

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

In the Matter of)
The Wendell H. Ford Aviation)
Investment and Reform Act for)
the 21st Century)
LEGEND AIRLINES, INC.)
)
For exemptions from 14 C.F.R., Part 93,)
Under 49 U.S.C. § 41717(c))
_____)

**Docket Nos. OST-00-7180
OST-00-7134**

AMENDED APPLICATION
OF LEGEND AIRLINES, INC. FOR EXEMPTIONS

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Date: April 28, 2000

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Pursuant to Order 2000-4-15, Legend submits the attached Certification and this amended application for slot exemptions at Chicago O’Hare under the provisions of 49 U.S.C.§ 41717(c) as enacted by the Wendell Ford Aviation Investment and Reform Act for the 21st Century (“FAIR-21”).

In that Order, the Department stated that it may consider the following “Public Interest” criteria in awarding slot exemptions to new entrants: the service benefits that would be attained; the likely effect on competition; whether the proposed service would likely be operationally and financially viable; and especially, the practical ability of the carrier to initiate service on a timely basis. In addition, the Department directs applicants to state how grant of their proposal provides a maximum of benefit to the United States economy, including the number of US jobs created by the carrier, its suppliers, and

related activities, and the consumer benefits associated with the award of such exemptions.

Due to American's domination of the Dallas/Fort Worth Metroplex, consumers have had a lack of alternatives and viable competition. As concentration has grown, fares from DFW have increased. Small businesses, which are the economic growth engine of the local and national economies, are the most severely impacted of all as they lack the purchasing volume to negotiate discounted fares with major carriers. Legend will provide much needed fare and service level competition, particularly for those business travelers, by offering business class service at coach fares.¹

Legend's upgraded service is in the best interest of all travelers. Last year, the Department and Congress were inundated with a record number of consumer complaints concerning the poor treatment consumers received when flying on major carriers. Congress held hearings on this matter, prompting the large carriers to "voluntarily" put customer service plans in place. In the recently enacted FAIR-21, Congress has directed the Department to monitor the large carriers' compliance with these customer service plans. Legend's business class service for all passengers raises the bar on customer treatment and benefits travelers in Dallas, Los Angeles and the Washington DC area. Legend is ready to bring customer-friendly service and competitive benefits to Chicago. Already, American is duplicating Legend's service in an effort to "copy" it. Although many suggest American's motive in duplicating Legend's service is to drive yet another

¹ Among other things, Legend provides pre-boarding amenities, gourmet meals, first class seating, and unlimited carry-on bags for all of its customers.

new entrant out of its markets, apparently even American understands that it needs to substantially upgrade its product.²

Since Legend's service is targeted at business travelers, it is crucial that Legend be able to operate to the high density airports. By obtaining O'Hare slot exemptions, Legend would be able to compete with American Airlines, which currently operates from DFW to O'Hare and is planning to initiate Love Field-O'Hare service on May 1, 2000.

Although in its April 24 filing (Docket OST-00-7134), American appears uncomfortable with having its routes and activity at Love Field scrutinized, the facts speak for themselves. American is only operating its new all business class service from Love Field on routes that Legend is operating or intends to operate. Careful examination of American's two "dropped" flights between LAX and DFW show that the flights were dropped at times when American had multiple flights in short time periods. Nevertheless, the fact remains that American is increasing its frequencies from Dallas to LAX by two roundtrips. American's flights surround the four flights offered by Legend. That American has decided to decrease its seating capacity is an entirely different issue not relevant to Love Field. Unlike its decision to "upgrade" its Love Field service, the decision by American to "add" leg room is a "system-wide" action. Is American adding frequencies in all of its routes to counterbalance the "decrease" in seats? Certainly not.

American has a 75 percent market share in Dallas and has over 1000 O'Hare slots. When American's Love Field-O'Hare service begins, it will have 28 roundtrips

² Legend notes that American is not interested in providing this new level of service at DFW or any other of its airports.

from Dallas to O'Hare.³ The only other carrier that provides Dallas-O'Hare service is United.⁴

As to why American is increasing its Dallas-O'Hare service, American claims that Legend's plans for Love Field-O'Hare service were not a factor in its decision making. Perhaps the following best addresses the motive behind American's activity:

where service in a market is constrained by slot availability, a hub carrier with access to a large pool of slots has even greater ability to respond to entry in this way because the entrant will be unable to add capacity on its own. American's president has referred to such strategic responses as "predatory scheduling." The net result of "predatory scheduling" is to discourage new entry in the first place, or to render it unprofitable where it occurs. [Department of Justice Comments on the American Airlines/British Airways Alliance OST-97-2058, p. 25-26]

Legend amends its original slot exemption request to seek 10 slots so that it can provide five DAL-ORD roundtrips at the following times:

Effective March 1, 2001:

<u>Arrive ORD</u>	<u>Depart ORD</u>
7:30	8:20
15:20	16:10
16:50	17:40

Effective September 1, 2001:

<u>Arrive ORD</u>	<u>Depart ORD</u>
18:10	18:40
19:10	20:00

This frequency is necessary to serving time-sensitive business travelers and to compete with American. Legend's plans for O'Hare service is a part of its business plan

³ American also has five roundtrips from DFW to Chicago Midway.

⁴As the Department noted: "Together, American and United hold over 82% of all O'Hare slots for a total of approximately 2,000 operations a day." Order 99-7-17.

and is, hence, operationally and financially viable. As outlined above, Legend will be able to initiate service on a timely basis.

Approval of Legend's application for O'Hare slot exemptions will allow a new entrant to bring competitive options to an important business market as Congress intended when enacting FAIR-21. As this service flourishes and Legend continues to grow, it will create more employment opportunities at Legend and its suppliers and bring competitive benefits to business travelers across the nation.

Respectfully submitted,

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Counsel for Legend Airlines, Inc.

April 28, 2000

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2000, a copy of the Amended Application of Legend Airlines, Inc. for Exemptions, and Certification of Legend Airlines, Inc. was served upon the parties on the attached service list.

Nancy R. Thompson