

U.S. Department
of Transportation

Federal Aviation
Administration

July 13, 1990

Exemption No. 5133A
Regulatory Docket No. 26101

Mr. John E. Gillick
Mr. Robert Reed Gray
Ms. Constance O'Keefe
Attorneys for America West Airlines, Inc.
Winthrop, Stimson, Putnam & Roberts
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Dear Messrs. Gillick and Gray and Ms. O'Keefe:

This is in response to your petition on behalf of America West Airlines, Inc., to extend Exemption No. 5133. Under this exemption, America West is authorized to operate four special slots at Washington National Airport which were formerly operated by Braniff Airlines under Federal Aviation Administration (FAA) Exemption No. 3927.

The Exemption No. 5133 was issued by the FAA on January 12, 1990, in consideration of the Department of Transportation's policy of promoting competition in the airline industry and Section 102 of the Federal Aviation Act of 1958, as amended. The request by America West for an extension of the original exemption was received by the FAA on June 4, 1990, and published in the Federal Register on June 18, 1990 (55 FR 24681).

The FAA received two comments on America West's petition for extension of the original exemption. Neither commenter supported the petition. Midwest Express opposed extension of the exemption based on the grounds that America West has had sufficient time in which to obtain other permanent slots at National, thereby eliminating any question of hardship to the flying public. In this regard, the FAA notes that no slot lotteries have been held, pursuant to 14 CFR Section 93.225, at National Airport since the original exemption was issued on January 12, 1990. Midwest Express further urged that the four former Braniff exemption slots be considered part of the permanent air carrier slots at National and allocated by lottery in accordance with the FAA regulations. As noted in the January 12 Partial Grant of Exemption, the FAA does not consider the four special slots to be

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part of the permanent air carrier slot pool at National Airport, and allocation of the four slots by exemption continues to be appropriate. The Metropolitan Washington Airports Authority commented that the requested extension, like the original temporary grant of the four Braniff slots, would not be consistent with the Metropolitan Washington Airports Act of 1986. The Authority urged that America West be granted slots at National only through the existing market mechanisms (the buy-sell rule).

In support of its petition, America West filed comments outlining its basis for the request. American West pointed to the number of enplaned passengers on its flights from National as demonstration of the number of individuals and airports which would be inconvenienced by the cancellation of the flights. Since America West holds no permanent slots at National, its service between National and various airports, such as Omaha and Wichita, would be cancelled if the exemption were not extended. The Department supports enhanced competition in the airline industry and expansion of services to the traveling public. However, as noted in the original grant, specials slots allocated by Exemption No. 5133 are not associated with any particular market, and grant of the exemption does not assure service to particular cities. American West noted the existence of a Department of Transportation rulemaking project to consider the need for changes to the slot allocation rules.

In consideration of the above, I find that the justification for Exemption No. 5133 remains valid, and, therefore, that a limited extension of the exemption for a 1-year period under the same terms as Exemption No. 5133 is justified. I find that grant of Exemption No. 5133A extending the terms of Exemption No. 5133 is in the public interest and would have no adverse effect on safety. Therefore, pursuant to the authority contained in Sections 307 and 313 of the Federal Aviation Act of 1958, as amended, America West is granted a limited extension of Exemption No. 5133.

This exemption expires July 15, 1991, unless sooner superseded or rescinded.

Sincerely,

/s/ James B. Busey
Administrator

cc: Edward S. Faggen
Legal Counsel
Metropolitan Washington Airports Authority

Bradford L. Bates
Transportation Counsel
Midwest Express Airlines, Inc.