

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

Application of)	
)	
SPIRIT AIRLINES, INC.)	Docket OST-2003-15972
)	
for an emergency exemption pursuant to the)	
provisions of 49 U.S.C. § 41714(d))	

MOTION OF SPIRIT AIRLINES, INC.

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Dated: February 3, 2006

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INTRODUCTION

On August 12, 2003, Spirit obtained four 2100 slots at Washington’s Reagan International Airport (“DCA”) in an FAA-administered lottery. By Order 03-9-30, Spirit received from the Department authority to “slide” the slots it had obtained (“Lottery Slots”) into other time periods so that it could operate a viable pattern of service at DCA. At the time, Spirit indicated its plans to offer double-daily low fare service at Fort Lauderdale. In Order 03-9-30 (“Slot Slide Order”), DOT found that permitting Spirit to serve DCA would be consistent with the public interest and was warranted by extraordinary circumstances. Spirit had no DCA slots at the time, and would have been unable to offer any commercially viable service without the relief it received from the Department. Since receiving those slots in the lottery process, Spirit has also obtained a pair of slots in the exemption process pursuant to Order 2004-04-02, which enabled Spirit to offer a single daily service between Washington and Detroit Metro Airport (“DTW”).

Pursuant to this Motion, Spirit requests that the Department amend its Slot Slide Order so that Spirit can vary slightly the use of its Lottery Slots to accommodate seasonal fluctuations in demand in the markets it serves from DCA. Specifically, Spirit requests the flexibility to vary the use of a pair of its Lottery Slots so that it can fly from DCA to either Detroit or Fort Lauderdale, depending upon changes in market conditions. This flexibility would, for example, permit Spirit to add a flight in the Washington-Detroit market in the summer season, enabling it to offer double-daily service in times of peak demand, and would enable Spirit to use the Lottery Slots to operate double-daily service in the Fort Lauderdale-DCA market in the winter season, when demand for service to sunspot destinations may be higher.

As Spirit will show below, approval of this request would be entirely consistent with the public interest and with settled DOT policy. By enabling Spirit to alter the use of its Lottery Slots on a seasonal basis or as needed, the Department will enable Spirit to use its scarce DCA slots more efficiently, and more closely match its services to the demand of the market.

Spirit is among the smallest slotholders at DCA. Given that Spirit is serving DCA solely with exemption and lottery slots, Spirit, unlike many of its larger competitors, simply cannot alter its existing service pattern in the absence of DOT relief. This is an exceptional circumstance that warrants relief under the provisions of 49 USC § 41714(d). Enabling Spirit to adjust its services in this manner would benefit the public by giving Detroit-area passengers access to additional low fare service during peak travel times.¹ Of course, this service will be operated with Stage 3-compliant aircraft.

¹ The need for this service has increased since the termination of Independence Air's low-fare service between Dulles and Detroit.

DISCUSSION

1. Subsection (d) of section 41714 of the Federal Transportation Code authorizes the Secretary to grant any carrier currently holding or operating DCA slots an exemption from the FAA's High Density Airport Rule (14 CFR Part 93, Subparts K and S) to enable the carrier to conduct Stage 3 aircraft operations at DCA. The authority of the Secretary to grant such an exemption is conditioned on the ability of the Secretary to find that the grant of the exemption will not:

- Result in an increase in the total number of slots per day at DCA;
- Result in an increase in the total number of slots at DCA from 7:00 am to 9:59 pm;
- Increase the number of operations at DCA in any one hour period by more than two operations;
- Result in the withdrawal or reduction of slots operated by any air carrier; and
- Result in a net increase in noise impact on surrounding communities resulting from changes in timing of the exempted operations.

The authority requested herein by Spirit would be fully consistent with these statutory criteria.

2. In considering whether or not to grant the relief requested by Spirit, the Secretary should take into account the fact that Spirit is among the smallest slotholders at DCA. Being able to serve the market only because it was able to obtain four new entrant lottery slots back in August 2003 (and subsequently being permitted to slide those slots) and obtain some limited exemption relief, Spirit is highly constrained in its ability to adjust the use of its slots in response to changes in market demand. By permitting Spirit to alter its service pattern, the Department would be enhancing competition at DCA. Furthermore, there are no statutory impediments to this request.

3. The Department previously has approved requests to amend an order approving a "slot slide." For example, DOT in March 2001 permitted Midwest Express to retime its Kansas City-DCA service so it could accommodate connecting passengers. See Order 2001-3-17. See

also Order 99-11-4, granting a similar request of Midwest Express. (“The Department acknowledges that a new entrant/limited incumbent may obtain a 2100 hour slot from the FAA and subsequently petition for an exemption to retime those slots to other time periods.”) Because these “lottery” slots, unlike the slots created pursuant to Air 21 and Vision 100, are not earmarked for service to any type or category of market (i.e., small hub, medium hub, etc.), the Department has the statutory authority to permit Spirit to use its Lottery Slots in a slightly more flexible manner.

4. Grant of this amendment will offer passengers traveling to and from Detroit additional access to DCA. As the attached chart shows, the introduction of low-fare service in the DCA-DTW market by Spirit has had a very dramatic effect on traffic and fares there. Prior to Spirit’s introduction of low-fare service in the DTW-DCA market in June 2004, the average fare in the market was approximately \$178 each way, with 303 passengers per day each way (PDEW). After introduction of this service, the average fare in the market fell to about \$81 each way, with approximately 608 PDEW.²

5. Given that Spirit already is operating these slots, grant of this request will not result in any increase in the number of operations authorized for DCA under the High Density Airport Rule. As a result, there will be no net increase in noise impacting the area surrounding DCA. Similarly, the number of air carrier operations at DCA will not increase in any one hour by more than one flight operation, and no other carrier would face the loss of a slot as a result of this ruling. Thus, approving this request would be fully consistent with the Secretary’s authority under subpart (d) of section 41714.

6. The Secretary can readily find that exceptional circumstances support the award of the requested exemption authority. The Department has granted similar relief to Midwest Express. See, e.g., Orders 94-9-49, 99-11-4, and 2000-7-20. The Department also has granted this type of relief to America West, which was required to retime some of its slots at

² Statistics are based on a comparison of traffic and fares in 3Q03 and 3Q05. Spirit’s low-fare service commenced in June 2004.

DCA in order to operate its DCA-Columbus service. See, Order 2000-10-32. In circumstances quite similar to those presented here, the Department found that the requests were consistent with the Congress' intent in adopting section 41714(d) to enhance competition at Washington National Airport by facilitating only those carriers that hold only a limited number of DCA slots. In Order 2000-10-32, DOT observed "our authority to grant exemptions for slot slides at Reagan National is applicable only in limited circumstances to meet the specific needs of carriers holding a limited number of slots at that airport." Order 2000-10-32 at 3. DOT there found that America West, which held only nine slots, qualified for such relief. Surely Spirit, which holds six slots and is the smallest operator at DCA, would be similarly deserving.

7. Granting the relief that Spirit requests would also satisfy the specific factors which warrant a finding of exceptional circumstances set forth in section 41714(c). See Orders 97-10-16, 97-10-17, 98-4-21. Factors that the Department said it would take into account include the need for competitive service in a particular market, with emphasis on a wider dispersal of slots among air carriers serving High Density Airports. Order 98-4-21, pp. 3-4. Further, DOT considers if the proposed service will be operationally and financially viable.³

8. As demonstrated in paragraph 4, above, the entry of Spirit into the DCA-DTW market has had a dramatic effect upon both traffic and fares. As the Department is aware, Detroit is one of Spirit's largest focus cities. Over the years, Spirit's presence at Detroit has grown to the point that it is now the second largest domestic carrier at Detroit. By permitting Spirit to supplement its single existing DCA-DTW service with an additional nonstop operation during the summer months and as otherwise needed, Spirit will enhance its growing portfolio of services at DTW, and tap into expanded seasonal demand for access to DCA. As such, there can be no question that Spirit's expanded DTW-DCA service will be not only viable, but successful. Moreover, when the Department granted exemption slots to Spirit so that it could offer its current single daily service to DTW from DCA, the Department found that Spirit's low-

³ DOT also takes into account whether the service will be provided with Stage 3 jet equipment. Since all air carriers were required to be Stage 3-compliant by the end of 1999, this decisional criteria is no longer relevant.

fare service would “promote important public benefits” and be consistent with the public interest.

Order 2004-04-02, at 15.

CONCLUSION

This request meets the specific decisional criteria enumerated in section 41714(d) and the “exceptional circumstances” test as defined by the Department in recent slot exemption orders. Therefore, the DOT should grant the limited relief requested herein.

Respectfully submitted,

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Dated: February 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have, this 3rd day of February 2006 served the foregoing Motion of Spirit Airlines, Inc. by electronic mail upon the persons whose email addresses appear below, and by first-class mail upon:

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