economic, efficient, and low-priced services";
- "Placing maximum reliance on competitive market forces and on actual and potential

competition”;

- Avoiding unreasonable industry concentration, excessive market domination, [and] monopoly power;
- 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.

49 U.S.C. § 40101(a)(4), (6), (10), (13). The slot exemptions America West now seeks at LGA and JFK would advance these public interest objectives by ensuring the continued availability of the carrier’s highly competitive, full-service operations for passengers in the LGA – Columbus and JFK – Phoenix, Las Vegas and beyond markets. Only America West offers the pro-competitive network benefit of a hub system coupled with highly competitive fares which extend the reach of passengers in these markets to numerous cities throughout the United States. Continued access to LGA and JFK will permit America West to maintain the competitive benefits of these services.

Despite its best efforts, America West has been unable to obtain at any price replacement slots for the leased JFK and LGA slots it will soon lose. Slots have been unavailable to new entrant and limited incumbent carriers through the buy/sell mechanism for some time. As noted by the Department in, *A Report to the Congress: A Study of the High Density Rule*, May, 1995 (“HDR Report”),

The decline in slot transactions [after 1986] suggests that the slot market lacks certain elements that would make it effective. In order to operate efficiently, a market requires a large number of buyers and sellers. The slot market is characterized by an over-abundance of buyers and a lack of sellers.<sup>4</sup>

The Department’s conclusion has been empirically verified by America West, which despite contacting virtually every carrier operating at JFK and LGA on multiple occasions, has been unable to obtain slots at usable times on commercially reasonable terms. In the rare instances in which slots have been available, America West understands they have sold for as much as \$3 million. The FY1998 Securities

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<sup>4</sup> HDR Report at 66. The GAO has confirmed the cost of slots to post-deregulation carriers is prohibitive and that in any event slots are rarely available. See 1996 GAO Report at 5-6.

and Exchange Commission Form 10-K Annual Report for Calair L.L.C., a wholly owned subsidiary of Continental Airlines, notes at page 2,

Under the Sale Agreement entered into between Calair and Continental . . . Continental sold to Calair substantially all of Continental's takeoff and landing rights at O'Hare (29 slots), Reagan National (41 slots) and LaGuardia (32 slots) for \$151.1 million, which represented their estimated fair value.

Thus, only two years ago a large number of slots at high density airports were sold to the subsidiary of an incumbent airline at approximately \$1.5 million per slot, in a sale in which the seller had little incentive to maximize the sale price.

As noted by Senator John McCain, in his remarks supporting compromise provisions in Air 21, numerous respected studies have shown that "slots and perimeter rules are anticompetitive, unfair, unneeded, and harmful to consumers." 146 Cong. Rec. S12,096 (daily ed. Oct. 6, 1999) (statement of Sen. McCain) (referring to reports by the GAO, et al.). The dominance of the incumbent, pre-deregulation carriers at slot constrained airports that has for years concerned the GAO and members of Congress alike remains a significant obstacle to competition today. Indeed, the current plight of America West will have particularly serious repercussions for travelers if America West were forced to discontinue important existing services to its three hubs. Such a result would not only penalize travelers in these specific city pair markets through unmet demand and higher fares, but would have negative effects on travelers throughout America West's system through the loss of network efficiencies. The Department should not allow this situation to occur. Fortunately, Air 21 requires that it be avoided through grant of America West's requested exemption slots at JFK and LGA.

**B. The Benefits of America West's JFK and LaGuardia Operations**

In its Order 98-4-22, the Department recognized that the grant of slots to America West at LGA would bring "substantial benefits to many consumers," but at the time the Department did not have

sufficient slot exemptions available to grant the carrier's request. In Order 99-9-11, the Department also emphasized that the High Density Rule is recognized as a serious barrier to new entry, and has had a dampening effect on competition. Air 21 now permits, indeed requires, the Department to grant America West's requests for exemption slots at both LGA and JFK, which, as the Department has already recognized, would further the public interest and promote competition at these airports.

Currently, New York is Columbus's second largest O&D market and Columbus is LGA's 21st largest O&D market. US Airways is the principal carrier in the LGA-Columbus market and offers twice the capacity of America West. Nevertheless, America West has built up a 27 percent market share by offering highly competitive fares that average 26 percent below those of US Airways. In addition, it is able to offer passengers connecting service through Phoenix and Las Vegas to 37 cities in the West at fares approximately 40 percent below its major competitors. *See Exhibit 2.* Through its codeshare arrangement with Mesa, operating as America West Express with regional jets, America West has been able to provide four daily round-trips to Columbus by using four Mesa slots and the four slots temporarily available from American. Continuing its four roundtrips between LGA and Columbus is critically important for passengers flying in this market. If America West were forced to exit, they would be left with no comparably competitive service. Moreover, these flights are important to America West's overall ability to develop its Columbus hub and provide additional, low-fare service options to the West Coast through this airport. The likelihood that the only major, post-deregulation, full-service, low fare, hub-and-spoke carrier would be forced to discontinue its competitive service from its hubs to key New York airports if its application for exemption slots were not granted certainly meets the public interest requirement for the requested exemptions.

Las Vegas and Phoenix are the fifth and eighth largest domestic O&D markets from JFK respectively, and America West has been the price leader among the major carriers in ensuring low

fares in these markets. America West currently provides 64 percent of the available seat departures in the JFK-Phoenix market and 33 percent in the JFK-Las Vegas market. America West's load factors at JFK average 71 percent on an annual basis and exceed its system-wide load factors by 3 percent. In the peak months of July and August 1999, its load factors at JFK were 80 and 84 percent respectively, which confirms the strong public interest in enabling America West to continue to serve this airport. Importantly, America West also provides the only low fare option from JFK to the West Coast.

America West has been working for years to build a presence at JFK and LGA despite the dominance at these airports by the nation's largest incumbent carriers. American, Delta, United and US Airways have long controlled the vast majority of slots at LGA. The new exemption slots at LGA and JFK being allocated pursuant to Air 21 will help alleviate the anticompetitive effects of the slot restrictions at these airports, but America West must be included in these allocations if the already proven benefits of the carrier's LGA and JFK operations are to be preserved.

#### **IV. Conclusion**

America West has long urged the Department to continue the deregulation process by granting slot exemptions at high density airports to stimulate competition and enhance consumer welfare. Moreover, as the Department noted last year, "It is well recognized that slot constraints at the affected airports are a barrier to the marketplace's ability to meet the air transportation demands of many city-pair markets." Order 99-3-12. The public interest need to grant limited incumbents and new entrants improved access to these airports has now been reconfirmed by Congress in Air 21, which, as the Department has recognized, requires the grant of additional slots for such access.

Since deregulation, despite its minuscule slot pool, America West has demonstrated its commitment to maximizing its presence at high density airports where possible through slot trades and leases. The carrier consistently has reduced prices in air transportation in markets where it competes.

It is both required by Air 21 and clearly in the public interest to meet consumer demand by enabling America West to continue service at JFK and LGA during slot controlled times. The slot exemptions requested at JFK and LGA will allow America West to continue its highly successful, competitive fare, full-service operations between these airports and Columbus, Phoenix, Las Vegas and 37 other points in the West. If America West were forced to end these operations, the traveling public would lose an important competitive force in the New York area and fares to Columbus, Phoenix, Las Vegas and the West would surely increase. The benefits that deregulation has brought to these markets would be lost, and the Department's goal of promoting competition in the air transportation industry would suffer a severe setback. Accordingly, grant of America West's requested exemptions would be warranted on public interest grounds even if it were not required by Air 21.

WHEREFORE, for the reasons stated above and pursuant to Air 21, the Department's April 14, 2000 Notice establishing slot exemption proceedings and Orders 2000-4-10 and 2000-4-13, America West respectfully renews its request that the Department immediately grant it the requested exemptions from Subparts K and S of Part 93 of the Federal Aviation Regulations, allocating America West three exemption slots at JFK and four exemption slots at LGA, and granting such other and further relief as the Department deems appropriate.

Respectfully submitted,

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