



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

Issued by the Department of Transportation
on the 22nd day of February, 2008

Applications of

**AIRTRAN AIRWAYS, INC.
COMAIR, INC.
MIDWEST AIRLINES, INC.
SPIRIT AIRLINES, INC.
US AIRWAYS, INC.**

Docket DOT-OST-2000-7182

For exemptions from 14 C.F.R. Part 93, Subparts K and S, pursuant to 49 U.S.C. § 41718(b), Special rules for Ronald Reagan Washington National Airport (within-perimeter slot exemptions)

**ORDER GRANTING WITHIN-PERIMETER SLOT EXEMPTIONS AT
RONALD REAGAN WASHINGTON NATIONAL AIRPORT**

SUMMARY

By this order, the Department grants the following slot exemptions at Ronald Reagan Washington National Airport (DCA): (1) Spirit Airlines, Inc. (Spirit), two slot exemptions to provide a daily nonstop round trip to Fort Lauderdale, Florida; and (2) AirTran Airways, Inc. (AirTran), two slot exemptions to provide a daily nonstop round trip to either Jacksonville, Florida, or Milwaukee, Wisconsin. In the event that either Spirit or AirTran fails to operate the slot exemptions awarded here by May 3, 2008, we select Midwest Airlines, Inc. (Midwest) as the back-up carrier, to provide an additional nonstop trip to Milwaukee or Kansas City, Missouri, utilizing Boeing 717 aircraft.

BACKGROUND

On July 5, 2000, pursuant to the provisions of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR-21), the Department issued Order 2000-7-2, which awarded a total of 12 "within perimeter" slot exemptions at DCA to be operated with Stage 3 aircraft. Among the awards were four slot exemptions to American Trans Air, Inc. (ATA Airlines), to provide nonstop service to Chicago-Midway Airport (MDW).

By letter dated October 30, 2007, ATA Airlines notified the Department that, due to the financial challenges in maintaining DCA flights, the carrier planned to end its nonstop service to MDW effective November 28, 2007, leaving four slot exemptions available for reallocation.¹

On November 26, the Department initiated a re-allocation proceeding, soliciting applications from air carriers for four AIR-21 slot exemptions returned by ATA Airlines, for service between DCA and any medium hub or smaller airport within the 1,250-mile perimeter established for civil operations at DCA under Title 49 U.S.C. § 49109.

Title 49 U.S.C. § 41718(b) directs the Secretary to distribute 20 within-perimeter slot exemptions² in a manner that promotes air transportation: (1) by new entrant air carriers and limited incumbent air carriers;³ (2) to communities without existing nonstop air transportation to Ronald Reagan Washington National Airport; (3) to small communities; (4) that will provide competitive nonstop air transportation on a monopoly nonstop route to Ronald Reagan Washington National Airport; or (5) that will produce maximum competitive benefits, including low fares.

Further, 49 U.S.C. § 41718(c)(3) provides additional guidance in awarding within-perimeter slot exemptions. Of the exemptions granted under subsection 49 U.S.C. § 41718(b): (A) without regard to the new entrant air carriers and limited incumbent air carrier criterion contained in subsection (b)(1), six shall be for air transportation to small hub airports and nonhub airports⁴; (B) ten shall be for air transportation to medium hub and smaller airports; and (C) four shall be for air transportation to airports without regard to their size.

ATA Airlines used its four slot exemptions for service between DCA and MDW. MDW was classified as a medium hub in 1997.⁵ Moreover, all four slot exemptions allotted for

¹ ATA's letter actually indicated that six slots or slot exemptions would be returned, the four AIR-21 slot exemptions and two other slots, one at 0600 hours and the other at 2200 hours. These latter two are not being reallocated here. They are not subject to the prohibition on transfer at 49 § USC 41714 (j) and, in any event, slots are otherwise available to accommodate demand at those times. In addition, ATA received two slots as the result of the Federal Aviation Administration (FAA) slot lottery held on August 15, 2003. These were the subject of a subsequent exemption request under 49 § U.S.C. 41714 (d) to "slide" those slots to other times. By Order 2003-9-30, the Department granted ATA's exemption request to operate these slots in the 1300-1359 hour and 1400-1459 hour periods. Consistent with Order 2003-9-30, those slot exemptions were self-terminating and reverted to the 2100 hour when ATA ceased operation of service between DCA and MDW in the 1300 and 1400 hour periods.

² AIR-21, which mandated the award of 12 within-perimeter slot exemptions as noted above, was amended in 2003 by P.L. 108-176, the VISION 100 – Century of Aviation Reauthorization Act. Section 425(b)(1) of VISION 100 increased the number of within-perimeter slot exemptions to 20.

³ A new entrant carrier or limited incumbent carrier is defined as an air carrier or commuter operator that holds or operates (or held or operated, since December 16, 1985) fewer than 20 slots and slot exemptions at DCA.

⁴ Because six of the twenty slot exemptions are already used for service to small hub and nonhub airports, the new entrant/limited incumbent criterion will apply in this proceeding.

⁵ 49 U.S.C. § 41714(h)(7), (8) and (9) require that hub classifications be based on the Federal Aviation Administration's Primary Airport Enplanement Activity Summary for Calendar Year 1997.

large hubs have already been allocated and are currently being used. Therefore, carriers were welcome to propose service to a medium hub or smaller airport within the 1,250-mile perimeter.

APPLICATIONS

The Department received applications from AirTran, Comair, Inc. (Comair), Midwest Airlines, Inc. (Midwest), Spirit and US Airways, Inc. (US Airways) for slot exemptions to provide nonstop service within the 1,250-mile perimeter at DCA. All proposals would be with Stage 3-compliant aircraft. These proposals are summarized below. Each carrier's entire proposal, as well as the responses and additional comments filed, may be accessed online through the Federal Docket Management System at:

<http://www.regulations.gov> by doing a "search" on docket number DOT-OST-2000-7182.

AirTran

AirTran applied for four slot exemptions to operate two daily nonstop round trips between DCA and either Jacksonville or Milwaukee, using 117-seat Boeing 717 or 137-seat Boeing 737 aircraft. AirTran claims that its proposal meets several AIR-21 statutory requirements. First, the carrier asserts its status as a limited incumbent carrier, stating that it holds nine slots in the 0700-2000 time period.⁶ Second, AirTran explains that its proposal would provide competitive nonstop air transportation on a monopoly route to DCA. It contends that only US Airways provides nonstop service between DCA and Jacksonville, and Midwest between DCA and Milwaukee. Third, AirTran argues it would provide maximum competitive benefits, including low fares. AirTran maintains that the additional slot exemptions in either market would allow it to offer low-fare service to Jacksonville or Milwaukee, thereby increasing competition, allowing it to provide its customers with a more competitive schedule at DCA and additional travel options within its expanding network. In support of its claim of increased customer demand for its service and low fares, the airline notes that, based on its own analysis of its October 2003 entry into the DCA-ATL market, average fares fell 20 percent and passenger traffic increased 68 percent, resulting in annual consumer savings of \$70 million. AirTran also states for December 2006, its traffic grew by 20.2 percent to over 1.2 billion revenue passenger miles on an increase of 19.4 percent in capacity, and a load factor of 70.4 percent.

⁶ Currently, AirTran operates at total of seven arrivals and seven departures at DCA each weekday, using slots and slot exemptions.

Comair

Comair submitted an application for four slot exemptions. Comair would use the DCA slot exemptions to introduce daily nonstop Delta Connection service to Birmingham, Alabama, and Fort Walton Beach, Florida, using 50-seat CRJ aircraft. Comair explains that its application is consistent with the statutory criteria. Comair notes that neither Birmingham nor Fort Walton Beach has direct service to DCA. Comair argues that Birmingham and Fort Walton Beach are small communities. The carrier also asserts that its application would maximize public benefits by: improving access to the nation's capital for passengers to/from Birmingham and Fort Walton Beach; providing additional competitive options to travelers; and saving more than three hours of travel time (on a round trip basis) when compared to current one-stop options.

Midwest

Midwest seeks to obtain four within-perimeter slot exemptions at DCA to provide an additional nonstop round trip to Milwaukee and Kansas City, Missouri, utilizing Boeing 717 aircraft.⁷ Similar to AirTran, the airline confirms its status as a limited incumbent carrier, stating that it currently has a total of fifteen slots and slot exemptions at DCA within the 0659 and 2159 time period, and three additional slots outside the controlled hours. It also contends that it currently provides the only nonstop service in the DCA-Milwaukee market. Midwest also argues it has not been able to offer sufficient capacity to meet demand for nonstop seats at Milwaukee, which has only increased since its only other competitor in the DCA-Milwaukee market ceased service in January 2006. In support of its claims that Milwaukee and Kansas City are underserved, the carrier states that, based on its own analysis of twenty markets, Kansas City and Milwaukee rank fourth and fifth as the most underserved cities from DCA. Midwest also claims that its average load factor for the eleven months ended November 2007 on nonstop flights between DCA and both Milwaukee and Kansas City range is high, ranging from 74 percent to almost 79.5 percent. The carrier argues that these slot exemptions will allow it to enhance connecting opportunities to many small and nonhub airports it serves at both Milwaukee and Kansas City. Midwest also explains that it would offer an attractive package of premium level services at competitive fares, in addition to a full range of advance purchase and other discounted fares attractive to the leisure market.

Spirit

Spirit submitted an application requesting two slot exemptions to provide an additional daily nonstop round trip between DCA and Fort Lauderdale, Florida, with 144-seat, Airbus A319 or 198-seat Airbus A321 aircraft. Like AirTran and Midwest, the carrier affirms its status as a limited incumbent carrier, stating that it holds and operates only four 2100 hour slot exemptions. The carrier also states that its only DCA service is two daily nonstop round trips between DCA and Fort Lauderdale. In support of its claim that its proposal would stimulate market growth and provide additional low-fare options,

⁷ Midwest's Boeing 717 fleet is currently being reconfigured to accommodate 99 seats.

Spirit explains that since resuming DCA-Fort Lauderdale service in November 2003, passenger traffic has increased 83 percent and fares have decreased by 21 percent. Spirit also details the competitive advantage, including overall size and vast slot holdings held by its competitor in the DCA-Fort Lauderdale market -- US Airways. The carrier also asserts that an award to Spirit would not only strengthen competition in the DCA-Fort Lauderdale market, but would enable it to serve more DCA customers, and more passengers in the Latin American and Caribbean markets beyond Fort Lauderdale.

US Airways

US Airways applied for two slot exemptions to launch daily nonstop service between DCA and Pensacola Regional Airport utilizing 76-seat Embraer E-170 aircraft from September through February, and 86-seat Embraer E-175 aircraft from March through August.⁸ This is the second consecutive slot allocation proceeding in which US Airways has sought slot exemptions to serve the DCA-Pensacola market.⁹ The airline states that its proposed service would bring competitive, new, low-fare service to an unserved market and highlights the importance that Congress has placed on maintaining convenient air service to small communities. US Airways argues that an award to it at Pensacola would benefit more passengers than currently benefit from any other award of AIR-21 small community slot exemptions, and estimates that Pensacola would generate 63 DCA passengers per day each way. US Airways also notes that the Pensacola region's economy is diverse and home to many military bases and defense installations, suggesting that the economic ties between Pensacola and Washington D.C. are strong. The carrier also explains that neither Pensacola nor any of the Pensacola region's other airports have nonstop air service to Washington Dulles International Airport (IAD) or Baltimore/Washington International Thurgood Marshall Airport (BWI), requiring travelers to drive in excess of three hours for nonstop service. US Airways also maintains that new nonstop service between DCA and Pensacola would reduce travel times and allow for more convenient access to the Gulf Coast region by federal officials to assess needs and provide assistance after hurricanes.

RESPONSIVE PLEADINGS

On January 9, AirTran, Comair, Midwest, Spirit, US Airways and Pensacola Regional filed responsive pleadings. The reply comments are summarized below.

Concerning AirTran's Application

In its response, AirTran maintains that it should be awarded the four slot exemptions because it will improve competition, provide consumers with additional cost savings, and travel choices at Jacksonville, Milwaukee and connecting destinations. The carrier states that it is willing to operate its proposed service in ATA Airlines' former slot times.

⁸ US Airways also mentions the introduction of Embraer E-190s into its fleet, which could result in increased capacity should demand warrant.

⁹ See Application of US Airways, Inc. for an Exemption, January 27, 2007, Docket DOT-OST-2000-7182.

AirTran also explains that it would like to serve both markets but that its decision will be based, in part, on the number of slot exemptions it is awarded. AirTran argues that it needs four slot exemptions to enter the DCA-Milwaukee market to compete effectively with Midwest and Midwest's code-share agreement with Northwest Airlines; however, during peak season demand for Florida service, AirTran would use two slot exemptions to serve Jacksonville.

Respondents argue that AirTran's failure to specify which market (Jacksonville or Milwaukee) would receive service makes it difficult, if not impossible, to evaluate the merits of its proposal. They argue that both Jacksonville and Milwaukee are major cities that do not lack nonstop service to/from DCA. Respondents also argue that AirTran's proposal offers limited public benefits since it would provide no service to small communities. Respondents also encourage the Department to be fair and equitable in the re-allocation of slot exemptions as AirTran has been the benefactor of several of the recent slot proceedings. Midwest also questions AirTran's claim of providing low fares by illustrating that the carrier's average yields are higher in the DCA-Atlanta market than the yields Midwest receives in the DCA-Kansas City market. The other applicants also explain that AirTran has previously failed to properly use two slot exemptions it had been awarded to serve multiple markets in Florida. They suggest that it would be more efficient for AirTran to increase Washington D.C.-Milwaukee service through BWI than to provide a single round trip from DCA.

In its later filing, AirTran disputes US Airways' and Comair's claims that it has not made consistent use of all the within-perimeter slot exemptions it has been awarded. It explains the complexity of serving markets in Florida and the difficulty of operating as a limited incumbent at DCA competing with dominant carriers that can offer multiple flights in a market. AirTran refutes US Airways' claims that it is not committed to Milwaukee by highlighting its acquisition of additional gates and newly announced service. The carrier also challenges Comair's and US Airways' suggestions that it operate its proposed DCA-Milwaukee service from BWI by claiming that these two carriers are only interested in blocking competition at DCA. AirTran also questions Midwest's assertion that it should not receive an award in this proceeding because it was recently awarded DCA slot exemptions and reiterates its claims that its proposal will improve competition and bring low-fares to its proposed markets.

Concerning Comair's Application

In its comments, Comair states that its proposal satisfies the statutory criteria for receiving these slot exemptions. Comair would provide the only nonstop service between DCA and Birmingham and Fort Walton Beach, both small communities, improving competitive options for travelers.

Respondents to the Comair's request contend that Comair's proposal would provide only minimal public benefits since Comair has the smallest aircraft of any proposal, and would serve small markets. They argue that Comair and Delta control a substantial percentage of DCA slot holdings, and, therefore, if the commercial merits of serving Birmingham

and Fort Walton Beach were overwhelming, they should eliminate service to underperforming markets utilizing their existing DCA slot holdings and commence service in these markets on their own accord. The respondents question the viability of service to these small communities by referencing Atlantic Southeast Airlines' performance in the Birmingham market that only lasted approximately ten months and contend that the DCA-Fort Walton Beach market would generate fewer passengers than DCA-Birmingham. They also suggest that, based on load factors, Delta and Comair do not use their DCA slots efficiently. The other applicants contend that Comair would provide non-competitive, high-fare service in these markets.

Concerning Midwest's Application

Midwest repeats its claims that its application would benefit more passengers than would approval of any of the other applications, and that the DCA-Milwaukee and Kansas City routes are underserved. The airline argues that an additional round trip would not only benefit the local markets, but also would enhance service to many smaller communities that connect to DCA at Milwaukee and Kansas City.

Respondents argue that Midwest is barely a limited incumbent and draw attention to the recent purchase of Midwest by the Texas Pacific Group (giving Northwest Airlines 47 percent ownership in Midwest). They suggest that Midwest would no longer qualify as a limited incumbent carrier based on its new relationship with Northwest Airlines. They also contend that its proposal does not offer service to a new market, but simply adds additional flights to existing markets. They argue that Midwest is not a low-fare carrier and that it would operate a relatively small aircraft type, as compared to some of the other applicants. Respondents further argue that Midwest's proposal would provide no service to a community without existing DCA service, would increase its service on a monopoly route (DCA-Milwaukee) and would not serve a small community. They highlight that Midwest's application implies that it would operate its proposed flights only on weekdays. The respondents note that Midwest has previously returned awarded slot exemptions to the Department for re-allocation.

Concerning Spirit's Application

In its reply comments, Spirit claims that its proposal is the best choice in this proceeding. Spirit claims that its proposal would: strengthen the competitive position of the smallest limited incumbent at DCA; expand low fare competition; create needed capacity in light of very high load factors; provide service to the maximum number of passengers possible; continue to use these slot exemptions at a medium hub; and stimulate passenger demand in the DCA-Fort Lauderdale market and beyond.

Respondents argue that we should not grant Spirit the exemptions to expand its service to address competition in the DCA-Fort Lauderdale market. They explain that Fort Lauderdale receives more than 15 daily nonstop round trips to the Washington Metropolitan Area operated by six carriers, including Spirit. The respondents suggest that Spirit's existing service will continue to discipline fares in the market. They argue

that Spirit's claims about expanding access to Latin American and Caribbean markets should not be considered. They make note of Spirit's inability to make consistent use of previous slot exemptions, referencing Spirit's decision to discontinue its DCA-Myrtle Beach, South Carolina, and DCA-Detroit service.

Concerning US Airways' Application

In filing its responsive comments, US Airways argues that its proposed service to Pensacola would: provide the first ever nonstop air service to DCA for over one million people; award service to the largest small hub without nonstop service; bring nonstop service to customers that must drive in excess of three hours to access nonstop air service to any Washington Metropolitan area airport; increase small community access to DCA; add competition to the DCA-Pensacola/Gulf Coast region market; and provide nonstop air service to a region with strong military ties.

The Pensacola Airport strongly supports US Airways' application for these DCA slot exemptions. In its filing, the airport asserts that the Washington Metropolitan Area is its largest origin and destination market. It argues that nonstop service to DCA would benefit the defense, aerospace, and tourism industries, and the Pensacola/Gulf Coast economy as whole. It explains that its catchment area spans five counties (in Florida and Alabama) and for year ended June 30, 2007, it served 1.4 million people. It argues that it is the largest un-served small community in this proceeding and largest market without nonstop service to the Washington Metropolitan Area, and that the Department should give considerable weight to promoting service to small communities without existing nonstop air transportation to DCA. It details its high-growth business sectors, and highlights its numerous military installations. It contends that US Airways' proposed service would strengthen the military, corporate and governmental links between the Washington Metropolitan Area and the Pensacola/Gulf Coast region. Pensacola Regional believes US Airways' proposed nonstop service would facilitate more efficient movement of military, business, and leisure passengers.

Respondents argue that US Airways is neither a new entrant nor a limited incumbent under AIR-21, and that, since US Airways holds and operates the largest number of DCA slots of any carrier, granting its request would be contrary to the intent of AIR-21 to enhance competition and improve slot access for new entrants/limited incumbents at DCA. Because US Airways is the largest slot holder at DCA, the respondents argue that if the commercial merits of serving Pensacola were overwhelming, US Airways should eliminate service to underperforming markets utilizing its existing DCA slot holdings and commence service in this market on its own accord. Respondents argue that US Airways' relatively small aircraft provide fewer benefits than the aircraft proposed by other carriers, and that US Airways' proposal offers no low-fare service benefits. They highlight that service between DCA and multiple cities within the State of Florida is already provided utilizing several previously awarded slot exemptions. The respondents contend that US Airways is reducing capacity at DCA and therefore does not need these two slot exemptions to serve Pensacola.

In its late filing, US Airways challenges Comair's assertion that it should not receive an award in this proceeding because it was awarded DCA slot exemptions for service to Sarasota, Florida, in June 2006. It also disputes Comair's claims that it has not followed through on its commitment to up-gauge aircraft during the winter season, a factor cited by the Department in granting US Airways' previous inside-perimeter DCA slot exemptions to serve Sarasota,¹⁰ by illustrating that it will up-gauge to Airbus A319 aircraft in February.

DECISION

We have decided to award Spirit two DCA slot exemptions to provide nonstop service to Fort Lauderdale utilizing either 144-seat Airbus A319 or 198-seat Airbus A321 aircraft. We have also decided to award AirTran two slot exemptions to serve either Jacksonville or Milwaukee with 117-seat Boeing 717 or 137-seat Boeing 737 aircraft. We conclude that these two proposals best meet the statutory criteria for the award of AIR-21 slot exemptions at DCA. In the event that either Spirit or AirTran fails to operate the slot exemptions awarded here, we select Midwest as the back-up carrier, utilizing Boeing 717 aircraft, to provide an additional nonstop to either Milwaukee or Kansas City.

We find this to be a competitive case in which each proposal satisfies at least one of the statutory criteria, which were discussed above. AirTran's, Spirit's and Midwest's applications are set apart, due to their status as limited incumbent carriers, and their willingness to maintain these exemptions for medium hubs,¹¹ servicing a larger pool of potential passengers. However, for the reasons that we discuss below, we find that Spirit's and AirTran's proposals have the greatest potential of producing maximum competitive benefits and best meet the criteria set out in section 41718. We will first discuss each of the five selection criteria.

New entrant or limited incumbent air carriers: AirTran, Midwest and Spirit hold and operate fewer than 20 slots and slot exemptions at DCA; therefore, all three applicants are new entrant or limited incumbent air carriers. 49 U.S.C. 41714(h). In contrast, US Airways and Delta (including Comair) each maintain substantial DCA slot holdings and do not qualify as new entrants or limited incumbents.

Communities without existing nonstop DCA service: Comair's and US Airways' applications would promote air transportation to communities without existing nonstop DCA service. No commercial airline currently offers nonstop service between DCA and

¹⁰ See Order 2006-6-17.

¹¹ As previously noted, 49 U.S.C. § 41714(h)(7), (8) and (9) require that hub classifications be based on the Federal Aviation Administration's Primary Airport Enplanement Activity Summary for Calendar Year 1997. In Calendar Year 1997, Chicago-Midway, Jacksonville International Airport, Milwaukee-General Mitchell International Airport, Kansas City International Airport, and Fort Lauderdale were classified as medium hubs. Birmingham International Airport, Okaloosa Regional Airport, and Pensacola Regional Airport were classified as small, nonhub, and small hubs respectively. Chicago-Midway and Fort Lauderdale are now classified as a large hubs, while the remaining airports listed above are classified as medium hubs, small hubs, or nonhub airports.

Birmingham, Fort Walton Beach, or Pensacola. AirTran's, Midwest's and Spirit's proposals would supplement existing nonstop service.

Small Communities: Only Comair and US Airways are proposing to serve small communities. AirTran would serve either Jacksonville or Milwaukee, Midwest would serve Milwaukee and Kansas City; and Spirit would serve Fort Lauderdale.

Competitive nonstop air transportation on a monopoly nonstop route to DCA: Only AirTran's proposal to serve either Jacksonville or Milwaukee would provide competitive nonstop air transportation on a monopoly nonstop route to DCA. As discussed above, US Airways is the only carrier that provides nonstop service between DCA and Jacksonville, while Midwest provides the only service in the DCA-Milwaukee market. Midwest's application seeks to increase its nonstop frequencies on routes where nonstop competition does not exist. Spirit seeks to increase its flight frequency on the DCA-Fort Lauderdale route to compete more effectively against US Airways.

Maximum competitive benefits, including low fares: With respect to the criterion that the award produce the maximum competitive benefits, including low fares, we find that both AirTran's and Spirit's applications would offer more significant competitive benefits than the other applications. Both AirTran's and Spirit's proposals include a stated intention to offer low fares and they have a well-established record of providing low-fare service, which should exert increased pricing pressure on existing fares offered by the more dominant carriers in their respective markets. Further, AirTran's proposal to add competitive nonstop air transportation on monopoly nonstop routes to DCA is expected to have an immediate competitive impact on fares in the market where it inaugurates service, either Jacksonville or Milwaukee.

SUMMARY OF FINDINGS

As is noted by several of the applicants, Delta (including Comair) and US Airways hold and operate a large proportion of DCA slot holdings. Thus, Delta (including Comair) could elect to serve Birmingham and Fort Walton Beach, and US Airways could elect to serve Pensacola with their existing slot holdings, if the commercial merits of serving these two smaller communities were compelling. Additionally, neither Comair's nor US Airways' application make mention of offering low-fare service. (Comair and US Airways would offer the only nonstop service in the markets they have proposed, and it is therefore reasonable to assume that their service would have a more limited competitive impact on existing connecting services.) Furthermore, Comair and US Airways would operate regional jets (50-seat CRJ aircraft and 76-seat Embraer E-170s, respectively), offering significantly less capacity than either AirTran or Spirit. Moreover, given Comair's and US Airways' decisions to operate small aircraft, we note that their service could be provided with less valuable commuter slots rather than these slot exemptions now that AIR-21 legislation raised, from 50 seats to 76, the size of aircraft that can use commuter slots at DCA.

Given these factors, the reallocation of these slot exemptions focuses on the applications of Spirit, AirTran and Midwest. Spirit fully qualifies as a limited incumbent carrier. Additionally, the carrier has proposed to use either 144-seat, Airbus A319 or 198-seat Airbus A321 aircraft. Even the smaller of the two aircraft is larger than that proposed by any other applicant. Coupled with Spirit's history of providing low-fare service, we find that its proposed service would have the most dramatic competitive effects.

As between AirTran and Midwest for the remaining two exemptions, we find that AirTran better meets the statutory criteria. It would provide more seats than Midwest, and has a track record of providing low-fare service.

Midwest, on the other hand, highlights its premium level of service and claims that it will offer competitive fares, but does not focus on offering low fares. Midwest's application also seeks to increase its nonstop frequencies on routes where it offers the only nonstop service, allowing it to strengthen its monopoly position. As a result, we will award the second pair of exemptions to AirTran to serve either Jacksonville or Milwaukee.

These factors, taken together, with all of the other considerations discussed above, support the selection of AirTran's DCA-Jacksonville or Milwaukee proposal and Spirit's application to serve the DCA-Fort Lauderdale market.

BACK-UP AUTHORITY

As discussed above, AirTran applied for all four slot exemptions to serve either Jacksonville or Milwaukee with two daily round trips. AirTran did not indicate that it would operate any new service if it were awarded only two slot exemptions. In the event that either carrier does not inaugurate service by May 3, we find that Midwest represents the best choice for back-up authority.

As we discuss above, Comair's and US Airways' proposals are less attractive because of their large slot holdings, their relatively small aircraft, and the fact that their service could be provided with commuter slots rather than the more valuable air carrier slot exemptions. Given these facts, we find that our discretion is best used by awarding Midwest, a limited incumbent carrier, back-up status. Midwest would operate the DCA slot exemptions, utilizing Boeing 717 aircraft, to provide additional nonstop service to either Milwaukee or Kansas City.

CONDITIONS

Start-up

The Department requires that Spirit and AirTran inaugurate full service by May 3, 2008. If, for any reason, Spirit and AirTran are not able to use these slot exemptions on a daily basis by May 3, 2008, we request that they notify the Department as soon as possible, but not later than seven days after the date of service of this order, so that Midwest's back-up authority can be activated in a timely manner.

Assignment of Slot Times

We are directing Spirit and AirTran to file in the Docket, no later than seven business days from the service date of this order, their proposed flight schedules and effective dates for inauguration of operations authorized by this order.

As we stated in our Notice of November 26, 49 U.S.C. Section 41718(c)(2) allows us to assign only one additional slot exemption per one-hour period, an increase from the original two per hour authorized by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21). Slot times for these two exemptions are in the 0900, 1400, 1700, and 1900 hour periods. Almost all time periods have been fully subscribed and, thus, the Department may not be able to accommodate carrier requests for alternative slot exemption times. Spirit and AirTran, in accordance with statute and Department regulations, may request the Federal Aviation Administration's (FAA) Slot Administration Office to approve temporary exchanges of the assigned slot exemption times with other slots or slot exemptions in a different hour for the purpose of conducting operations authorized by this Order. In acting on such a request, the FAA will employ standard practices in conjunction with applicable statutory and regulatory requirements for the utilization of slot times between and among individual carriers. Regardless of any subsequently approved slot time exchanges, the slot times assigned by the Department or the FAA's Slot Administration Office pursuant to this order will be tagged such that, if any of the service granted by this order is suspended or is not inaugurated in a timely manner, the Department will withdraw the slot exemptions based on their tagged slot time rather than by any subsequent slot time operated.

Should Spirit and AirTran file to operate in the same hour periods, the Department shall make the final determination of each carrier's slot times.

ENVIRONMENTAL ISSUES

Although 49 U.S.C. Section 41718(e) specifically exempts our action here from the review under the National Environmental Policy Act,¹² we remain sensitive to the

¹² Section 41718(e) states, "Neither the request for, nor the granting of an exemption, under this section shall be considered for the purposes of any Federal law a major Federal action significantly affecting the quality of the human environment."

environmental impact of increased operations at DCA. Consistent with the statute, we will require that all operations authorized by this order will be conducted with Stage 3 aircraft. Also, under 49 U.S.C. Section 41718(e), the Department will give DCA priority in making grants for airport noise compatibility planning and programs that qualify for Federal financial assistance.

ADMINISTRATIVE TERMS

FAA slot regulations make clear that “slot(s) do not represent a property right but represent an operating privilege subject to the absolute FAA control (and) slots may be withdrawn at any time to fulfill the Department’s operating needs.” (14 C.F.R. Section 93.223(a).) Moreover, under the provisions of 49 U.S.C. Section 41714(j), Spirit and AirTran may not sell, trade, transfer, or convey the operating authorities granted by the subject exemptions unless otherwise authorized therein.

Further, granting of these exemptions in no way is to be construed as allowing a carrier to operate services that it could not otherwise operate. Spirit and AirTran must still meet all the requirements of the Department of Transportation, the Federal Aviation Administration, and all other statutes and regulations governing air transportation.

This order is issued under authority delegated in 49 C.F.R. § 1.56(a).

ACCORDINGLY,

1. The Department grants two slot exemptions from 14 C.F.R. Part 93, Subparts K and S, to Spirit Airlines, Inc., to enable it to provide one nonstop round trip a day between Ronald Reagan Washington National Airport and Fort Lauderdale, Florida;
2. The Department grants two slot exemptions from 14 C.F.R. Part 93, Subparts K and S, to AirTran Airways, Inc., to enable it to provide one nonstop round trip a day between Ronald Reagan Washington National Airport and either Jacksonville, Florida, or Milwaukee, Wisconsin;
3. As back-up to the slot exemptions awarded in ordering paragraphs 1 or 2, above, if either Spirit Airlines, Inc. or AirTran Airways, Inc. does not inaugurate service, the Department grants the slot exemptions from 14 C.F.R. Part 93, Subparts K and S, to Midwest Airlines, Inc., to enable it to provide one nonstop round trip a day between Ronald Reagan Washington National Airport and Milwaukee, Wisconsin, or Kansas City, Missouri;
4. The Department directs Spirit Airlines, Inc. and AirTran Airways, Inc. to file in Docket DOT-OST-2000-7182, no later than seven business days after the service date of this Order, their proposed flight schedules and effective dates of operations authorized by this Order. Further, Spirit Airlines, Inc. and AirTran Airways, Inc. must commence their proposed service no later than May 3, 2008. The slot exemptions granted must be conducted with Stage 3 aircraft, may not be used for operations between the hours of

10:00 p.m. and 6:59 a.m., and may not increase the number of operations at Ronald Reagan Washington National Airport in any one-hour period during the hours between 7:00 a.m. and 9:59 p.m. by more than three operations. Spirit Airlines, Inc. and AirTran Airways, Inc are advised to exercise maximum flexibility in their proposed operating times to ensure compliance with these limits;

5. The back-up selection of Midwest Airlines, Inc., would not become effective unless (1) either Spirit Airlines, Inc. or AirTran Airways, Inc. notifies the Department, that it has decided not to accept the two slot exemptions awarded in paragraphs 1 or 2 above; and (2) Midwest Airlines, Inc., files in Docket DOT-OST-2000-7182, its proposed flight schedule and effective date of operations authorized by this Order. Further, Midwest Airlines, Inc. must commence its proposed service by May 3, 2008, or sixty days after either Spirit Airlines, Inc.'s or AirTran Airways, Inc.'s notification referenced in condition (1) above, whichever is later. The slot exemptions granted must be conducted with Stage 3 aircraft, may not be used for operations between the hours of 10:00 p.m. and 6:59 a.m., and may not increase the number of operations at Ronald Reagan Washington National Airport in any one-hour period during the hours between 7:00 a.m. and 9:59 p.m. by more than three operations. Midwest Airlines, Inc. is advised to exercise maximum flexibility in its proposed operating times to ensure compliance with these limits;

6. We grant all motions to file otherwise unauthorized documents;

7. Except as otherwise granted, we deny all other applications for exemptions from 14 C.F.R. Part 93, Subparts K and S, filed in this docket;

8. The authorities granted under these exemptions are subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use-or-lose requirements; and

9. We will serve this order on all parties in Docket DOT-OST-2000-7182 and the FAA Slot Administration Office. We direct Spirit Airlines, Inc. and AirTran Airways, Inc. to contact the Federal Aviation Administration's Slot Administration Office prior to start-up in order to complete the assignment of the slot exemption times and identification numbers.

By:

MICHAEL W. REYNOLDS

Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

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