

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

_____)
In the matter of)
)
THE WENDELL H. FORD AVIATION)
INVESTMENT AND REFORM ACT FOR THE) Docket No. OST-2000-7180
21ST CENTURY)
)
for exemptions from 14 CFR Part 93,)
under 49 U.S.C. § 41717(c))
_____)

**CONSOLIDATED ANSWER AND MOTION
FOR LEAVE TO FILE LATE OF SPIRIT AIRLINES, INC.**

Communications concerning this document should be addressed to:

Mark S. Kahan
Vice Chairman and
Chief Operating Officer
SPIRIT AIRLINES, INC.
2800 Executive Way
Miramar, Florida 33025
(954) 447-7965

Anita Mosner
Steven Quan
GKMG CONSULTING SERVICES, INC.
1530 Wilson Boulevard
Arlington, VA 22209
(703) 312-1446

Representatives of
SPIRIT AIRLINES, INC.

Date: May 17, 2000

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

In the matter of)	
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THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY)	Docket No. OST-2000-7180
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for exemptions from 14 CFR Part 93, under 49 U.S.C. § 41717(c))	
)	

**CONSOLIDATED ANSWER AND MOTION
FOR LEAVE TO FILE LATE OF SPIRIT AIRLINES, INC.**

Spirit Airlines, Inc. ("Spirit") respectfully requests leave to file late this Consolidated Answer to the applications filed in this docket. Pursuant to Order 2000-4-15, several U.S. carriers, including Spirit, have applied for the 30 new-entrant slots at Chicago's O'Hare International Airport ("O'Hare" or "ORD") that have become available as a result of the passage of Air 21. While Spirit applauds the passage of Air 21 to the extent it creates opportunities for new-entrant airlines at O'Hare and elsewhere, Spirit would have preferred that the new opportunities had been greater in scope, thereby obviating the need for a competitive carrier selection process. However, given the apparent need for such a process, Spirit files this answer in response to competing ORD slot applications.

Spirit proposes to offer ten daily roundtrip flights at O'Hare, serving six markets -- Myrtle Beach, Tampa, Orlando, Fort Lauderdale, Ft. Myers, and West Palm Beach. Spirit's proposal is modeled closely on Spirit's service to these specific markets from Detroit's Metro Airport, which have greatly increased the number of passengers and substantially reduced the average fare in those markets. Spirit is proposing to enter the

O'Hare market in a relatively robust fashion out of its belief that the O'Hare market needs and can easily sustain low-fare service to our nation's leading leisure destinations, and in part out of its belief that a new entrant must serve a handful of markets (as opposed to just one or two routes) in order to operate efficiently. Spirit would urge the Department to award these slots in a manner that would provide one or more O'Hare new entrants with the critical mass they require to mount an effective competitive presence in the market, rather than providing a large number of carriers with a smaller number of slots, which would allow new entry only on a piecemeal basis.^{1/}

America West

America West has applied for 11 slots, which would be used to provide nonstop service to Columbus and to Las Vegas. The Department should reject these proposals in their entirety.

As a preliminary matter, the Department should take cognizance of the fact that America West already enjoys access to O'Hare, and in fact has chosen to trade three O'Hare slots it previously held to American in exchange for slots at other airports. See Application of America West, page 5, note 3. This cuts against America West's stated need for these exemptions. Moreover, under the terms of "Air 21," America West does not qualify as a "limited incumbent." Under 49 U.S.C. § 41714(k):

^{1/} To this end, Spirit must express its disappointment with the Department's interpretation of 49 U.S.C. § 41717(c) to the extent the Department believes that it may award only a total of 30 new-entrant frequencies, rather than 30 slot exemptions to "any new entrant air carrier or limited incumbent air carrier to provide air transportation to or from Chicago O'Hare International Airport," as the statute indicates. Had new entrants received such slots, they would have been able to quickly make their competitive presence felt, as the authors of the statute had intended.

. . . 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 two carriers at the airport exceed 20 slots and slot exemptions.

America West is, of course, a code-share partner of Continental Airlines, a carrier that holds far more than 20 slots at O'Hare. Therefore, America West should not be treated as a "new entrant" or "limited incumbent" for the purpose of gaining access to O'Hare. The claims of America West that this section is inapplicable unless America West and Continental code-share at Chicago are not persuasive, as the language of the statute says nothing of the sort.

Legend

Legend has applied for 10 slots so that it might operate 5 daily nonstops between Chicago and Dallas. While Legend's rationale for its request is that it requires five daily nonstop services to mount an effective competitive challenge to American, the limited number of frequencies available in this proceeding dictates against the award of so many frequencies for service to a single market. There comes a point where mounting high levels of service in a market merely to maintain competitive "parity" raises the risk that the services will not be viable, a factor the Department must weigh in determining how best to award such frequencies. While the Dallas-Chicago market may be large, the fact remains that, by any measure, Legend's proposal to add five daily nonstop services in a market with already-high levels of service is simply untenable, and must be rejected.

In addition, while Spirit supports Legend's efforts to challenge American, Spirit strongly believes that public policy favors Spirit's proposal because it will produce significantly more consumer benefits. Spirit plans to use 164-seat MD-80 series aircraft, while Legend's proposal would utilize aircraft limited to 56-seats. If there were no slot limitations, both proposed services would offer new price competitive options. However, given that the Department only may award a limited number of exemptions, those proposals which maximize the public benefits with the scarce number of available slots should be granted preference. Clearly, in the case at hand, Spirit's proposed services will benefit significantly more passengers than Legend's proposed services. Accordingly, if the Department wishes to maximize the consumer benefits as its policy dictates, then it must favor Spirit's proposal.

Another factor militating against an award to Legend of the slots it seeks is the fact that Legend will not be in a position to introduce any new service until March 2001, nearly ten months from now. Legend proposes to introduce three daily services as of that date, with the remainder being operated as of September 1, 2001. Given the value of these slots, and the fact that demand for such slots far outstrips the available supply, it would contravene settled DOT policy to allow these slots to remain unused for the long period of time that Legend would. Legend's plan to serve a single market several months from now should not be permitted to block Spirit's plan to offer far more immediate benefits to six highly deserving communities.

National

National Airlines proposes to offer three daily nonstop services between Chicago and Las Vegas. While National attempts to argue that the Las Vegas O'Hare market is in strong need of additional low-fare competition, the fact is that this market already is receiving ample service. Moreover, National does not explain why a leisure market such as Las Vegas would require three flights per day rather than a more modest level of service. While in an ideal world National should receive its full request, the scarcity of available slots will require the Department to make hard choices among the markets to be served. This militates against a full award to National.

Sun Country

Sun Country proposes to operate three daily nonstop roundtrip services between Chicago and Minneapolis/St. Paul. While Sun Country argues that it would add a low-fare option to this market, it does not explain why the market requires service at the level Sun Country proposes, or why such services would offer greater public benefits than competing proposals.

CONCLUSION

Spirit is the only applicant in this proceeding proposing to establish ORD as a new operating focal point, offering Chicago-area travelers low-fare access to a variety of attractive leisure destinations. Spirit's service will have a large employment impact at ORD, and will stimulate additional tourism to communities that are highly dependent upon tourism revenues.

Another factor to consider are the recent programs introduced by American and United to remove seats from their aircraft, creating more room for “premium economy” or full fare passengers. This measure will diminish the ability of United and American to accommodate demand at O’Hare for inexpensive seats for traffic destined to the leisure markets Spirit proposes to serve, making the need for Spirit’s low-fare service at O’Hare even more compelling.

WHEREFORE, Spirit respectfully requests that its motion for leave to file this Consolidated Answer be granted, and for the reasons set forth above and in Spirit’s application, request that the Department promptly grant Spirit the twenty slots it seeks.

Respectfully submitted,

Anita Mosner
Steven Quan
GKMG CONSULTING SERVICES, INC.
1530 Wilson Boulevard
Arlington, VA 22209
(703) 312-1446

Representatives of
SPIRIT AIRLINES, INC.

Date: May 17, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May 2000, I served a copy of the foregoing Motion for Leave to File Late the Consolidated Answer of Spirit Airlines, Inc. by postage-paid first-class mail to each of the persons named on the attached service list.

Belen Sangria

SERVICE LIST

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

William C. Evans
Verner, Liipfert, Bernhard, McPherson
& Hand
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005-2301
(Counsel for AirTran)

Thomas R. Walker
Commissioner of Aviation
O'Hare International Airport
P. O. Box 66142
Chicago, IL 60666

R. Bruce Keiner, Jr.
Edward B. Glennon
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595
(Counsel for Continental)

Joanne W. Young
Baker & Hostetler LLP
Washington Square
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036-5304
(Counsel for America West)

Carl B. Nelson, Jr.
Associate General Counsel
American Airlines, Inc.
1101 17th Street, N.W.
Suite 600
Washington, D.C. 20036
(Counsel for American and American Eagle)

Jeffrey A. Manley
Jeffrey N. Shane
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037-1420
(Counsel for United and AccessAir)

Marshall Sanford Sinick
Squire, Sanders & Dempsey LLP
1201 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20004
(Counsel for ATA)

Richard Taylor
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
(Counsel for Comair)

Joel S. Burton
Donald T. Bliss
O'Melveny & Myers LLP
555 13th Street, N.W.
Suite 500 West
Washington, D.C. 20004-1109
(Counsel for US Airways, US Airways
Express & US Airways Shuttle)

Robert E. Cohn
Shaw Pittman
2300 N Street, N.W.
5th Floor
Washington, D.C. 20037
(Counsel for Delta, Delta Express,
Delta Shuttle & Vanguard)

Megan Rae Rosia
Managing Director, Government Affairs
& Associate General Counsel
Northwest Airlines, Inc.
901 15th Street, N.W.
Suite 310
Washington, D.C. 20005
(Counsel for Northwest)

Ed Nelson
Director - Marketing
Ft. Lauderdale-Hollywood Int'l Airport
Broward County Aviation Department
320 Terminal Drive
Ft. Lauderdale, FL 33315

Robert M. Ball, A.A.E.
Executive Director
Southwest Florida International Airport
Suite 8671
16000 Chamberlin Parkway
Ft. Myers, FL 33913

C. W. Jennings
Senior Director - Airports
Orlando International Airport
One Airport Boulevard
Orlando, FL 32827-4399

Jerry L. Allen
Director - Planning & Development
Palm Beach International Airport
P.B.I.A., Building 846
West Palm Beach, FL 33406

William Connors
Senior Director - Planning
Tampa International Airport
P. O. Box 22287
Tampa, FL 33622

Edward P. Faberman
Michelle M. Faust
Ungaretti & Harris
1500 K Street, NW, Suite 250
Washington, D.C. 20005-1714
(Counsel for Legend Airlines)

T. Allan McArtor
President & CEO
Legend Airlines, Inc.
7555 Lemmon Ave.
Dallas, TX 75209

George U. Carneal
Ronald P. Brower
Hogan & Hartson L.L.P.
555 Thirteenth Street, NW
Washington, D.C. 20004-1109
(Counsel for National Airlines, Inc.)

Dennis N. Barnes
Morgan, Lewis & Bockius LLP
1800 M Street, N.W.
Washington, D.C. 20036
(Counsel for Sun Country Airlines, Inc.)

Kevin J. Tourek
Senior VP – Legal & Human Resources
National Airlines, Inc.
6020 Spencer St.
Las Vegas, NV 89119

Donald E. Hood, Attorney
Southwest Airlines Co.
2702 Love Field Drive HDQ/4GC
PO Box 36611
Dallas, TX 75235

Bob Kemp
Director of Airports
Horry County Dept. of Airports
1100 Jetport Rd.
Myrtle Beach, SC 29577

Governor Jim Hodges
Governor's Office
P.O. Box 11829
Columbia, SC 29211

Governor Jeb Bush
The Capitol
Tallahassee, FL 32399-0001