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Order 99-3-16
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**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 19th day of March 1999

Application of

POLSKIE LINIE LOTNICZE LOT S.A.

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

Docket OST-99-5086

ORDER GRANTING EXEMPTION

APPLICATION

On February 5, 1999, Polskie Linie Lotnicze LOT S.A. (LOT) requested an exemption from 14 C.F.R. Part 93, Subparts K and S, under 49 U.S.C. § 41714(b)(1), to the extent necessary to enable it to introduce two new weekly nonstop, round-trip flights between Poland and Chicago, Illinois (O'Hare International Airport), using Boeing B-767 equipment (a Stage 3 aircraft). One flight would be in roundtrip service between Warsaw and Chicago, Illinois (O'Hare International Airport) while the second flight would originate in Warsaw, operate to Chicago and return to Krakow. LOT requests four slot exemptions on each Monday to accommodate two O'Hare arrivals at 1:10 P.M. and two O'Hare departures at 3:00 P.M. LOT hopes to commence operations under this exemption on or about May 17, 1999, and continue them until September 27, 1999.¹ No answers in opposition to the application have been filed.

In support of its request, LOT states that it had made a timely request for the additional slots with the Federal Aviation Administration (FAA), for a period during the 1999 summer season, but by letter dated January 27, 1999, the FAA informed the applicant that its slot request, along with the requests of other carriers, exceeded the number of slots that FAA could allocate.

LOT asserts that grant of the requested slot exemptions is justified by increased traffic demand in the U.S. Poland market and would provide for the improvement of U.S.-Poland air services as contemplated by the liberalized U.S.-Poland bilateral agreement. LOT also alleges that its application is similar to other slot exemption requests that have been granted by the Department, including a 1997 slot exemption request made by LOT and granted by the Department.

STATUTORY BACKGROUND

¹ The summer season begins April 4, 1999 and ends October 30, 1999.

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 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.

Pursuant to 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 will grant LOT an exemption to enable it to perform two weekly Warsaw-Chicago scheduled flight arrivals and one weekly departure at O'Hare to Warsaw and one weekly departure at O'Hare to Krakow during the 1999 summer season, effective May 17, 1999, and terminating September 27, 1999. We find that grant of this exemption authority is consistent with the public interest. Grant of this application is also consistent with the objectives of the bilateral air services agreement between the U.S. and Poland which contemplate access to the market for carriers of either nation.

In reaching our decision, we recognize that LOT filed a timely request with the FAA for these additional slots, and that due to hourly constraints the FAA has not been able to accommodate the applicant's request within the requested time frame. Moreover, we note that aviation relations with LOT are governed by the U.S.-Poland Air Transport Agreement, which provides for the proposed Warsaw-Chicago and Krakow-Chicago services, and that LOT has been properly authorized by its government to provide scheduled foreign air transportation in the Warsaw-Chicago and Krakow-Chicago markets.²

As we have affirmed,³ 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, LOT followed those slot-allocation procedures.

Since grant of this exemption authority is dependent upon the applicant's existing U.S.- Poland operating authority, we attach the condition that this exemption authority may be used only in the provision of LOT's scheduled service between Warsaw and Chicago O'Hare and between Krakow and Chicago O'Hare. Furthermore, in accordance with the requirements of the statute, all aircraft operations performed under this exemption shall be conducted by Stage 3 aircraft. We also note that grant of this exemption provides LOT with only a temporary slot allocation at

² While our findings in this matter will allow for the improvement of services in the Warsaw-Chicago and Krakow-Chicago markets, we emphasize that airline requests for exemption authority will be decided by the Department on a case-by-case basis.

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

O'Hare Airport and does not confer on the applicant any ability to sell, trade, transfer, or convey the authority.

This Order is issued under authority delegated in 49 C.F.R. 1.56a(f)(1).

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 Polskie Linie Lotnicze LOT S.A. to the extent necessary to enable it to operate two weekly scheduled arrivals at Chicago's O'Hare International Airport between 12:45 P.M. and 1:14 P.M. (local time) and two weekly scheduled departures at Chicago's O'Hare International Airport between 2:45 P.M. and 3:14 P.M. (local time) in a pattern to be determined in consultation between Polskie Linie Lotnicze LOT S.A. and the Slot Administration Office, FAA;
2. As a condition of approval, Polskie Linie Lotnicze LOT S.A. may use this exemption authority only to provide scheduled service between Warsaw, Poland, and Chicago, Illinois (O'Hare International Airport) and between Krakow, Poland, and Chicago, Illinois (O'Hare International Airport);
3. As a further condition of approval, the Department directs that all aircraft operations granted under this exemption must be provided by Stage 3 aircraft;
4. The authority granted under this exemption is subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S;
5. We direct Polskie Linie Lotnicze LOT S.A. 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 exemption authority granted here. The Federal Aviation Administration will assign slot withdrawal numbers for the slot exemption times listed in ordering paragraph 1;
6. The temporary slot allocation provided for in ordering paragraph 1 above is effective commencing on May 17, 1999, and expires on September 27, 1999;
7. We will serve this order on the Ambassador of Poland in Washington, D.C.; the City of Chicago; Polskie Linie Lotnicze LOT S.A., the Department of State (Office of Aviation Negotiations); and all other parties served with the application; and
8. We grant all motions to file otherwise unauthorized documents.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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