



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

Served March 16, 1999

Issued by the Department of Transportation
on the 16th day of March, 1999

Applications of

**THE COMMUNITIES OF THE VIRGINIA PENINSULA
THE COMMUNITY OF SAVANNAH, GA/HILTON
HEAD, SC
THE COMMUNITY OF GREENVILLE/SPARTANBURG,
SC
ASPEN MOUNTAIN AIRWAYS**

**Docket OST 98-4604
Docket OST 98-3603**

Docket OST 99-5130

Docket OST 98-3671

For an exemption from 14 CFR Part 93,
Subparts K and S, pursuant to 49 U.S.C.
§ 41714

ORDER RESERVING SLOT EXEMPTIONS AT CHICAGO O'HARE AIRPORT

SUMMARY

By this order the Department is establishing an experimental allocation of Chicago O'Hare Airport slot exemptions to be deployed by selected communities for the purpose of assisting those communities in acquiring nonstop air service to O'Hare. Specifically, we are reserving a total of three O'Hare slot exemptions each for the communities of Greenville/Spartanburg, South Carolina, and Savannah, Georgia/Hilton Head, South Carolina, for the provision of such service. The service must be provided with Stage 3 jet aircraft, and is limited to a 179-day period. We find that this action is in the public interest.

BACKGROUND

The High Density Rule, 14 CFR Part 93, Subparts K and S, designates New York's John F. Kennedy International and La Guardia Airports, Chicago's O'Hare International Airport and Ronald Reagan Washington National Airport as high density traffic airports and prescribes air

traffic rules for operating aircraft, other than helicopters, to or from those airports. Those 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 one of these airports 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 (49 U.S.C. §41714). Consistent with the letter and intent of that authority, as reflected in its legislative history, the Department has utilized its exemption authority to facilitate the vital public interest objective of enabling qualified air carriers to fill voids in underserved markets and to instill price competition in specific markets.¹

More recently the Department has been further examining whether additional changes to the High Density Rule would be appropriate. It is well recognized that slot constraints at the affected airports are a barrier to the marketplace’s ability to meet the air transportation demands of many city-pair markets, and both the Department and the Congress are considering means, including legislative proposals, to enable increased new entry into such markets. There are only a very few slot exemptions now available for our consideration under the environmental assessment we previously completed for O’Hare airport,² and there remain several outstanding requests for slot exemptions.³ No single application stands out from the others to warrant an award to that applicant to the exclusion of all others. In that circumstance, we find it especially important to allocate these slot exemptions where they will produce the maximum transportation benefits. We note that several of the communities named in pending applications already have nonstop service to O’Hare, and applicants at those communities did not propose low-fare service in their applications. At four communities, no nonstop service is provided: Savannah/Hilton Head, Greenville/Spartanburg, Virginia Peninsula and Edmonton. Of those, the former two have demonstrated by far the greatest demand, and that critical consideration weighs heavily in those communities’ favor. In reviewing the applications submitted by these two communities, we also see an opportunity to obtain information to guide us as we continue to develop policy and

¹ See most recently, e.g., Order 98-10-29, in which the Department granted slot exemptions to Pro Air, Inc., and Spirit Airlines, Inc., noting that “...our actions here will enable expanded aviation and commercial opportunities for two new entrant air carriers and substantial transportation benefits for a large number of consumers.”

² In October 1997 the Department performed an environmental assessment in which we concluded that an increase of sixty additional operations a day at O’Hare airport would not have a significant impact on the human environment. Since that time a total of 55 additional operations have been implemented pursuant to slot exemptions we have authorized. The Department has continued to adhere to the limit established under the environmental assessment.

³ In addition to the application of Greenville/Spartanburg, Savannah/Hilton Head, and the Virginia Peninsula parties, which are addressed in this order, there are four pending air carrier applications for O’Hare slot exemptions: Air Canada (Montreal and Ottawa), Canadian Airlines (Vancouver, Calgary and Edmonton), Atlantic Coast Airlines (Savannah/Hilton Head), American Eagle (Greenville/Spartanburg), and Aspen Mountain Airways (Sioux City).

legislative initiatives to promote expanded air services and concomitant price competition. Therefore, we will establish a limited one-time test to enable us to observe the extent to which the availability of slot exemptions assists non-airline parties in addressing their transportation needs. We have also decided to defer action on the other pending proposals for slot exemptions at O'Hare, especially given our expectation that Congress will soon be considering various proposals to liberalize the slot regime at O'Hare.⁴

FRAMEWORK FOR EVALUATING SLOT EXEMPTION APPLICATIONS

Heretofore the Department's authorizations of slot exemptions have been to air carrier applicants, based on guidelines we have established and delineated in a number of orders.⁵ Several communities have now filed applications for slot exemptions, as described below, for the purpose of enabling them to seek nonstop service to O'Hare where none now exists. Those applicants assert that their requests are consistent with the principles contained in our guidelines for determining public interest and exceptional circumstances related to exemption proposals. Thus we have previously stated that, in striving to achieve maximum public benefits through the grant of slot exemptions, we would favor proposals that are based on jet aircraft that meet Stage 3 noise requirements; that there should be a reasonable expectation that the proposed service would be operationally and financially viable; and that we would place a premium upon the introduction of new nonstop services where none exist, and new competitive services, especially by applicants that have the demonstrated potential to offer low-fare competition. We continue to adhere to those guidelines, and we find that the exemptions we are granting in this order are consistent with them, subject to the ability of the community recipients of the exemptions to implement them through partnership with air carriers whose operations will be viable. Obviously, we are less able to forecast the ability of a service without identifying the carrier that will be providing it. It is for that reason that we have determined to limit the exemptions to a carefully selected test set of communities for a temporary period of 179 days.

We have also emphasized that the number of available slot exemptions is very limited, and that we may have to apply our guidelines on an increasingly more restrictive basis or even deny applications that otherwise meet the standards we have established. Since October 1997 we have adhered to a limit of sixty slot exemptions at O'Hare, based on an environmental assessment issued with Order 97-10-16. At this time a total of 55 O'Hare slot exemptions are being used against that total. Consequently, we are confined now to awarding only five additional exemptions, which we can increase to six as a result of other recent Department action in which we withdrew slots from another air carrier (see footnote 6, *infra*). This ceiling places an additional, practical limitation on the number of pending applicants that could effectively implement an exemption grant. We have decided to select two cities, Greenville/Spartanburg and Savannah/Hilton Head, among the three pending applicants, for the reasons explained below.

⁴ We will also dismiss without prejudice Aspen Mountain Air's application for O'Hare slot exemptions in Docket OST 98-3671 because the carrier ceased all operations on November 14, 1998.

⁵ See, e.g., Orders 98-4-21 and 98-4-22.

APPLICATIONS AND FILINGS

Savannah/Hilton Head

On March 11, 1998, the community of Savannah/Hilton Head filed an application for eight slot exemptions at Chicago O'Hare Airport to enable it to attract a carrier to provide four nonstop round trips a day in the Savannah/Hilton Head-O'Hare market.⁶ In support of its request Savannah/Hilton Head states that it is consistent with Congressional intent to increase access for small and medium-sized communities to the nation's air transportation system. The community points to a number of GAO reports, the Department's own 1996 *Low-Cost Airline Service Study*, the 1997 National Air Service Roundtable, and the Airline Deregulation Act itself as all stating that barriers to entry must be reduced for a truly competitive air transportation system to exist and that the ADA requires, among other things, "...placing maximum reliance on competitive market forces and on actual and potential competition."

The Savannah/Hilton Head parties note that they have had very successful service to O'Hare in the past. From January 1986 to February 1995, United served the market with its standard jet fleet and generated as high as 60,000 O & D passengers in 1994. They assert that the strength of their demand is further illustrated by the continued high volume and growth of traffic in the market even after United's exit. The community attributes this to the growth of the area as a first-class leisure destination and to businesses having expanded throughout the region, as well as to the large increases in both population and per capita income in the area. The community maintains that the reason for United's leaving the market in 1995 was not a lack of boardings, but rather the carrier's need, because of the scarcity of slots at O'Hare, to focus on its very largest markets at the expense of smaller markets. Even without direct service in the market, O'Hare is Savannah/Hilton Head's third largest market.

The community also notes that on May 22, 1996, the Department granted Air South six New York JFK slot exemptions to provide Savannah/Hilton Head-JFK service. Unfortunately, for reasons not related to the Savannah/Hilton Head-JFK service, Air South was subsequently forced to cease all operations and the exemptions were returned to the Department. However, the community contends that its overall air service market has grown substantially since that original award to Air South some three years ago, citing a number of tourism, business and related statistics.

Newport News/Williamsburg

On October 20, 1998, we received an application from a number of municipalities and businesses representing the Virginia Peninsula, requesting six O'Hare slot exemptions in order to attract a carrier to provide nonstop service between Newport News/Williamsburg International Airport and O'Hare. In support of their application the Virginia parties state that their request is consistent with Congressional intent to increase access for small and medium-sized communities to the nation's air transportation system. Like the Savannah/Hilton Head parties, they cite the findings

⁶ By Order 98-9-24 the Department, among other things, deferred action on the community's application.

of numerous sources espousing the need to reduce barriers to entry in order to achieve a competitive air transportation system.

The Virginia parties also state that they had received direct service to O'Hare in the past but that, because the total pool of permanent slots at O'Hare has been static while overall passenger traffic has increased substantially, the practice of the two hubbing carriers at O'Hare has been to increase frequencies in their larger markets while dropping service in smaller markets.

The Virginia parties represent that the Newport News/Williamsburg International Airport is the closest commercial airport for 600,000 people in southeastern Virginia and is also the closest for the some five million visitors a year to Colonial Williamsburg and Busch Gardens, among other tourist attractions. During 1997 more than 50,000 passengers traveled between O'Hare and the combined Newport News and Norfolk area, and 20,000 of the Norfolk-O'Hare passengers' ground origin was Newport News. By contrast, only 2,130 Newport News passengers used connecting service from their own airport to O'Hare. They also comment that Airtran has enjoyed success in the Newport News/Williamsburg-Atlanta market, which they assert is an indicator of the vitality and viability of their community. They state that Chicago is now their fifth most popular destination and estimate that more than 100 passengers a day would use O'Hare service.

Greenville/Spartanburg

On February 19, 1999, the Greenville-Spartanburg Airport Commission requested an exemption from the High Density Rule to enable it to secure nonstop service in the Greenville/Spartanburg-O'Hare market. In support of its application, the community states that O'Hare is its third largest origin & destination market, despite the absence of direct service. The many Greenville/Spartanburg companies that do business in Chicago must rely on connecting flights at Charlotte or Atlanta, and they pay some of the highest fares in the country. The Greenville/Spartanburg Airport Commission notes, based on the Department's Domestic Airline Passenger Fares Consumer Report for the first quarter of 1998, that the one-way fare between Greenville/Spartanburg and O'Hare, \$307, was the highest among all markets listed in the 551-600 mileage block. The Commission states that the combination of inconvenient connecting service and high fares has had a dampening effect on the region's economic growth and potential.

On March 8 United Air Lines filed an objection to Greenville/Spartanburg's application. United argues that it would be both unlawful and unwise for the Department to award slots directly to a community. United further points to the Department's statement in Order 98-9-24 that we are not in a position to ascertain the viability of an application that does not include a specific operating proposal.

DECISION

We have decided to reserve three slot exemptions each for the communities of Greenville/Spartanburg and Savannah/Hilton Head to assist each of those communities in attracting the services of an air carrier to provide two nonstop round trips a day to Chicago

O'Hare with Stage 3 jet aircraft.⁷ Grant of these exemptions is conditioned on their being used solely by a carrier for nonstop service in the city-pair market named in each application, and is effective for 179 days from April 4, 1999.⁸ The limited period of effectiveness is appropriate due to the unique character of this experiment, as well as a desire not to unduly limit carriers' discretion over their markets and operations.⁹ Moreover, we expect that Congress will be addressing slot exemption issues this term, and we desire to maintain program flexibility in light of any legislative developments in that area.

As noted and explained above, in view of the very small number of slot exemptions available to be awarded at this time, we are adopting the policy initiative of allocating those exemptions to community applicants as a one-time experiment.¹⁰ An equal allocation of three exemptions for each community will reach the operational ceiling rising from the October 1997 O'Hare environmental assessment, and thus effectively limits us to considering two community recipients among the three pending applications. We have selected Greenville/Spartanburg and Savannah/Hilton Head for several reasons.

None of the applicant communities have direct round-trip service, i.e., nonstop or other single-plane flights in both directions, to and from Chicago, and as we will illustrate below, traffic at Greenville/Spartanburg and Savannah/Hilton Head is clearly sufficient to support nonstop jet service to O'Hare. Moreover, Chicago is one of the foremost communities of interest for both communities: it is Savannah's third largest market overall and Greenville/Spartanburg's third largest also. Indeed, Savannah is Chicago's largest market without nonstop service. Thus, approval of slot exemptions to fill the service void in these markets comports with our policy guidelines, which contemplate our use of exemption authority to produce substantial transportation benefits.

We find, however, that the demonstrated demand level in the Newport News-Chicago market is far less than those at Greenville/Spartanburg and Savannah/Hilton Head and, for that reason, we are selecting the two latter communities for awards in this order. We recognize that the authorization of three exemptions per market does not by itself facilitate two round trips a day.

⁷ As explained in footnote 2, a total of 55 additional operations per day are now being performed at O'Hare pursuant to slot exemptions we have authorized since October 1997, leaving a total of five remaining available for additional grants. In addition, however, we note that in a related action the Department recently withdrew two slots from Great Lakes Aviation related to its cessation of service at Sterling/Rock Falls, Illinois, in February 1999, (see Order 99-2-21). In view of that action, our authorization in this order of equal numbers of slot exemptions to two communities (three each, for a total of six) does not exceed our commitment under the October 1997 environmental assessment to authorize no more than sixty additional operations a day at O'Hare absent further environmental analysis or legislative mandate.

⁸ That is the traditional date that carriers implement spring schedule changes. In addition, it is the soonest realistic date that any carrier would be able to implement service.

⁹ Since the authority is for a period of fewer than 180 days, it does not constitute a license with reference to activities of a continuing nature within the meaning of 5 U.S.C. 558(c). Cf. 14 CFR Part 377.

¹⁰ We are deferring action on other pending slot exemption applications for domestic city-pair markets.

We would expect any prospective air carriers to obtain one or more additional slots, either through the marketplace or by operating outside the controlled hours, in order to provide at least a two-round-trip-a-day schedule.

The Department's latest available calendar year Origin & Destination (O & D) survey data, those for 1997, show 58,330 Savannah/Hilton Head-Chicago O & D passengers (160 a day), 41,590 Greenville/Spartanburg-Chicago passengers (114 a day), 9,940 Edmonton-Chicago passengers (27 a day) and 4,620 Newport News-Chicago passengers (13 a day). These figures clearly demonstrate a more pressing case for the institution of direct O'Hare service for Savannah/Hilton Head and Greenville/Spartanburg than for Newport News.

Contrary to United's assertions in its objections to Greenville-Spartanburg's application, only 49 U.S.C. section 41714(a), which is not applicable here, requires that award of slot exemptions be made to carriers. (And as United well knows, many slots are held by non-carrier parties.) United's arguments concerning the Federal preemption provisions of 49 U.S.C. section 41713(b) are similarly unfounded. The purpose of this experiment is to determine whether these communities can leverage the availability of slot exemptions to attract a carrier to provide service under the terms presented in this order. Route and key service parameters have been determined; cost and other details of service are subject to carrier discretion. No carrier can be compelled to serve or continue serving either community; if no carrier is willing to provide such services under these terms, we will have profited from that knowledge too. Notwithstanding our position on these points, we agree with United that carrier discretion over market and operational decisions is generally to be preserved, and so have limited this experiment in number and duration.

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 93.223(a). This order should not be construed as conferring any ability to sell, trade, transfer, or convey the operating authorities granted by the subject exemptions.

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

ACCORDINGLY,

1. Effective April 4, 1999, the Department reserves three O'Hare slot exemptions for the community of Savannah, GA/Hilton Head, SC, to assist the community in attracting a qualified airline to provide it nonstop service to Chicago O'Hare Airport;
2. Effective April 4, 1999, the Department reserves three O'Hare slot exemptions for the community of Greenville/Spartanburg, SC, to assist the community in attracting a qualified airline to provide it nonstop service to Chicago O'Hare Airport;
3. The Department directs each community and its selected carrier to contact the Federal Aviation Administration's Slot Administration Office to determine with the FAA the proposed inaugural date and the actual times for arriving and departing flights as authorized by this order;

4. The Department dismisses without prejudice the application of the Communities of the Virginia Peninsula for Chicago O'Hare Airport slot exemptions in Docket OST 98-4604;
5. The Department dismisses without prejudice the application of Aspen Mountain Airways for Chicago O'Hare Airport slot exemptions in Docket OST 98-3671;
6. Except for the actions taken in this order, the Department defers action on all other pending O'Hare slot exemption applications;
7. The slot exemptions reserved under this authority expire 179 days from April 4, 1999;
8. 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
9. We will serve a copy of this order on all parties in Dockets OST-98-3603, OST-98-4604 and OST-99-5130.

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://www.dot.gov/dotinfo/general/orders/aviation.html>.*