

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

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**Application of** :  
 :  
 **FRONTIER AIRLINES, INC.** : **Docket OST-00-7181**  
 :  
 **For exemptions from Subparts K and S of** :  
 **14 C.F.R. Part 93 pursuant to 49 U.S.C. §41718:** :  
 **(“beyond perimeter” slot exemptions)** :  
 **Ronald Reagan Washington National** :  
 **Airport, — Denver, Colorado** :  
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**APPLICATION OF  
FRONTIER AIRLINES, INC.  
FOR EXEMPTIONS**

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April 27, 2000

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Frontier Airlines, Inc. (“Frontier”) hereby applies for exemptions from 49 U.S.C. §§49104(a)(5), 49109, 49111(e) and 41714 and 41718(a), and Subparts K and S of 14 C.F.R. Part 93 (“high density rule”), to allow Frontier to operate two daily nonstop roundtrip flights between Ronald Reagan Washington National Airport (“DCA”) and Denver International Airport, Colorado (“DEN”). Frontier requests four exemption slots for service beyond the DCA perimeter under the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (“FAIR-21”), Section §41718.

On March 15, 2000, Congress enacted FAIR-21, which was signed by President Clinton on April 5, 2000. Section 231(e) of the bill creates a new 49 U.S.C. § 41718, which directs the Department to grant 12 slot exemptions “to air carriers to operate limited frequencies and aircraft on select routes between Ronald Reagan Washington

National Airport and domestic hub airports” located beyond the DCA perimeter (i.e., more than 1,250 statute miles from DCA). Frontier’s application for four slot exemptions to operate two daily nonstop roundtrip flights between DEN (a hub airport) and DCA is fully consistent with each of the exemption criterion set forth in §41718.

### **Frontier Airlines: A Low-Cost Carrier Success Story**

Against all odds, Denver-based Frontier Airlines commenced operation on July 5, 1994, in Denver. Since that date, Frontier has competed and grown at a highly concentrated hub airport. Although Frontier faced enormous obstacles during its first few years of operation, including being blocked from serving some of the nation’s most important airports, it has survived and continues to grow, bringing low fares to markets and travelers throughout the country. At a time in which a number of low-cost carriers are no longer in business, Frontier is offering the type of competition and fare choices that is the backbone of deregulation.

Unlike other airlines, Frontier’s low fares do not have a Saturday night stay requirement. In 1999, Frontier was named “Best Domestic Low-Fare Carrier” by Entrepreneur Magazine in the publication’s sixth annual *Business Travel Awards*. Also during 1999, Frontier was recognized by Ernst and Young and received the Entrepreneur of the Year award for the Rocky Mountain Region in the services section. The airline currently serves 21 cities coast to coast with a fleet of 23 Boeing 737 jets and employs approximately 2,000 aviation professionals.

Denver and a number of major markets served from DEN by Frontier have not had nonstop service to National Airport because of the airport’s perimeter rule. Although

currently at 1,250 miles, the National Airport perimeter rule was originally set at 650 miles. It was later extended to 1,000 miles and then again to 1,250 miles.

Frontier's application for beyond perimeter rule exemption slots offers the Department the opportunity to:

- allow the first low-cost new entrant service at DCA in over 15 years;
- increase service opportunities for the only low-cost new entrant carrier operating a hub outside of the 1,250-mile perimeter rule; and
- benefit the largest true east-west hub outside of the 1,250-mile perimeter rule.

## **NEW ENTRY IS CRITICAL IF COMPETITION IS TO SURVIVE**

### **Background**

Promulgated in 1968,<sup>1</sup> the DOT's High Density Rule designates four airports (i.e., Chicago O'Hare, New York's LaGuardia and Kennedy, and National) as high density airports and regulates the number of permissible Instrument Flight Rule [IFR] operations (take-offs and landings)<sup>2</sup> at each airport.

In 1985, the Department issued the buy-sell slot rules (Amendment 93-49, 50FR 52195) to allocate slots at all high density airports. Under the buy-sell rule, a number of slots were allocated to new entrants through a lottery. Most of those "lottery" slots were subsequently obtained by the large carriers. As a result of "grandfathering" of the slots to large carriers by the 1968 rule and the 1985 buy/sell rule, major carriers control 99 percent of the slots at DCA. Providing slots to new entrants at DCA has not happened again since the 1985 lottery.

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<sup>1</sup> 33 Fed. Reg. 17896 (1968).

<sup>2</sup> 14 CFR Part 39, Subparts K and S.

In essence, slot ownership allowed by these rules has enabled the major carriers to generate significant monopoly power by virtue of their ability to hoard market share and effectively prohibit new entry.

The cost of purchasing slots at slot-constrained LaGuardia and Washington National Airport is prohibitive for new entrants (though major carriers appear loathe to sell them to new entrants at any price):<sup>3</sup>

- In 1996, it was reported that “new airlines have to pay as much as \$2 million to buy a slot from one of the majors to fly into airports such as LaGuardia.”<sup>4</sup>
- In 1992, USAir purchased 62 LaGuardia jet slots and 46 commuter slots, 6 National slots, a terminal under construction and flight kitchen for \$61 million.<sup>5</sup>

No new entrant has been able to purchase a slot.

Airport access restrictions, including slot controlled airports, have been criticized on grounds that they frustrate the open entry objectives and free market systems envisioned by the Airline Deregulation Act of 1978.<sup>6</sup> The buy-sell rule has been widely criticized on grounds that it gave the incumbent airlines a windfall, and drives up the

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<sup>3</sup> “[As a result of the Buy/Sell Rule] the carriers holding the slots have a grip on the traffic operating out of [Washington National, Chicago O’Hare, and New York Kennedy and LaGuardia Airports]. Slots at peak times are said to be worth several million dollars each, but new entrant carriers allege that slots cannot be purchased at any price.” Sally Gethin, Congress Is Under Pressure To Limit the Influence of America’s Powerful Hub and Spoke System, *Jane’s Airport Rev.* (Dec. 1, 1997), at 20.

<sup>4</sup> Ann Imse, Federal Rules Hurt Discount Air Carriers, *Rocky Mountain News*, Nov. 15, 1996), at 1B.

<sup>5</sup> Gary Rawlins & Larry Marshak, *USA Today*, Jan. 9, 1992, at 8B.

<sup>6</sup> See Robert Hardaway, The FAA “Buy-Sell” Slot Rule: Airline Deregulation At the Crossroads, 52 *J. Air L. & Com.* 1 (1986); James Gesualdi, *Gonna Fly Now: All the Noise About the Airport Access Problem*,

price of air transportation for consumers.<sup>7</sup> As a consequence of these restrictions on new entry, average fares at LaGuardia were 35 percent higher than the average for 33 other airports.<sup>8</sup> Yields at DCA are also among the highest in the nation. The GAO found that airports where entry is limited by slot controls have about 7 percent higher air fares.<sup>9</sup> In 1997, the DOT had concluded, “it would be far better for open competition if we did not have slot controlled airports.”<sup>10</sup>

The Federal Aviation Administration Authorization Act of 1994 authorized the Secretary of Transportation to grant exemptions from the slot requirements enabling new entrant air carriers<sup>11</sup> to provide air transportation at high density airports (other than DCA).<sup>12</sup> The Department issued some limited exemptions under that authority.

The Department then expanded the use of slot exemptions under the 1994 law in *Application of Frontier Airlines*.<sup>13</sup> Recognizing the need for competitive service — particularly low-fare competitive service — the Department found that “substantial

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16 Hofstra L. Rev. 213 (1987); Eileen Gleimer, Slot Regulation At High Density Airports: How Did We Get Here and Where Are We Going?, 61 J. Air L. & Com. 877 (1996).

<sup>7</sup> See Paul Dempsey, Robert Hardaway & William Thoms, 1 Aviation Law & Regulation § 7.25 (1993); Robert Hardaway, Airport Regulation, Law and Public Policy 197-205 (1991).

<sup>8</sup> U.S. General Accounting Office, Airline Deregulation: Barriers To Entry Continue To Limit Competition In Several Key Domestic Markets 21 (Oct. 1996).

<sup>9</sup> Paul Dempsey, Robert Hardaway & William Thoms, 1 Aviation Law & Regulation § 5.05 (1993).

<sup>10</sup> DOT Response to Questions from Sen. Richard Shelby, Hearings On the Implications of Airport Deregulation (Oct. 21, 1997).

<sup>11</sup> A “new entrant air carrier” is defined as an air carrier or commuter operator that holds or operates (or held and operated, since December 16, 1985) fewer than 12 slots at the airport in question, not including international, Essential Air Services, or certain night time slots at Reagan or LaGuardia airports. 49 U.S.C. § 41714(h).

<sup>12</sup> 49 U.S.C. § 41714(c)(1).

<sup>13</sup> DOT Order 97-10-17 (1997).

benefits can be achieved through increasing competition at slot-constrained airports in situations where consumers would be able to obtain significantly lower fares in noncompetitive or underserved markets.”<sup>14</sup> The Department found that “exceptional circumstances” exist warranting an exemption from the high density rule where the applicant either (a) offered new nonstop service where none existed, or (b) has demonstrated potential to offer low-fare competition, there is single carrier service and the market could support competition, or the existing carriers do not provide meaningful competition.<sup>15</sup> Under these criteria, Frontier and other new entrant airlines were able to inaugurate the first new competitive service to LaGuardia.<sup>16</sup> Recognizing the high density rule as “a serious barrier to entry, which has had a dampening effect on domestic airline competition,” the Department authorized 75 slot exemptions to a start-up airline at New York Kennedy International Airport.<sup>17</sup>

### **Low-Fare Competition Does Not Exist At Washington National Airport**

Although new entrants have been able to enter LaGuardia (in limited numbers) and JFK, they remain blocked from entering DCA. As a result, fares remain high at DCA. As Exhibit A (Washington Metro Airports Average Yields) reveals, of the three airports in the Washington, D.C., metropolitan area, DCA has consistently had the highest airline yields. From the first quarter of 1997 through the second quarter of 1999,

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<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> DOT awarded slot exemptions at New York LaGuardia Airport to Frontier Airlines, Spirit Airlines, Pro Air, AirTran, and American Trans Air.

<sup>17</sup> Application of New Air Corporation, DOT Order 99-9-11 (1999). New Air changed its name to JetBlue.

yields at DCA were 20.7 cents — among the highest of any airport in the nation — 32 percent higher than yields at Dulles International Airport (“Dulles”) (15.8 cents), and 67 percent higher than yields at Baltimore/Washington International Airport (“BWI”) (12.4 cents) during the same period. This is true despite the fact that Dulles (where United Airlines maintains a dominant hub) has a higher level of concentration. Even with those levels of concentration, Dulles has experienced some entry by low-cost carriers that has resulted in lower fares in certain markets. The fact that yields at DCA are so high is, in part, reflective of the fact that it is the only airport in the Washington, D.C., metropolitan area which is slot and perimeter constrained, and is served by no new entrant low-fare airline.<sup>18</sup>

Exhibit A also reveals the consumer benefits of competition realized when a low-fare entrant appears in a market, such as when Southwest Airlines inaugurated service at BWI in 1993. As low-cost carriers, such as Frontier, have entered and expanded at BWI, the number of consumers enjoying those fares is increasing. The only Washington area airport that has not experienced low fare benefits is DCA.

### **The Frontier Factor**

Frontier inaugurated service between DEN and BWI on November 16, 1997, with one Boeing 737-300 round trip per day. Exhibit B (Denver-Baltimore, DC, Average Air Fares) reveals the significant impact of low-fare competition in the market.

After Frontier began Denver-BWI service:

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<sup>18</sup> Many studies have shown a correlation between slot constraints and higher air fares. See Paul Dempsey, *Airport Planning & Development: A Global Survey* 466 (McGraw Hill 1999).

- Fares in the Denver-BWI market for the following full year period that ended on September 30, 1998, decreased \$48, or 20.8 percent, while passengers traveling between these two cities increased 87,000 or 67.6 percent.
- This positive impact was sustained by comparing data for the full year period that ended on September 30, 1999 to pre-Frontier entry (full year period that ended on September 30, 1997). When comparing that data, the decrease in average fare was still down \$43, or 18.4 percent, while passengers traveling that route had increased by 146,000, or 114.0 percent.

Another example of the Frontier factor can be found in the Denver-LaGuardia market. Frontier was awarded LaGuardia slots by the Department of Transportation in October 1997. On December 3, 1997, Frontier inaugurated DEN-LGA service with two roundtrip flights — precisely the same number of flight frequencies as are being proposed in the instant application. Exhibit C (Denver-LaGuardia Average Air Fares) reveals the significant impact of Frontier's low-fare service in that market. The impact of Frontier's service at LGA included:

- Fares in the Denver-LaGuardia market for the following full year period that ended on September 30, 1998 decreased \$72, or 24.7 percent, while passenger numbers increased by 119,000, or 48.2 percent.

- This positive impact was sustained by comparing data for the full year period that ended on September 30, 1999 to pre-Frontier entry (full year period ended on September 30, 1997). When comparing that data, the decrease in average fare was still down \$64, or 22.2 percent, while passengers traveling that route had increased by 219,000 or 88.1 percent.

Awarding the four requested beyond perimeter slots to Frontier would increase competition and provide more travel choices for multiple markets, including Portland, Oregon. As evidence of Frontier's history of bringing low fares to markets, one year after Frontier began service between Portland and Baltimore (via Denver), passengers traveling between these two cities increased over 24 percent, while fares decreased almost 8 percent. The airline has provided benefits for Portland travelers in other markets too. When Frontier began service between its Denver hub and Portland, passengers increased 23 percent, while fares between those two cities decreased over 15 percent.<sup>19</sup>

Frontier proposes to bring the same consumer benefits to DCA and the Washington area that it has already brought to Baltimore and LaGuardia and all of the markets it serves — by seeking four slot exemptions for the provision of nonstop service from Denver, one of the nation's most important connecting airports.<sup>20</sup> It can be predicted with near certainty that authorizing Frontier, a low-fare carrier, to inaugurate nonstop DEN-DCA service will result in significant consumer benefits Denver in terms

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<sup>19</sup> All of the above statistics are based on data reflecting the three months ended September 30, 1998 (prior to Frontier service in Portland) as compared to the three months ended September 30, 1999 (after Frontier initiated service between Denver and Portland).

of both lower fares and improved service not only between these two cities but to all connecting markets served by Frontier.

### **Building Market Share for Low-Fare Carriers**

The presence of a low-cost/low fare competitor can result in significant competitive discipline and consumer savings. According to the DOT, fares tend to be \$80 higher on average when no low-fare competitor is present on the route.<sup>21</sup>

As of February 2000, Frontier accounts for approximately 6.8 percent of market share at DEN while United accounts for 63.6 percent and United affiliates (Great Lakes and Air Wisconsin) account for 9.6 percent of the DEN market share. That gives United a combined market share of 72.8 percent. Frontier hopes to continue to provide Denver travelers and those from connecting cities with price alternatives. Further, since United Airlines maintains fortress hubs at Denver and Dulles, awarding Frontier slots to provide nonstops in the DEN-DCA market will further balance the market domination by United Airlines in both markets.

#### **I. Frontier's Proposed DEN-DCA Service**

Frontier proposes to operate twice daily nonstop roundtrip service between Denver and National Airport with Boeing 737-300 aircraft. Frontier has successfully operated two daily roundtrips on these aircraft from a number of east coast business markets. Frontier's proposed DEN-DCA-DEN schedule would commence on September 7, 2000 and is as follows:

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<sup>20</sup> Paul Dempsey, *Denver International Airport: Lessons Learned* (McGraw Hill 1997).

<sup>21</sup> Address of DOT Deputy Assistant Secretary Patrick Murphy Before the ABA Forum on Air & Space Law (San Francisco, CA, July 8, 1998).

## Frontier Airlines

### Proposed Denver (DEN) – Washington, DC-National (DCA)

Origin	Destination	Flight	Depart	Arrive
Denver (DEN)	Washington, DC (DCA)	442	11:00 am	4:20 pm
Washington, DC (DCA)	Denver (DEN)	797	6:00 pm	7:50 pm
Denver (DEN)	Portland (PDX)	797	8:50 pm	10:40 pm
Portland (PDX)	Denver (DEN)	446	11:05 am	2:30 pm
Denver (DEN)	Washington, DC (DCA)	446	3:30 pm	8:50 pm
Washington, DC (DCA)	Denver (DEN)	447	9:20 am	11:10 am

\*Other connecting markets, including Seattle, Los Angeles, San Diego, San Francisco, Phoenix, Las Vegas, Salt Lake City, Albuquerque, and El Paso

## **II. Frontier’s Proposed Denver-National Airport Service Is Consistent with FAIR-21 and the Future of Airline Competition.**

FAIR-21 requires the Secretary of Transportation to grant 12 exemptions to air carriers to operate limited frequencies between National Airport and domestic hub airports beyond the perimeter rule if the Secretary finds that the exemptions will:

1. Provide air transportation with domestic network benefits in the area beyond the perimeter;
2. Increase competition by new entrant air carriers or in multiple markets;
3. Not reduce travel options for communities served by small hub airports and medium airports within the perimeter; and
4. Not result in meaningful increased travel delays.

A primary purpose of FAIR-21, particularly the opening of perimeter rule flights, is to increase competition, open the closed high density airports, and to provide new levels of pure competition. No carrier proposing to operate beyond the perimeter will

meet more of these objectives than Frontier Airlines. Frontier’s proposed operation between Denver and National Airport meets all of these objectives.

**A. Frontier’s Denver-National Airport Service Will Produce Beyond Perimeter Network Benefits**

For the 12-month period ending September 30, 1999, Denver had the third largest origin and destination traffic level to markets outside of the perimeter rule (although Denver is the largest hub since neither Los Angeles or San Francisco provides significant domestic hub connecting service) to both DCA, exclusively, as well as to the combined markets of the Baltimore-Washington region. The following chart encompasses the largest markets outside of the current 1,250 mile perimeter rule area (it does not include markets within the 1,250 mile perimeter rule area.)

<b>To/From</b>	<b>DCA Only</b>	<b>BWI, DCA, IAD Combined</b>
Los Angeles	163,930	1,331,610
San Francisco	151,280	970,630
Denver	136,670	802,430
San Diego	110,920	519,860
Seattle	108,040	502,820
Phoenix	78,490	533,580
Salt Lake City	72,420	299,100
Las Vegas	61,650	478,370
Portland, OR	55,400	234,470

Clearly, there is more than sufficient demand to warrant non-stop service between DEN and DCA. Awarding four slots to Frontier would allow the airline to also provide connecting opportunities to other beneficiary markets beyond the perimeter rule, including Seattle, Portland, San Francisco, Los Angeles, San Diego, Phoenix, Las Vegas, Salt Lake City, Albuquerque and El Paso. In terms of origin and destination traffic to DCA, Denver is 1 ½ to 2 times the size of the other “hubs” on the above list—Phoenix,

Salt Lake City and Las Vegas. Therefore, nonstop service between DCA and DEN will serve a significantly larger market than the other hub cities listed.

When looking at the markets that passengers traveling to and from Washington National want to go, and as taken from DataBase Products O&D market survey for the 12 months ended September 30, 1999, there is additional compelling evidence to award four DCA slots to Frontier Airlines. For the time period stated above, the number of passengers traveling to and from DCA to Denver and markets west of Denver was 1,459,000. Of that number, 1,046,920, or 71.8 percent, traveled to markets that Frontier currently serves, including Denver, Seattle, Portland, Los Angeles, San Francisco, San Diego, Las Vegas, Salt Lake City, Albuquerque, El Paso and Phoenix. Adding all three airports, Baltimore, Dulles and DCA to the equation, passengers traveling to Denver or markets west of Denver jumps to 7,606,350. Of that number, Frontier currently is in markets serving 5,930,350, or 78.0 percent, that passengers prefer. When coupled with Frontier's demonstrated positive impact on both market stimulation and decreasing fares, this information provides evidence that strong consumer demand exists today. Taking Frontier's future growth plans into account, where the airline plans to add other top destinations to the West, means that percentage will increase.

Colorado is a growing and dynamic state, with nearly 74 percent of its residents in the labor force. Of those employed, nearly 16 percent are government employees, providing more demand for nonstop DCA service to the nation's capital. The following chart (based upon data from the Colorado Department of Local Affairs) shows projected growth of the entire state.

	<b>1990</b>	<b>2000 (Proj.)</b>	<b>Absolute Difference</b>	<b>Percentage</b>
State Population	3,294,473	4,175,380	880,907	26.7 %
City & Surrounding Areas Population	2,224,000	2,413,000	189,000	8.5%

Current data shows that these numbers will continue to grow.

Unlike applications of other carriers that are seeking to expand their dominance over a particular hub, to increase overall domestic or international market share, or prevent a new entrant from competing, Frontier’s service will expand travel options for leisure and business travelers from communities throughout Denver, Colorado and the West.

In further support of its exemption request, Frontier states the following:

**B. Frontier’s Denver-National Airport Service Will Significantly Increase Competition by New Entrants and In Multiple Markets**

The primary objective of deregulation was to promote competition and allow the growth of new entrants. Perhaps the best case for supporting growth of new entrants, including Frontier’s DCA proposal, was the following statement from the 1977 Civil Aeronautics Board:

It is imperative that the public continue to be protected from unreasonable price increases by the present certificate holders. The entire history of this industry offers convincing proof that, in the absence of competition or a realistic threat of competition from new low-cost carriers, competition among the existing certificated carriers cannot be relied upon to hold prices to a reasonable level.<sup>22</sup>

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<sup>22</sup> Hearings before the House Subcommittee on Aviation of the Committee on Public Works and Transportation, H.R. 8813, Introduced August 13, 1977.

When Congress deregulated the airline industry, it focused on the importance of competition and new entry when in the Airline Deregulation Act it stated the following as elements the Secretary should consider as being in the public interest:

(4) the availability of a variety of adequate, economic, efficient, and low-priced services. . . .

(10) Avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation.

(12) Encouraging, developing, and maintaining an air transportation system relying on actual and potential competition —

(A) to provide efficiency, innovation, and low prices; and

(B) to decide on the variety and quality of, and determine prices for, air transportation services.

(13) 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)]

Administration officials and Members of Congress have frequently addressed the importance of promoting airline competition.

President Clinton and I are committed to finding a way to increase competition, which will add service and lower fares in rural America. Our goal is to level the playing field and encourage new entrant carriers to enter markets like Des Moines. [Statement by Vice President Gore, released October 30, 1998]

I am afraid, Mr. President, that concentration is increasing rather than decreasing. That trend can only be reversed when we get new entrants

into the airline business. I am very disappointed at some of the information – much of it anecdotal – that I hear of the major airlines basically preventing that competition from beginning, or even existing, for a long period of time. [Senator John McCain, September 23, 1998; Senate floor debate]

But we do not have more competition after deregulation; we actually have less competition.

The 15 independent airlines operating at the beginning of 1986 had been merged into six megacarriers by the end of 1997.

...megacarriers have created competition free zones in effect, securing dominant market shares at regional hubs. [Senator Byron Dorgan, September 23, 1998, Senate floor debate]

Despite the intent of all of those involved in deregulating the industry that competition must be encouraged and that all markets should be opened, new entrants have been blocked from entering DCA.

As demonstrated by the following chart, high density airports — particularly DCA — are dominated by a few large carriers that also dominate the entire U.S. market.

## LARGE CARRIER CONTROL OF NATIONAL AIRPORT

	DCA SLOTS	% OF DCA SLOTS	% OF SLOT HOLDINGS AT ALL HIGH DENSITY AIRPORTS	% OF TOTAL US MARKET SHARE
American	135	18	32	18
US Airways	307	41	17	7
United	52	7	28	20
Delta	96	13	10	17
Northwest*	110	15	7	23
TWA	32	4	4	4
Other	14	2	1	9.5
New Entrants	0	0	1	1.5
Totals	746			

\* includes Continental

New entrants have less than one percent of all high density slots with no slots at DCA.

Foreign carriers have more total slots than new entrants at all high density airports.

### **More Compelling Reasons to Promote Competition**

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 in 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 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 GAO's 1996 study, *Airline Deregulation: Barriers to Entry Continue in Several Key Domestic Markets* (the GAO report), stated that "control of slots by a few airlines greatly deters entry at key airports in Chicago, New York and Washington." In the Department's response to the GAO Report, the Department made clear its support for increased competition and its willingness to invoke available tools to promote competition when it stated in the 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." 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 longstanding 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 "high average fares in many of the city-pair markets involving the hub

airports of major airlines have been a recurrent subject of public concern and policy debate during the past two decades...” and that “slot-controlled airports consistently are among the highest-priced markets in the country.”

The Department itself has recognized the importance of low-cost carriers entering high density airports.

In awarding the LGA slots to Frontier, the Department stated, “it has a demonstrated history of offering low fares.” (Order No. OST-97-2230-16). That demonstrated history continues today and has expanded as Frontier enters new markets. In awarding slots to JetBlue at JFK, the Department stated:

As we noted earlier, many authorities, including members of Congress, have concluded that the High Density Rule is a serious barrier to entry, which has had a dampening effect on domestic airline competition.

It is indisputable that Southwest has had a singularly positive effect on fare competition in literally every market it has chosen to serve. In many other markets, other low-fare new entrants have also had a salutary impact on domestic fares. Wherever those carriers have gone, fare competition has followed and traffic has increased, in many cases dramatically. The Department has previously granted New York-area (primarily LaGuardia) slot exemptions on the basis of low-fare proposals to Frontier Airlines...and traffic has been highly responsive.

The principle basis for our granting JetBlue’s application is our commitment, as stated in our guidelines, to place a premium on the introduction of new services by applicants that have the demonstrated potential to offer low-fare competition where the market could support new entry or where existing services do not produce meaningful competition. [DOT Order 99-9-11]

When DOT General Counsel Nancy McFadden testified before the House Aviation Subcommittee (October 21, 1999), she stated that:

- 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 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.
- 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.

The Department has on numerous occasions extolled the importance of low cost carriers providing discipline on pricing.

In the Low Cost Airline Service Revolution (April 1996), the Department stated:

The rapid expansion of low cost, low fare service in the United States by a growing cadre of carriers is a watershed development in domestic aviation that is having a profound effect on efficiency, competition, consumers and industry structure.

At network hub cities where low cost carriers do not compete, fare premiums are quite high and are increasing.

Therefore, the purposes of this study are... to reaffirm the Department's resolve that new entrants be given a fair chance to compete.

The importance to new entrants of gaining access to high density airports was also addressed by Tom Miller, Attorney General of Iowa, on behalf of 35 state attorneys general in a 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.

FAIR-21 offers the first opportunity in 15 years to allow new entrants to initiate competitive service at DCA. As a result of the limited number of exemption slots that may be awarded under the bill, it is essential that four beyond perimeter exemption slots be awarded to Frontier and not a carrier that already holds a significant number of slots. If Frontier is awarded these slots, it will have a positive effect on fare competition in multiple markets and will increase traffic.

This importance of allowing new entry at DCA is similar to the positions taken by large carriers seeking to enter foreign markets. In filings made at the Department concerning the need to open up Heathrow Airport for competition, U.S. carriers have made the following statements:

All of the available evidence in this docket confirms beyond any dispute that so long as new entry at Heathrow and Gatwick continues to be subject to an absolute government barrier to entry, granting American and BA authority to codeshare on U.S.- Heathrow/Gatwick services would reduce, rather than promote, competition, and would not be consistent with the public interest.

United Air Lines  
OST-99-6507-32  
Joint Application of American Airlines and British Airways  
(codesharing)  
February 22, 2000

\* \* \*

At present, under Bermuda 2, Heathrow and Gatwick are closed to new entrants, and incumbents serving those airports are constrained from adding new service by the restrictions in the Agreement, including those in Annex 2. While those restrictions remain in place, any decision by the Department authorizing reciprocal code sharing by American and BA on routes involving Heathrow or Gatwick would serve only to strengthen those carriers' competitive position on London-U.S. routes where they are already entrenched, dominant incumbents.

United Air Lines  
OST-99-6507-7  
Joint Application of American Airlines and British Airways  
(codesharing)  
December 1, 1999

\* \* \*

Delta is barred from serving London Heathrow- the primary airport for business travelers – the largest and most important U.S.-Europe business market. Furthermore, Delta is barred from serving London from New York, the largest U.S.-London routes, and Delta's major international gateway. Delta's lack of London access, particularly to London Heathrow, impairs Delta's competitiveness not only of U.S.-London travelers, but also in the overall U.S.-Europe marketplace.

Delta Airlines  
OST-99-6507-6  
Joint Application of American Airlines and British Airways  
(codesharing)  
December 1, 1999

\* \* \*

Because of the unique role Heathrow Airport serves in the competition between carriers for US-UK traffic, unless new entry occurs on a significant scale on US-Heathrow routes, the American/British Airways alliance will be substantially anti-competitive.

United Air Lines  
OST-97-2058-253  
Joint Application of American and British Airways for approval of  
antitrust immunity for alliance agreement  
May 22, 1998

\* \* \*

DOJ recommends that if the Department finds the public interest requires approval (a conclusion about which DOJ is skeptical) it would be appropriate to condition approval on a requirement that sufficient Heathrow slots and facilities be made available for competitors to operate approximately 24 new daily roundtrip US-Heathrow flights. As Delta exhibits demonstrate, twenty-four daily flights suggested by DOJ would not come close to approaching the level of airline services that would be expected in a freely open market.

The inevitable conclusion from DOJ's analysis of Heathrow's slot constraints is that nothing short of divestiture will provide sufficient slots to satisfy the service requirements of US carriers necessary to offset the anticompetitive effects of the alliance.

Delta Airlines

OST-97-2058-304

Joint Application of American Airlines and British Airways for approval of antitrust immunity for alliance agreement

June 23, 1998

\* \* \*

An award of four slots for Frontier's DEN-DCA service would be a significant step in providing for the future of airline competition and for the first time at DCA, passengers from throughout the western part of the United States would benefit from true fare options.

**C. Frontier's Service Will Not Reduce Travel Options For Communities Within the Perimeter Of National Airport**

The cities located in the western United States with the largest traffic demands for service to Washington, D.C. would benefit from new, competitive travel options available by utilizing Frontier's proposed connecting service at Denver to DCA. Frontier's proposed service will not reduce travel options for communities served by small hub or medium hub airports that are located within the DCA perimeter. When the DCA perimeter rules were extended to 1,000 and 1,250 miles, small and medium-hub airports were not impacted. They will not be impacted by this grant of authority.

By offering this new nonstop service between DCA and Denver, first time low-cost options will become available for passengers traveling throughout Frontier's system. While Frontier has no DCA flights to release, Frontier believes that other carriers might reduce service within the perimeter if granted exemptions to operate beyond the perimeter rule.

**D. Frontier's Proposed Nonstop Service Between DCA and Denver Will Enhance Service Options and Reduce Travel Delays and "Will Not Result in Meaningfully Increased Travel Delays."**

Frontier's new proposed nonstop service between DCA and Denver will not increase travel delays. Frontier requests only four slot exemptions to provide two daily round-trips.

Considering the significant investments made at Denver Airport and in the airspace throughout the region, no delays are expected. Denver is among the least congested western U.S. hub airports. Consequently, additional service at Denver will not impact congestion, and not result in "meaningfully increased travel delays" as compared with other western hub airports. Moreover, considering the size and convenience of Frontier's Denver operation, passengers will be able to easily connect to other markets.

The allocation of four slots to Frontier, spread throughout the day, will have no impact on congestion or delays at DCA or elsewhere in the system. In enacting the FAIR-21, Congress specifically required that there be no more than two additional slots allocated in any one hour period. (49 U.S.C. § 41718(c)(2)). Considering that the high density rule originally permitted 40 air carrier operations per hour and various shuttle "extra sections" were operated each hour, the total number of operations allowed in each

hour under FAIR-21 will be less than historical numbers. Therefore, there will be no impact on the system as a result of Frontier's operation.

Both Congress and the General Accounting Office ("GAO") determined that a limited number of additional slots at DCA would not create any significant aircraft delays. In September 1999, the GAO issued a study<sup>23</sup> confirming that DCA is fully capable of handling more flights without resulting in any significant delays. Based on these reports, it is clear that Frontier's proposal to operate a total of four slots, spread throughout the day, will not cause any measurable travel delays.

Moreover, Frontier's service will increase convenience of travel for passengers. Frontier's service will accomplish these goals by providing new opportunities for passengers to have more convenient and shorter elapsed travel times to DCA, and further, by reducing the need for many communities to "double or triple" connect in order to reach DCA.

In supporting Frontier's request for four slots, Bruce Baumgartner, Manager of Aviation of the City and County of Denver, stated:

We urge you to approve the petition submitted by Denver-based Frontier Airlines for four slots to allow nonstop service to Denver International Airport, which is located outside of the perimeter rule. An award of the slots requested to Frontier would benefit the Denver community, Colorado, communities throughout the west and the future of airline competition.

Direct service to National Airport would add a significant component to Denver International Airport's scope by allowing non-stop service to our nation's capital, as well as providing convenient, one-stop service to cities served by Frontier beyond Denver.

We are supportive of all air service we have in Denver, and will continue to promote competition and growth of all carriers in our market. As one

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<sup>23</sup> GAO Report to the Secretary of Transportation on Reagan National Airport, Capacity to Handle Additional Flights and Impact on Other Area Airports, GAO/RCED-99-234, September 1999.

of the few communities in the country with more than one hub carrier, Frontier's presence in our community and service to our citizens provides significant value to the city of Denver and to the state of Colorado. We hope you will demonstrate your continued support for our community and for the future of deregulation by awarding two non-stop daily flights (four slots) from National Airport to Frontier Airlines. We believe this service will further build on both the commerce and community links between our two growing communities.<sup>24</sup>

While Frontier fully appreciates the support it has received for this petition from multiple parties, the comments of those who utilize Frontier's services are the most compelling basis to award the four slots to Frontier. These are the voices of the American traveler<sup>25</sup>:

*Let me begin by saying that this country was built on the foundation called competition. It is how we got where we are today and what will determine where we go in the future.*

*As a Colorado resident, I would like to see your company expand into new markets. It would be good for the people of Colorado to have a choice. As a citizen of the United States I don't think that it is right for the government (and the "Giant Airliners") to control any one market.*  
[Radeen Thomas]

\* \* \*

*As a frequent flyer of Frontier Airlines, I would like to encourage the DOT and our congressional members to support the Frontier Airlines bid to provide service to the Ronald Reagan Airport from DIA. This would be a positive step for airline travellers and an encouraging step towards supporting new and upstart airlines by our DOT.*

*Frontier is providing a service that no other airline currently provides to its customers. This service contains two key elements: 1) Quality customer care; 2) An affordable ticket price.* [Dennis L. Hixon]

\* \* \*

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<sup>24</sup> Mr. Baumgartner's letter is in Exhibit D.

<sup>25</sup> Frontier received more than 848 comments in support of its application, which it is submitting in a separate exhibit labeled "Exhibit D."

*I hope you will consider allowing Frontier airlines to begin flying non-stop from DIA to Washington D.C. Air fares are maintained high [sic] from our airport due I suspect, to monopolistic practices by United. At least let the little guys step up to the plate. [Matt Poling]*

\* \* \*

*Regarding the recently signed Wendell H. Ford Aviation Investment and Reform Act, specifically Section 41718 (a), I would like Frontier Airlines to receive authorization from the DOT for two daily nonstop flights between Denver International Airport and Ronald Reagan Washington National Airport. I support airline competition and more travel choices! [Edward M. Caswall]*

\* \* \*

*I support airline competition and more travel choices. I just started my own business last week and if it was not for Frontier and its extremely affordable prices I wouldn't be able to function. For example, last week my associate and I flew to Salt Lake City for the same price on Frontier as one ticket would have cost on the other airlines. I am on an airplane almost every week and consistently Frontier provides better fares. Who knows what the fares would be without them. [Stuart F. Zall]*

\* \* \*

*As an owner of a small company, I realize how difficult it is to compete with the giants. I have watched the big guys crush the smaller guys time after time. The major airlines are among the worst offenders.*

*I grew up in Saint Paul, Minnesota which hubs Northwest Airlines. I now own a small company headquartered in Washington D.C. with an office in Denver. Both are hubs of United Airlines. While Western Pacific served the Front Range, I could regularly fly between my offices for \$400 or less. Without competition, I now pay between \$1500 and \$2200 per trip on United Airlines. Even a 21 day advance purchase and staying over a Saturday costs over \$600.*

*Garnering a slot at DCA would provide Frontier a deserved head-start on competition in the Washington market. I would provide me with a convenient, cost-effective method to visit my employees and clients throughout the West. [William J Schwebel]*

\* \* \*

*I wish to express my support for Frontier Airlines. It is very necessary for the Denver area to have more competition for flying from Denver to Washington D.C. Frontier would be a marvelous choice for us if they could fly into Washington National.*

*We were promised competition when the airlines were deregulated; now let's see some of that competition!* [Rose Protector]

### **III. Grant of the Requested Slots to Frontier Is in the Public Interest.**

Frontier's service will offer significant price improvements over the existing travel options between many cities in the western region of the United States and National Airport for business and leisure travelers from throughout the country. It is important for the Department to allocate the limited number of available slots in such a way as to ensure that deregulation and competition survive.

The perimeter rule is one of the few pre-deregulation remnants. It is an artificial constraint on the competitive marketplace. Frontier shares the position espoused throughout the debate on FAIR-21 by numerous Members of Congress that the best course would be to eliminate the rule in its entirety. However, FAIR-21 provides for only a limited number of DCA slots. The Department should ensure optimal use of these valuable exemption opportunities by awarding beyond perimeter exemptions to low-cost carriers proposing to service major network hubs that will bring their fare service to thousands of passengers. If these beyond-perimeter slots are awarded to large carriers, it will add to the dominance those carriers already hold throughout the country and will not provide for the future of a competitive system or for any price competition.

As Frontier continues to add markets, it will grow. Frontier projects that over the next few years it will add seven aircraft to its fleet and add 500 employees. This steady

economic and market growth is dependent on being able to enter critical markets such as National Airport.

### **Conclusion**

Throughout the past decade, the Department, GAO and others have reviewed the state of airline competition. Studies conducted by these parties have all noted the importance of competition, particularly when provided by low-cost new entrants. At the same time, those studies have noted the significant barriers to entry that limit the growth of competition. No airport in the United States or in the world has been closed longer to new entrants than National Airport.

Although the airline industry was deregulated over twenty years ago, there isn't a single new entrant carrier that today has access to all markets within the United States. As discussed in detail above, the high density airports have been closed to new entrants during most of the past two decades. In fact, more progress has been made with opening foreign markets than in opening the high density airports. The Department has taken steps to open LaGuardia, O'Hare, and JFK to new entry. It is now time to bring deregulation to the nation's capital. The Department has the opportunity to allow a new entrant — Frontier Airlines — to become the first low cost carrier to receive the benefits of a United States "Open Skies" policy. The community and travelers utilizing Frontier's services have spoken out in support of this petition. Frontier's impact on fares and competition has been demonstrated in multiple markets, including Baltimore and New York.

Just as the Department has advanced competition throughout the world through "Open Skies" agreements, it can take a critical step in providing for true competition in

the United States by awarding Frontier Airlines four slots at National Airport. The American public will be the beneficiaries of such a decision. An award to Frontier would place a premium on the introduction of new services by an applicant that has demonstrated its ability to offer low-fare competition where existing services do not produce meaningful competition.

It is time to ensure the future of airline competition and promote low-cost new entry.

WHEREFORE, for all of the foregoing reasons, Frontier Airlines, Inc, respectfully requests that the Department grant it four (4) DCA slot exemptions, to allow it to operate two daily nonstop roundtrip flights between Ronald Reagan Washington National Airport and Denver, as more fully described above, and grant such other, further and additional relief as the public interest may require.

Respectfully submitted

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Counsel for Frontier Airlines, Inc.

April 27, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Application of Frontier Airlines, Inc. for Exemptions was served on April 27, 2000, upon each of the persons on the attached list by first class mail, postage prepaid.

-----  
Nancy R. Thompson



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

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**Application of** :  
 :  
 **FRONTIER AIRLINES, INC.** : **Docket OST-00-7181**  
 :  
 **For exemptions from Subparts K and S of** :  
 **14 C.F.R. Part 93 pursuant to 49 U.S.C. §41718:** :  
 **(“beyond perimeter” slot exemptions)** :  
 **Ronald Reagan Washington National** :  
 **Airport, — Denver, Colorado** :  
----- :

**EXHIBIT D  
TO  
APPLICATION OF  
FRONTIER AIRLINES, INC.  
FOR EXEMPTIONS**

Communication with respect to this document should be sent to:

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April 27, 2000