

Served: January 8, 1998



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 8th day of January, 1998

Application of

AIRTRAN AIRWAYS, INC.

For an exemption from 14 CFR Part 93,
Subparts K and S, pursuant to 49 U.S.C.
§ 41714 (c)

Docket OST-97-2873

ORDER DISMISSING APPLICATION

By application filed September 2, 1997, AirTran Airways, Inc. ("AirTran") requested an exemption from 14 CFR Part 93, Subparts K and S, pursuant to 49 U.S.C. §41714, as added by section 206(c)(1) of the Federal Aviation Administration Authorization Act of 1994 ("the Act"). Specifically, AirTran seeks the exemption to enable it, as a new entrant air carrier, to operate two round-trip flights a day between Washington (DC) National Airport and Knoxville, Tennessee.

Trans World Airlines, Delta Air Lines, US Airways, and the Metropolitan Washington Airports Authority have filed answers opposing the AirTran application. Numerous Knoxville civic parties have filed letters in support of the application.

The regulations in 14 CFR Part 93, Subparts K and S, designate New York's John F. Kennedy International and LaGuardia, Chicago's O'Hare International, and Washington's National Airports as high density traffic airports and, *inter alia*, prescribe air traffic rules for operating aircraft, other than helicopters, to or from those airports. These regulations limit the hourly number of allocated Instrument Flight Rule operations (takeoffs and landings) that may be reserved for specified classes of users.

AirTran's application seeks relief that the Department is not empowered to grant. The language of 49 U.S.C. § 41714(c)(1), which empowers the Department to

grant exemptions from the requirements of Subparts K and S to enable new entrant air carriers to provide air transportation at high density airports, explicitly excludes exemptions to serve Washington National Airport, which AirTran's application contemplates.

Under 49 U.S.C. § 41714(d)(1) the Department may grant slot exemptions at Washington National Airport to air carriers currently holding or operating Washington National slots if the circumstances are deemed to be exceptional and meet several other conditions. Specifically, such exemptions, among other conditions, may not result in an increase in the total number of slots per day or between 7:00 a.m. and 9:59 p.m. It is clearly the intent of the legislation that our use of the exemption power for Washington National be limited to facilitating slides of existing slots to different times, as we authorized for Midwest Express in Order 94-9-49. Thus, the relief AirTran is seeking, *i.e.*, the authority to use wholly new slots at Washington National is outside the Department's power under 49 U.S.C. § 41714 to grant.

AirTran also requests, in the alternative, that the Department withdraw slots under 14 CFR 93.223 and reallocate slots at Washington National airport to the "affordable carriers" so as to effect the grant of the request for slots. In specifically addressing Washington National operations, the condition noted in 49 U.S.C. §41714(d)(1) requires that any exemptions "shall not result in the withdrawal or reduction of slots operated by an air carrier."

For all of the above reasons, we will dismiss the AirTran application.

This Order is issued under authority delegated in 49 CFR 1.56(l).

ACCORDINGLY,

1. The Department dismisses the application of AirTran Airways, Inc. in Docket OST-97-2873; and
2. We will serve this order all parties in Docket OST-97-2873.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

***An electronic version of this order is available on the World Wide Web at
<http://dms.dot.gov/general/orders/aviation.html>.***