



Order 97-10-16

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

**SERVED: October 24, 1997**

Issued by the Department of Transportation  
on the 24<sup>th</sup> day of October, 1997

Application of

**SIMMONS AIRLINES, INC. D/B/A AMERICAN EAGLE**

for an exemption from 14 CFR Part 93, Subparts K and S  
pursuant to Section 206(b)(1) of the Federal Aviation  
Administration Authorization Act of 1994

**Docket OST-95-368**

Application of

**TRANS STATES AIRLINES, INC.**

for an exemption from 14 CFR Part 93, Subparts K and S  
pursuant to Section 206(a)(2) of the Federal Aviation  
Administration Authorization Act of 1994

**Docket OST-97-2368**

Application of

**RENO AIR, INC.**

for an exemption from 14 CFR Part 93, Subparts K and S  
pursuant to Section 206(c)(1) of the Federal Aviation  
Administration Authorization Act of 1994

**Docket OST-97-2771**

**ORDER GRANTING AND DENYING APPLICATIONS FOR  
SLOT EXEMPTIONS AT CHICAGO O'HARE AIRPORT**

After considering the applications for exemptions from 14 CFR Part 93, Subparts K and S, for slots at Chicago's O'Hare Airport filed by Reno Air, Trans States, and Simmons, the Department has decided to grant two additional slot exemptions to Reno Air for service in the Reno, NV-O'Hare market; and eight slot exemptions to Trans States Airlines ("Trans States") on an experimental basis. We find that granting these slot exemptions is in the public interest and meets the statutory "exceptional circumstances" test. Grant of

the exemptions is conditioned on their being used solely for the markets designated in the carriers' applications. The Department has also decided to deny the application of Simmons Airlines d/b/a American Eagle ("Simmons") for six slot exemptions to serve the London, Ontario-Chicago O'Hare market, and the balance of Trans States' application for an additional 24 Chicago O'Hare slot exemptions, for the reasons set out below.<sup>1 2</sup>

## **REGULATORY AND LEGISLATIVE BACKGROUND**

The High Density Rule, 14 CFR Part 93, Subparts K and S, designates Chicago's O'Hare Airport as a high density traffic airport and prescribes air traffic rules applicable to that airport. These regulations limit the hourly number of allocated Instrument Flight Rule (IFR) operations (take-offs and landings) that may be reserved for specified classes of users. The authority to conduct a single operation (either a take-off or landing) at a high density traffic airport is commonly referred to as a "slot".

On August 23, 1994, Congress enacted the Federal Aviation Administration Authorization Act of 1994 which, among other things, authorized the Department to grant exemptions from the High Density Rule for the provision of basic Essential Air Service (EAS) at eligible communities, for international air service, and for service by "new entrant" carriers.<sup>3</sup> As applied to Chicago O'Hare and as relevant here, the Act provides for exemption authority as follows<sup>4 5</sup>:

Section 41714(a) states that, with regard to EAS, the Department must ensure that an air carrier has sufficient operational authority at a high density airport to provide the required service. It also states that the operational authority shall allow flights at reasonable times taking into account the needs of passengers with connecting flights.

Section 41714(b) authorizes the Department to grant exemptions, based on a public interest finding, to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft. Additional provisions apply regarding slot withdrawals from air carriers for use by foreign air carriers.

Section 41714(c) authorizes the Department to grant exemptions to new entrant air carriers, based on a public interest finding and under circumstances determined by the Secretary to be exceptional.

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<sup>1</sup> As requested by Western Pacific Airlines by letter dated October 16, 1997, we are holding in abeyance Western Pacific's application in Docket OST-95-277 for four slot exemptions at O'Hare for service in the Colorado Springs, CO-O'Hare market pending further notification by the applicant.

<sup>2</sup> The Department will rule in later orders on applications filed more recently for O'Hare slot exemptions.

<sup>3</sup> Codified as 49 U.S.C. § 41714(a), § 41714(b) and § 41714(c), respectively.

<sup>4</sup> On September 30, 1996, President Clinton signed into law the Department's 1997 Appropriations Act. The Senate Report that accompanied the bill contained language expressing the Senate's desire that the Department enable increased access to O'Hare for small and medium-sized communities. The report directed the Department to make the fullest possible use of existing exemption powers to maintain and improve Essential Air Services without significantly increasing funding requirements, and to improve service to nonhub cities as well. S. REP. No. 325, 104<sup>th</sup> Cong., 2d Sess., at 11-12 (1996).

<sup>5</sup> For these purposes, a "new entrant air carrier" may generally be defined as an air carrier or commuter operator that holds or operates (or held or operated, since December 16, 1985) fewer than twelve slots at the airport in question, not including international, EAS, or certain nighttime slots at Washington National or LaGuardia Airports. See 49 U.S.C. §41714(h).

Among the three applications listed above, Reno Air is seeking authority as a new entrant carrier; Simmons is requesting slots for international air service; and Trans States cites the essential air service provision as the statutory basis for its application.<sup>6</sup>

### **FRAMEWORK FOR EVALUATING SLOT EXEMPTION REQUESTS BY NEW ENTRANT AIRLINES**

In general, the Act requires that an application be in the public interest and, for a new entrant carrier, that it demonstrate that there are exceptional circumstances. Since the Act was passed, the Department has approved two slot exemption applications from new entrant airlines, while denying two other applications. For those exemptions that were granted, the Department found that exceptional circumstances existed where the applicant's proposal would address a significant service void. The Department applied that standard narrowly, with the goal of confining our use of the exemption authority to produce the maximum public benefits and to preserve the overall integrity of the High Density Rule.<sup>7</sup> Thus, the Department denied two new entrant applications based on a determination that the applications did not meet the exceptional circumstances criterion.<sup>8</sup>

Subsequently, a number of airlines filed new slot exemption applications. We have reexamined our decisional standards in the context of those requests and in the light of growing interest expressed by congressional, community and airline parties, particularly with regard to the need for a competitive spur in certain markets.

In our past approvals and denials of slot exemptions, we have recognized as an exceptional circumstance the existence of markets that were demonstrably large enough to support nonstop service but had no nonstop service. Here, we have determined to define "exceptional circumstances" more broadly by recognizing the need for competitive service in a market, especially low-fare competitive service. Airlines operating as low-fare carriers provide substantial public benefits by making low fares available to many more travelers and thereby greatly increasing the size of the market.<sup>9</sup> In expanding the range of exceptional circumstances, we are concurring with the concerns that have been raised by members of Congress, numerous community groups, new entrant airlines, the General Accounting Office and within the Department about the state of competition in the airline industry. As an example, in an October 1996 study entitled Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets ("GAO Report"), the General Accounting Office found that "control of slots by a few airlines greatly deters entry at key airports in Chicago, New York, and Washington."<sup>10</sup> The report further pointed out that such barriers to entry result in higher fares, citing the fact that average fares at Chicago O'Hare Airport were 24 percent higher than the average for 33 other large airports during 1995.<sup>11</sup>

We find that substantial benefits can be achieved through increasing competition at slot-controlled airports in situations where consumers would be able to obtain significantly lower fares in noncompetitive or

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<sup>6</sup> Trans States also cited Order 96-10-42 and Order 97-1-7 as additional support.

<sup>7</sup> Order 94-9-30 and Order 96-5-33.

<sup>8</sup> Order 95-4-33 and Order 95-8-38.

<sup>9</sup> See the Department's study entitled The Low Cost Airline Service Revolution, April 1996.

<sup>10</sup> Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets, October 1996, page 4.

<sup>11</sup> Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets, October 1996, page 21.

underserved markets. Therefore, we find that applications proposing to introduce such service can meet the exceptional circumstances criterion of the legislation.

Consistent with our continuing goal of achieving maximum public benefits through the grant of slot exemptions, we will also clarify other aspects of our decisional guidelines for determining public interest and exceptional circumstances. First, we would favor proposals that are based on jet aircraft that meet Stage 3 noise requirements<sup>12</sup>; second, there should be a reasonable expectation that the proposed service would be operationally and financially viable; third, we will place a premium upon the introduction of (a) new nonstop services where none exist and (b) new competitive services, especially by applicants that have the demonstrated potential to offer low-fare competition, where there is single carrier service and the market could support entry or where existing services do not produce meaningful price competition. Even though we are expanding the use of our exemption authority, it is clear that we cannot grant all of the applications that might be made under this statute. We emphasize, therefore, that the number of available slot exemptions is very limited, and we may have to apply our guidelines on an increasingly more restrictive basis or even deny applications that otherwise meet the standards set forth in this order.

In generally requiring the use of jet aircraft for all slot exemption operations (except essential air service), the Department is recognizing the public benefit of deploying scarce resources in a manner that makes them available to the highest number of users. Favoring the use of Stage 3 aircraft is consistent with language in those sections of the Act pertaining to essential air service, international air service, and the special rules that are applicable to Washington National Airport, although the requirement was omitted from the provision applicable to new entrant carriers. Thus, our decision that the public interest requires these aircraft for all slot-exemption approvals is based on the overall emphasis on Stage 3 equipment in most of the provisions of the Act and in similar provisions of the Airport Noise and Capacity Act of 1990, which called for the elimination of Stage 2 aircraft by December 31, 1999.

In adopting this policy framework, the Department is expressing its agreement with many of the concerns raised by a number of congressional, civic and airline parties, as highlighted by the GAO Report noted above.<sup>13</sup> The Department had made clear its support for increased competition and its willingness to invoke available tools to promote new competition when it stated in its January 6, 1997, response to the GAO Report that "...the Department intends to be more receptive to considering competition as a factor in granting slot exemptions to new entrants under the 'exceptional circumstances' criterion."<sup>14</sup>

#### **APPLICATION OF RENO AIR**

On July 30, 1997, Reno Air submitted an exemption application to enable it to operate one additional round-trip flight between Chicago O'Hare Airport and Reno, NV. The Airport Authority of Washoe County, the owner and operator of Reno/Tahoe International Airport and Reno Steed Airport, and the Reno/Tahoe Air Service Task Force (collectively the "Reno/Tahoe Parties") filed an answer in support of Reno Air's application on August 14, 1997. On August 22, 1997, United filed a motion for leave to file a response, and, on September 2, Western Pacific filed an answer in this docket requesting that the

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<sup>12</sup> 14 CFR Part 36, Subpart C and Appendix C.

<sup>13</sup> We are concurrently issuing an order on applications for slot exemptions at New York's LaGuardia Airport which includes an identical explanation of this decisional framework.

<sup>14</sup> Based on the view that slots are barriers to entry, the GAO Report also recommended that the Department create a pool of available slots by periodically withdrawing some slots that had been grandfathered to the major airline incumbents, taking into account the investments made by those airlines at each of the slot-controlled airports, and hold a lottery to distribute them in a way that increases competition. The Department is assessing this course as well as other slot-related options as a means of stimulating new price competition.

Department deny United's motion insofar as it refers to Western Pacific's application. On September 4, Reno Air filed a motion for leave to reply to United. On that same date, the Air Carrier Association of America ("ACAA") filed a motion for leave to file an answer and reply. The City of Chicago filed a motion for leave to file a response in support of the application and urged the Department to fashion a more transparent, timely, efficient and effective process in dealing with slot exemption applications for new entrant carriers. We hereby grant the motions of all parties in this docket for leave to file a pleading.

In support of its application, Reno Air stated that many of the findings on which the Department based its previous grant of slot exemptions for the Reno-Chicago O'Hare market continue to be applicable -- Reno Air's proposed additional service would be in the public interest, and the economic characteristics of the market are unique and meet the exceptional circumstances criterion. Reno Air asserted that slots at O'Hare were not and are not available for purchase at any price. The applicant also claimed that, since its inauguration of Reno-O'Hare service almost three years ago, that market has more than doubled in size, increasing from a total of 85 passengers per day in each direction to 174 passengers per day. As a result of the new service, Reno has also become an important connecting point for travelers willing to accept connecting service in exchange for low fares, according to Reno Air.

The Reno/Tahoe Parties described the history of nonstop service in the Reno-O'Hare market and confirmed the success of Reno Air's service. They also stated that the economic future of the Reno/Tahoe region depends upon the availability of nonstop air service to important midwest and east coast gateways. Because of the numerous other alternative destinations for leisure and discretionary travelers, the Reno/Tahoe Parties considered nonstop air service as essential for Reno to compete.

In opposing this application, United asserted that Reno Air's circumstances are no longer unique and that Reno Air faces the same problems that other carriers operating at O'Hare face when trying to expand. United argued that Reno Air should have to purchase slots in order to increase service and that the Department, by subsidizing the efforts of select carriers, would distort the marketplace. United continued to question the applicant's characterization of exceptional circumstances and argued that approval of the application would establish by fiat that very ordinary circumstances are exceptional and would therefore invite a flood of applications.

#### **APPLICATION OF SIMMONS AIRLINES D/B/A AMERICAN EAGLE**

On August 2, 1995, Simmons filed an exemption application to enable it to operate three daily nonstop round-trip flights between Chicago O'Hare Airport and London, Ontario with Saab 340B aircraft. On August 17, 1995, United filed in opposition to the petition while the City of Chicago filed in support of it. Simmons filed a reply to both answers on August 28, 1997, and, on the same date, United filed a motion for leave to file an unauthorized reply to Simmons and the City of Chicago. The Department hereby grants the motion of United to file an unauthorized reply in this docket.

In its application, Simmons stated that its proposed flights will serve the public interest by offering an important new air service option to the traveling and shipping public in a market that does not have nonstop service. It claimed that its service will reduce travel time between O'Hare and London, Ontario, by 50 percent in comparison to the online connecting service currently operated via Detroit, and that it will increase competition in that market. Citing the goals of facilitating trade, tourism and investment from the 1995 air transportation agreement between the United States and Canada, Simmons asserted that its proposed service represented an important international opportunity for Simmons. In fact, the applicant stated that, "The bilateral agreement provided Canadian carriers with additional slots at O'Hare Airport so

that they could offer service in this important market [United States-Canada].”<sup>15</sup> Simmons continued, “However, opportunities for enhanced U.S. carrier transborder service will not equal those for Canadian carriers in the absence of a favorable ruling on this petition for exemption. The playing field is not level for Chicago-based U.S. commuter carriers, which make full use of their available domestic slots but still seek to enter the Canadian market. The Secretary can correct this imbalance by exercising the statutory exemption authority recently enacted by Congress.”<sup>16</sup>

United opposed Simmons' application on the grounds that the slot exemption provisions of the Act represented an extremely limited pool of additional capacity and were not intended to benefit a carrier with large slot holdings such as American, Simmons' code-share parent. United argued that the Act's provisions for slot exemptions for international service were intended to apply to carriers that have no alternative opportunities for access to O'Hare and that current slot policy requires carriers holding 100 or more slots at O'Hare to furnish slots for their international service from their own holdings. United maintained that grant of Simmons' application would have ramifications far beyond the intent of Congress and would invite a flood of new applications.

The City of Chicago supported Simmons' application and arguments. It contended that the application satisfies the public interest standard and the Stage 3 requirement and presented an opportunity to take advantage of the 1995 bilateral agreements between the United States and Canada. Grant of the exemption request, according to the City of Chicago, “will help to offset the arguable imbalance created by the grant of ten slots without charge for Canadian carriers as a result of the bilateral agreement.” It stated further that, “allowing U.S. air carriers to avail themselves of the foreign air transportation exemptions assures equality as foreign air carriers begin to request exemptions for new service to Chicago.”<sup>17</sup>

#### **APPLICATION OF TRANS STATES AIRLINES**

Trans States filed an application on April 21, 1997, for a total of 32 slot exemptions to enable it to operate four daily nonstop round-trip flights, using 30-seat Jetstream J-41 aircraft, between Chicago O'Hare Airport and each of the following non-hub cities: Asheville, NC, Chattanooga, TN, Roanoke, VA and Tri-City Airport (Bristol, VA, Johnson City, TN and Kingsport, TN).<sup>18</sup> The following civic/community/local airport parties filed comments in support of the application on the dates shown: the City of Roanoke (May 6, 1997), the Roanoke Regional Airport Commission (May 7, 1997), the Chattanooga Metropolitan Airport Authority (May 7, 1997), the Tri-Cities Airport Commission (May 8, 1997) and the Asheville Regional Airport Authority (May 14, 1997). On October 9, 1997, Simmons filed a motion for leave to file a late pleading and to answer the application of Trans States. Simmons stated that, should the Department find it necessary to choose between the proposals of Trans States and Simmons for service between O'Hare and Chattanooga and Roanoke, the Department should choose Simmons' proposal.

We will not consider here Simmons' request that we select it rather than Trans States to be awarded slot exemptions for service between O'Hare and either Chattanooga or Roanoke. Trans States' application was filed in April and answers were due in May. Simmons' instant application was not filed until four months later, after the Department had fully considered Trans States' proposal and had publicly made it known

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<sup>15</sup> Application dated August 2, 1995, at page 4.

<sup>16</sup> Application dated August 2, 1995, at page 4.

<sup>17</sup> Motion and answer of the City of Chicago, August 17, 1995, at 7.

<sup>18</sup> Trans States' proposed schedules include four aircraft departures from O'Hare and four aircraft arrivals at O'Hare for each of the four non-hub cities at various times throughout the slot-controlled period. The carrier's request therefore applies to a total of 32 slots during the slot-controlled hours.

that our decision was imminent. Simmons, moreover, provided no reason at all for its late filing. For these reasons, we deny Simmons' motion of October 9 to file a late pleading in this docket. We will consider Simmons' application later.

Trans States noted that none of the four cities included in the application has direct access to O'Hare despite the fact that Chicago ranks as the second or third most popular destination for local origin and destination passenger traffic from these points. The applicant also stated that, in 1995, these four cities generated, in the aggregate, about 70,000 local Chicago passengers despite the absence of single-plane service. Trans States commented that its proposed nonstop service would provide significant improvement over time-consuming connecting service over Cincinnati or Charlotte, and estimated that passenger traffic would more than double, to 164,000 passengers, in the first 12 months of its operations.

Trans States' application received strong support from the local civic and community interests and the regional airports. Among other things, these parties provided detailed information about the size of the population in their regions, changes in air service and historical travel patterns, and the economic characteristics of their regions. The civic parties asserted that all of these factors support the need for nonstop service to O'Hare.

## **DECISION**

### **APPROVAL OF THE APPLICATION OF RENO AIR**

The Department has decided to grant Reno Air's application for two slot exemptions at O'Hare for Reno-O'Hare service. We find that the application is in the public interest and meets our guidelines for the exceptional circumstances criterion as we have outlined in this order.

Grant of Reno Air's request is fully consistent with the Department's findings in Order 94-9-30. In that order we recognized the substantial potential demand in the Reno-O'Hare market and authorized a phased-in grant of three slot exemptions initially, followed by two more four months later, enabling a total of three round trips. We note again that the Reno-O'Hare market is the City of Reno's largest market in the midwest, and O'Hare is now the City's 11th largest passenger market, up from 16th prior to the start of Reno Air's direct service. The market has responded to Reno Air's service and low fares by more than doubling in size over not quite three years, and clearly will support the additional service contemplated by the pending request. In view of these considerations, as well as the carrier's continued use of Stage 3 jet aircraft, we find that Reno Air's exemption request for two additional O'Hare slots for the Reno-O'Hare market is a logical extension of the exceptional circumstances findings we made in Order 94-9-30, and we find it consistent with the expanded guidelines outlined in this order.

United did not supply empirical evidence to support its assertion that Chicago is one of the nation's most competitive aviation markets. Clearly, it is not supported by the findings in the GAO Report that average fares at O'Hare were 24 percent higher than average fares at 33 other large airports. While the slot rules limiting operations at O'Hare cause fares to be higher at that airport, clearly the high level of fares in many O'Hare markets reflects the lack of low-fare competition as well. To illustrate, we examined passenger and fare data from the Department's Origin and Destination Survey of Passenger Traffic for the third quarter of 1996. We focused on the 24 largest Chicago city-pairs that were within 700 miles of Chicago and that had nonstop service from two or more airlines. All 24 city-pairs were served on a nonstop basis to O'Hare by two or more network carriers. Of the 24 markets, 12 were also served on a nonstop basis to Midway by a low-fare airline. In those 12 markets, the average fare for passengers using O'Hare was \$113. The other 12 city-pairs were served by two or more network airlines on a nonstop basis to O'Hare only with no

Midway service by low-fare airlines. In the latter 12 markets, the average fare for passengers using O'Hare was \$220 or nearly twice as high as the fares for the markets where there was low-fare competition at Midway. While the presence of nonstop service by two or more airlines in a market may indicate competition on a service basis, the data clearly demonstrate the importance of low-fare competition. These observations reinforce the case for our invoking the exemption authority, as we are in this order, to enable new price competition such as we expect Reno Air to provide.

United has argued that if competitive harm is being felt by any carrier it is felt by United itself as the only airline whose largest domestic hub is slot-controlled and where its ability to expand and enhance the efficiencies of its network is restricted by the High Density Rule. We disagree. More to the point, we note that from 1985 to the present United has been able to increase its number of air carrier slots at O'Hare from 597 to 760, or an increase of 27 percent. New entrant airlines, on the other hand, have had little, if any, ability to acquire slots at slot-controlled airports. Since 1985, carriers other than United and American have experienced a decrease in O'Hare slots of 22 percentage points -- from 34 percent of all O'Hare air carrier slots in 1985 to only 12 percent today. Thus, contrary to United's complaint, data on slot holdings and on average fares in individual markets tend to support the view that slot constraints at O'Hare have been a barrier to price-competitive new entry.

Moreover, United's contention that slot exemptions constitute a subsidization of the applicant carrier is directly at odds with the history of the High Density Rule and, more specifically, the Buy-Sell Rule, through which United and other major carriers obtained voluminous slot holdings at no cost. United itself is the beneficiary of the economic rents that are reflected in higher fares as well as the often cited value that has accrued over time to controlled slots, ranging as high as several million dollars per slot. Although realistically United can now obtain additional O'Hare slots only through the marketplace, it received its very substantial initial allotment of slots at O'Hare without charge under the grandfather provisions of the Buy-Sell Rule. In that context, it is not reasonable to suggest, by comparison, that granting a very small number of slot exemptions to a new entrant airline should be regarded as an unfair subsidy.

#### **PARTIAL APPROVAL OF TRANS STATES' APPLICATION**

We have decided to grant a portion of Trans States' request, a total of eight slot exemptions, on an experimental basis for a two-year period. Trans States will have the option of using them to provide nonstop service in the market or markets of its choice among the four its application contemplated: Asheville, Chattanooga, Roanoke and Tri-Cities. Thus, its options will range from using two slot exemptions for one daily nonstop round-trip flight to each of the four cities to using all eight slot exemptions for four daily nonstop round-trip flights to one city, or any variation within that range.

We recognize that Trans States' application does not meet all of the criteria set forth in this order for determining whether an application satisfies the exceptional circumstances standard. Trans States plans to operate with 30-seat turboprop aircraft, not with jet aircraft, and to that extent its operating proposal would not benefit the maximum number of consumers. However, the grant of Trans States' application on an experimental basis will advance an important Congressional goal, using slot exemptions to promote service to medium-sized communities. We recognize that some medium-sized communities have not benefited from airline deregulation as much as would be expected by the size of their demand for air service. Congress similarly has been concerned about inadequate service to some medium-sized communities, as shown by the language in the Senate committee report accompanying the Department's 1997 appropriations act, cited in footnote 4 of this order. The report urges us to use our exemption authority to improve service to non-hub communities.

Earlier this year, the Department of Transportation participated in a conference at which a number of communities in the southeastern states discussed ways that they might help themselves achieve air service improvements.<sup>19</sup> We are supportive of that initiative and we regard Trans States' application as a potential avenue in that respect.

Trans States proposes to provide service between O'Hare and several medium-sized communities which currently have no single-plane service to O'Hare. Its proposal thus clearly would further the Congressional goal of enabling such communities to obtain convenient service to slot-controlled airports. However, certain features of its proposal prevent us from finding that it would be in the public interest to grant it the large number of slot exemptions required to carry out its proposal. Trans States plans to operate small non-jet aircraft on routes with a stage length of 481 to 536 miles. Its service would be successful only if travelers find it relatively attractive compared to the connecting services offered by other airlines operating with jet aircraft. To give Trans States the opportunity to show that its proposed service will be viable and attract consumers, we will grant it eight slot exemptions for a two-year period. Our partial approval of its application, limited both in duration and the number of slots involved, will give the applicant and us an opportunity to test the viability of such operations without committing an undue number of scarce slot exemptions.

During the two-year period, we will monitor Trans States' service and determine whether the airline's performance and traffic response justify extending its slot exemptions for a longer period. If we decide not to extend the exemptions, we will provide Trans States with 90 days advance notice that its exemptions will expire.

#### **DENIAL OF SIMMONS' APPLICATION**

The Department has decided to deny the application of Simmons for six slot exemptions at O'Hare for service in the London, Ontario-O'Hare market. Although grant of the application may provide public benefits, the number of slot exemptions that we are willing to consider granting is very limited and it is our firm policy to consider other factors intended to ensure the most efficient use of slots. In this instance, Simmons' proposal contemplates the use of small, non-jet aircraft in a relatively small international market.<sup>20</sup> Simmons has provided no supporting evidence to enable us to quantify the potential benefits of its proposal. Furthermore, the heightened concern about service to small and medium-sized U.S. cities, reflected in the Senate Report mentioned previously, and in recent congressional hearings, indicates a congressional desire for the Department to place a special emphasis on domestic requirements especially considering the limited availability of slots. In these circumstances we are not able to find that the grant of Simmons' application would result in an acceptably productive deployment of the slots it is requesting.

We also agree with United's comment that the exemption powers conferred upon the Department under the Act contemplated a limited pool of additional capacity and was not intended to benefit an airline group with large slot holdings such as American and its corporate affiliates. Similarly, we agree with United that the slot exemptions for international service were intended to apply to carriers that have no alternative opportunities for access to O'Hare and that current slot policy requires carriers holding 100 or more slots at O'Hare to furnish slots for their international service from their own holdings.

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<sup>19</sup> The "National Air Service Roundtable" conference was held in Chattanooga on February 7, 1997, prior to Trans States' application.

<sup>20</sup> Based on the Department's Origin and Destination Survey of Passenger Traffic, the number of passengers was less than 600 per quarter during the three year period ending September 30, 1996.

Simmons' potential decision to transfer a number of its own slots from domestic markets involving small or medium size communities in order to serve the London, Ontario, market is within its prerogatives. The Department recognizes that carriers frequently find themselves in the position of having to make such market-based allocation decisions. To the extent that such decisions may portend a particular hardship for individual communities, it has been our experience that carriers weigh those considerations carefully and attempt to work with the affected parties toward a mutually acceptable outcome.

Both Simmons and the City of Chicago indicated that an inequity or imbalance resulted from the granting of slots to Canadian carriers in response to the 1995 agreement between the United States and Canada and that grant of exemption authority for this application would begin to correct that inequity. The Department disagrees with this characterization. While it is true that we provided slots to Canadian carriers at the time of the agreement in order to facilitate the inauguration of service, the total number granted was extremely small in comparison to the very large number of slots that U.S. carriers were already holding and operating at O'Hare.

### **ENVIRONMENTAL IMPACT**

The additional flights operated as a result of the slot exemptions granted in this order represent only a small percentage of the total current operations at these airports and represent a *de minimis* increase in noise contours. The Department has performed an Environmental Assessment of these actions and concluded that no significant environmental impact would be experienced. The complete Environmental Assessment is available in Dockets OST-95-368, OST-97-2368 and OST-97-2771.

### **FUTURE CHANGES**

As the FAA slot regulation makes clear “[s]lots do not represent a property right but represent an operating privilege subject to absolute FAA control [and] slots may be withdrawn at any time to fulfill the Department’s operating needs...” 14 CFR section 93.223(a). This order should not be construed as conferring on these carriers any ability to sell, trade, transfer, or convey the operating authorities granted by the subject exemptions.

The Department is granting slot exemptions by this order on the ground that the services proposed by the applicants meet the statutory public interest and exceptional circumstances criteria. The Department reserves the right to modify or terminate such exemption authority if the Department determines that, due to changed circumstances, these criteria are no longer satisfied by an applicant’s use of the authority.

This order is issued under authority delegated in 49 CFR 1.56(I).

**ACCORDINGLY,**

1. The Department grants an exemption from 14 CFR Part 93, Subparts K and S, to Reno Air to enable it to operate one arriving flight and one departing flight from Chicago O'Hare Airport during the slot-controlled period of 6:45 A.M. to 9:15 P.M. This authority is in addition to the authority granted in Order 94-9-30 and may be used only to provide nonstop service between Reno, NV and Chicago O'Hare Airport;
2. The Department grants a temporary exemption from 14 CFR Part 93, Subparts K and S, to Trans States Airlines to enable it to operate four arriving flights and four departing flights at Chicago O'Hare Airport during the slot-controlled period of 6:45 A.M. to 9:15 P.M. This temporary operating authority is effective for a two-year period from the effective date of this order or until further order of the Department, whichever occurs later, and may be used only to provide nonstop service between Chicago O'Hare Airport and one or more of the following non-hub cities: Asheville, NC, Chattanooga, TN, Roanoke, VA and Tri-City Airport (Bristol, VA, Johnson City, TN and Kingsport, TN);
3. Except to the extent granted in ordering Paragraph 2, the Department denies the remainder of the application of Trans States Airlines for temporary operating authority for 24 additional arriving and departing flights at Chicago O'Hare;
4. The Department denies the application of Simmons Airlines d/b/a American Eagle for exemption authority to enable it to operate six slots for three round-trip flights between Chicago O'Hare and London, Ontario;
5. The Department directs Reno Air and Trans States Airlines to contact the Airspace and Air Traffic Law Branch of the Office of the Chief Counsel in the Federal Aviation Administration as soon as possible following the issuance of this order to determine with the Federal Aviation Administration the actual times for arriving and departing flights as authorized by this order;
6. The authority granted under these exemptions is subject to all of the other requirements delineated in 14 CFR Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use-or-lose requirements; and
7. We will serve this order on all persons on the service lists in Dockets OST-95-368, OST-97-2368, and OST-97-2771.

By:

CHARLES A. HUNNICUTT  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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<http://dms.dot.gov/general/orders/aviation.html>*