



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, 1999

Applications of

JAPAN AIRLINES COMPANY, LTD.

Dockets OST-1998-4890

ALL NIPPON AIRWAYS CO., LTD.

OST-1998-4902

for exemptions from Subparts K and S of
Part 93 of Title 14, Code of Federal Regulations
pursuant to 49 U.S.C. § 41714(b)(1)

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

APPLICATIONS

Japan Airlines Company, Ltd. (JAL)

On December 9, 1998, JAL requested an exemption from Subparts K and S of 14 C.F.R. Part 93 to the extent necessary to enable it to provide foreign air transportation between Chicago, Illinois (O'Hare International Airport), and Osaka, Japan (Kansai Airport), using Stage 3 aircraft.¹ The applicant says that it plans to operate five round-trip flights per week. JAL intends to begin these operations on or about May 1, and continue them throughout the remainder of the 1999 summer season.

In support of its request, JAL states that its application is consistent with the U.S.-Japan Memorandum of Understanding (MOU) relating to the 1952 Civil Air Transport Agreement between the two countries.² JAL says that its proposed service will restore direct service between Chicago and Osaka;³ and that the request is consistent with the public interest and with past exemption actions taken by the Department.

¹ JAL holds operating authority from the Department to conduct scheduled foreign air transportation of persons, property and mail between any point or points behind Japan, any point or points in Japan, any intermediate point or points, any point or points in the United States, and any point or points beyond; and to conduct charters pursuant to 14 C.F.R. Part 212. See Order 98-4-17 (Docket OST-98-34-84).

² An Exchange of Notes dated April 20, 1998, formally concluded the 1998 MOU.

³ JAL notes that United Air Lines, Inc. discontinued its daily nonstop service in the market in October 1998.

JAL states that prior to October 15, 1998, it filed a timely request with the Federal Aviation Administration (FAA) for new international takeoff and landing slots at O'Hare Airport for the summer 1999 season, consistent with 14 C.F.R. 93.217(a)(6). JAL says that it has been notified by the FAA that its request is pending and that it is unlikely to be approved, since JAL's request and those from other airlines for new or additional slots at O'Hare Airport exceed the total number of slots that the FAA can allocate under 14 C.F.R. 93.217 (see 49 U.S.C. § 41714(b)(2)). JAL maintains that absent the slot allocation by the FAA or an exemption by the Department, it will be unable to implement the economic authority granted earlier to it by the Department.

All Nippon Airways Co., Ltd. (ANA)

On December 11, 1998, ANA requested an exemption from Subparts K and S of 14 C.F.R. Part 93 to the extent necessary to enable it to provide foreign air transportation between Chicago O'Hare and Tokyo, Japan (Narita Airport), using Boeing 747-400 equipment (Stage 3 aircraft).⁴ ANA says that it plans to operate daily round-trip flights in the market, and that it intends to begin these operations on or about April 4, 1999.

In support of its request, ANA states that its application is consistent with the U.S.-Japan MOU relating to the 1952 Civil Air Transport Agreement between the two countries. ANA says that its proposed service will provide increased capacity and additional travel options for consumers and will increase competition in the market. ANA maintains that its proposal will provide the kind of benefits envisioned in the U.S.-Japan MOU.

ANA states that it submitted a timely request to the FAA for O'Hare Airport slots, consistent with 14 C.F.R. 93.217(a)(6). ANA says that it has been notified by the FAA that its request is pending and that it is unlikely to be approved, since ANA's request and those from other airlines for new or additional slots at O'Hare Airport exceed the total number of slots that the FAA can allocate under 14 C.F.R. 93.217 (see 49 U.S.C. § 41714(b)(2)). Accordingly, ANA says that its request is necessary to enable it to implement the economic authority it has received from the Department.

⁴ ANA holds operating authority from the Department to conduct scheduled foreign air transportation of persons, property and mail between any point or points behind Japan, any point or points in Japan, any intermediate point or points, any point or points in the United States, and any point or points beyond; and to conduct charters pursuant to 14 C.F.R. Part 212. See Order 98-4-17 (Docket OST-98-34-84).

RESPONSIVE PLEADINGS

American Airlines, Inc. (American)

On December 23, 1998, American filed an answer urging the Department to deny ANA's Chicago-Tokyo exemption request unless the slot coordinator at Tokyo's Narita International Airport provides to American at least the slots it has requested to serve between New York and Tokyo.⁵ American says that it has not been able to obtain the slots it requires to serve Tokyo from New York and Boston.⁶

American asserts that, where it has been unsuccessful in obtaining the slots it seeks at Narita International Airport to exercise rights under the U.S.-Japan Civil Air Transport Agreement, it is contrary to the public interest to grant ANA's request for O'Hare Airport slots. American argues that the public interest finding required under 49 U.S.C. § 41714(b)(1) cannot be made in this case, since American has been denied requested slots at the same foreign point at issue in ANA's application.

Delta Air Lines, Inc. (Delta)

On December 24, 1998, Delta filed a consolidated answer urging the Department to initiate consultations with the Government of Japan "to secure the means for U.S. carriers to obtain Narita slots" and to defer action on both ANA's and JAL's proposed applications "pending satisfactory completion of those discussions."

Delta says that it has not been able to secure an appropriate number of slots at Tokyo's Narita Airport to satisfy fully its new Atlanta-Tokyo, Honolulu-Tokyo, and Los Angeles-Tokyo services.⁷ Delta argues that it would be contrary to the public interest to grant the foreign applicants' requests for slot exemptions at Chicago's O'Hare Airport when no similar mechanism is available to the U.S. airlines seeking slots at Narita Airport.

US Airways, Inc. (US Airways)

On January 4, 1999, US Airways filed a motion for leave to file and a consolidated answer supporting the positions of American and Delta.⁸ The carrier maintains that U.S.-flag carriers are denied commercially viable access to foreign airports, and it asks the U.S. Government to address this issue.

⁵ American did not file in opposition to JAL's Chicago-Osaka exemption request.

⁶ The record indicates that American has secured sufficient slots to support its services in the Chicago-Tokyo, San Jose-Tokyo, and Dallas/Ft. Worth-Osaka markets. Answer at 1-2.

⁷ Delta is currently providing daily, nonstop service in the Atlanta-Narita Airport and Los Angeles-Narita Airport markets. Official Airline Guides Inc., Electronic Edition, January 1, 1999.

⁸ We grant the motion to file an otherwise unauthorized document.

United Air Lines, Inc. (United)

On January 6, 1999, United filed a motion for leave to file and a consolidated reply to the answers of American and Delta.⁹ United asserts that both American and Delta were aware of the unavailability of Narita Airport slots when they proposed their new U.S.-Japan services. United says that throughout the discussions leading up to the 1998 MOU, the Japanese delegation acknowledged that immediate expansion of service at Tokyo's Narita Airport was not possible until construction of a second runway had been completed.

United further recognizes that the Government of Japan made a significant commitment to opening its markets by entering the recent MOU. United contends that both American and Delta have already benefited significantly from Japan's commitment to allowing U.S. airlines to start new services at Narita Airport. United says that the Japanese authorities have achieved this by both increasing the number of operations at Narita Airport and by allowing the reallocation of dormant slots. United notes that the Japanese authorities have limited growth at Narita Airport for all airlines pending completion of runway expansion, including U.S. incumbents and Japanese-flag incumbents such as ANA and JAL.

JAL

On January 6, 1999, JAL filed a reply asking the Department to deny Delta's deferral request and to grant its own application expeditiously. JAL maintains that Delta has the slots it needs to operate in the Atlanta/Los Angeles-Tokyo markets. As to Delta's concerns regarding the Honolulu-Tokyo market, JAL argues that this issue does not justify withholding action on its request to commence Chicago-Osaka service. JAL emphasizes that the Japanese authorities made over 200 additional slots available at Narita Airport after the MOU was signed, and that U.S. airlines received about 37 percent of these additional slots. JAL maintains that Delta is one of the U.S. airlines that benefited significantly from the allocation of additional slots.

On January 7, 1999, JAL also filed a motion for leave to file and a reply to US Airways' answer.¹⁰

ANA

On January 7, 1999, ANA filed a motion for leave to file and a reply asking for expeditious consideration.¹¹ ANA comments that it is not responsible for the allocation of slots at Narita Airport and has no influence over the slot allocation process. Rather, ANA asserts that slots at Narita Airport are limited due to the physical constraints of the airport, which affect both U.S. and Japanese airlines. ANA notes that the Department has

⁹ We grant the motion to file an otherwise unauthorized document.

¹⁰ We grant the motion to file an otherwise unauthorized document.

¹¹ We grant the motion to file an otherwise unauthorized document.

consistently recognized that it is in the public interest to issue slot exemptions in order to allow the commencement of bilaterally-agreed services. It maintains that American's interest in this matter is to limit competition from rival airlines.

City of Chicago (the City)

On January 20, 1999, the City, owner and operator of O'Hare Airport, filed a motion for leave to file and a consolidated answer supporting both applications.¹² The City's position is that the proposed operations are in the public interest, providing both inter- and intra-gateway competition. The City states that these proposed operations would benefit the Chicago region in terms of jobs, trade, and tourism. Finally, the City urges that the more productive means for the Department to address the concerns raised by the opposing parties is to initiate consultations with the Japanese authorities, rather than denying or deferring action on the pending applications. The City urges the Department to grant the applications expeditiously.

STATUTORY BACKGROUND

Subparts K and S of 14 C.F.R. Part 93 designate Chicago's O'Hare International Airport, New York's John F. Kennedy International and LaGuardia Airports, and Ronald Reagan Washington National Airport (National) as high density traffic airports and prescribe certain air traffic rules for the operation of aircraft at these airports. These regulations limit the number of allocated Instrument Flight Rule (IFR) operations (takeoffs and landings) for specified classes of users during certain periods of the day.

Under 49 U.S.C. § 41714(b)(1), the Secretary of Transportation may, by order, grant exemptions from the requirements of Subparts K and S of 14 C.F.R. Part 93 (pertaining to slots at high density airports other than National), to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft, if he finds such action to be in the public interest.

DECISION

We find that grant of these exemptions is consistent with the public interest. In reaching this decision, we recognize that ANA and JAL filed timely requests with the FAA for slots, and that due to hourly constraints the FAA has not been able to accommodate those requests. ANA and JAL have been properly authorized by their government to provide scheduled foreign air transportation in the Chicago-Tokyo and Chicago-Osaka markets, respectively,¹³ and our action here will provide the traveling public with important new services.¹⁴

¹² We grant the motion to file an otherwise unauthorized document.

¹³ Both applicants noted that they are seeking to implement rights under the 1998 MOU.

¹⁴ JAL's proposal will provide the Chicago-Osaka market with its only nonstop service.

We appreciate the basis for the arguments opposing the applications in this case. Narita is a slot-constrained airport. Those constraints prevent airlines around the world from freely expanding air service to Tokyo. However, Japanese aviation authorities have taken steps to improve this situation. The result has been more access for U.S. airlines in the past year than during any recent comparable period. For example, American (Chicago-Tokyo) and Delta (Atlanta-Tokyo) have recently commenced new daily services to Tokyo. Thus, while slot constraints continue to inhibit service at Tokyo's Narita Airport, we cannot find that this situation outweighs the factors that support granting the ANA and JAL applications.

In these circumstances, we find that ANA and JAL have been properly authorized to serve the affected markets, have complied with the procedures for requesting slots, and that it is appropriate to provide them with the exemptions necessary to implement their proposed services.¹⁵ Furthermore, our actions here will ensure continued enhancement of air services between Japan and the United States, and continue to provide the public with improved passenger and shipping options.

As we have recently affirmed,¹⁶ while 49 U.S.C. § 41714(b)(1) provides the Department with discretionary authority to grant slot exemptions for foreign air transportation at a high density airport, we do not view this authority as a substitute mechanism for the slot-allocation procedures outlined in Subpart S of 14 C.F.R. Part 93. We fully expect air carriers and foreign air carriers to follow and exhaust all appropriate procedures for slot acquisition before filing a slot exemption request with the Department. In this case, ANA and JAL followed those slot-allocation procedures.

Since grant of these exemption authorities is dependent upon the applicants' existing U.S.-Japan operating authority, we attach the condition that the exemptions may be used only in the provision of ANA's scheduled service between Tokyo and Chicago O'Hare, and JAL's scheduled service between Osaka and Chicago O'Hare. Furthermore, in accordance with the requirements of the statute, all aircraft operations performed under these exemptions shall be conducted by Stage 3 aircraft. We also note that the grant of these exemptions provides ANA and JAL with only a temporary slot allocation at O'Hare Airport and does not confer to the applicants any ability to sell, trade, transfer, or convey these exemption authorities.

The Department issues this Order under authority delegated in 49 C.F.R. 1.56(l).

¹⁵ While our findings in these matters will allow for the implementation of operations provided for under the U.S.-Japan MOU, we emphasize that the Department will decide airline requests for slot exemptions on a case-by-case basis.

¹⁶ See Orders 98-6-8 at 3 and 98-8-26 at 3.

ACCORDINGLY,

1. The Department grants a temporary exemption from 14 C.F.R. Part 93, Subparts K and S under 49 U.S.C. § 41714(b)(1), to Japan Airlines Company, Ltd. to the extent necessary to enable it to operate one scheduled arrival at Chicago's O'Hare International Airport on Tuesday, Wednesday, Thursday and Saturday between 8:45 A.M. and 9:14 A.M. (local time) and on Sunday between 1:45 P.M. and 2:14 P.M. (local time) and one scheduled departure at Chicago's O'Hare International Airport on Tuesday, Wednesday, Thursday and Saturday between 10:45 A.M. and 11:14 A.M. (local time) and on Sunday between 3:45 P.M. and 4:14 P.M. (local time) in a pattern to be determined in consultation between Japan Airlines Company, Ltd. and the Slot Administration Office, FAA;
2. As a condition of approval, Japan Airlines Company, Ltd. may use this exemption authority only to provide scheduled service between Osaka, Japan (Kansai Airport), and the terminal point Chicago, Illinois (O'Hare International Airport);
3. The temporary slot allocation provided for in ordering paragraph 1 above is effective commencing on May 1, 1999, and expires on October 26, 1999;
4. The Department grants a temporary exemption from 14 C.F.R. Part 93, Subparts K and S under 49 U.S.C. § 41714(b)(1), to All Nippon Airways Co., Ltd. to the extent necessary to enable it to operate one daily scheduled arrival at Chicago's O'Hare International Airport between 8:15 A.M. and 8:44 A.M. (local time) and one daily scheduled departure at Chicago's O'Hare International Airport between 11:15 A.M. and 11:44 A.M. (local time) in a pattern to be determined in consultation between All Nippon Airways Co., Ltd. and the Slot Administration Office, FAA;
5. As a condition of approval, All Nippon Airways Co., Ltd. may use this exemption authority only to provide scheduled service between Tokyo, Japan (Narita Airport), and the terminal point Chicago, Illinois (O'Hare International Airport);
6. The temporary slot allocation provided for in ordering paragraph 4 above is effective commencing on April 4, 1999, and expires on October 26, 1999;
7. As a further condition of approval, the Department directs that all aircraft operations granted under these exemptions must be provided by Stage 3 aircraft;
8. The authority granted under these exemptions is subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S;
9. We direct All Nippon Airways Co., Ltd. and Japan Airlines Company, Ltd. to contact the Federal Aviation Administration's Slot Administration Office in order to determine the start-up date in consultation with that Office for the exemptions granted here. The Federal Aviation Administration will assign slot withdrawal numbers for the slot exemption times listed in ordering paragraphs 1 and 4;

10. We grant all motions to file otherwise unauthorized documents; and

11. We will serve this Order on the Ambassador of Japan in Washington, D.C.; the City of Chicago; All Nippon Airways Co., Ltd.; Japan Airlines Company, Ltd.; the Department of State (Office of Aviation Negotiations); and all other parties served with these applications.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*