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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 9th day of August, 1999

Application of

**VIRGIN ATLANTIC AIRWAYS LIMITED**

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)

Served: August 9, 1999

**Docket OST-99-5872**

**ORDER GRANTING EXEMPTION**

**APPLICATION**

On June 22, 1999, Virgin Atlantic Airways Limited (Virgin Atlantic) 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 a new daily nonstop, round-trip flight between London, United Kingdom (Heathrow Airport) and Chicago, Illinois (O'Hare International Airport), using Airbus A-340 equipment (a Stage 3 aircraft). Virgin Atlantic requests two slot exemptions to accommodate an O'Hare arrival at 1:10 P.M. and an O'Hare departure at 5:00 P.M. Virgin Atlantic hopes to commence these operations on or about November 1, 1999, and continue them through the remainder of the 1999-2000 winter season.<sup>1</sup>

In support of its application, Virgin Atlantic states that on March 4, 1999, the Government of the United Kingdom informed the Department of State that it had designated Virgin Atlantic to operate nonstop roundtrip service between London Heathrow Airport and Chicago O'Hare. On May 5, 1999, by Notice of Action Taken, the Department granted Virgin Atlantic's request for route exemption authority between London Heathrow Airport and Chicago O'Hare. On March 9, 1999, Virgin Atlantic formally requested slots from the Federal Aviation Administration (FAA) to operate its proposed new service for the 1999-2000 winter season, but on June 11, 1999 the FAA informally notified the carrier that its request, along with those of other carriers, exceeded the number of slots that FAA could allocate. Virgin Atlantic argues that grant of the requested slot exemptions would add significant new competition and service to the London-Chicago market and would generate substantial tourism and economic benefits to the City of Chicago and to the United States. Virgin Atlantic also argues that grant of its slot exemption request is consistent with the intent of the Bermuda 2 Agreement to facilitate new entry and enhance competition in

<sup>1</sup> The 1999-2000 winter season begins October 31, 1999, and ends April 1, 2000.

large U.S.-United Kingdom markets. Virgin Atlantic also contends that U.S. carriers will enjoy a substantial service advantage in the Chicago-London market even with the grant of the instant request. Finally, Virgin Atlantic argues that it has fully complied with the Department's procedural requirements in making its application.

## **RESPONSIVE PLEADINGS**

United Air Lines, Inc. (United) filed an answer opposing the Virgin Atlantic application on the grounds that U.S. carriers do not have equivalent slot access to London Heathrow and Gatwick Airports and that the U.S. Buy-Sell rule allows Virgin Atlantic to obtain O'Hare slots, an option unavailable to U.S. carriers at Heathrow or Gatwick. United argues that U.K. carriers can apply for O'Hare slot exemptions but that no analogous mechanism exists for U.S. carriers seeking London slot access. United also states that the efforts to liberalize the U.S.-U.K. agreement have stalled.

The city of Chicago (Chicago) filed an answer in support of the Virgin Atlantic application. Chicago contends that grant of the application would improve competition in the London-Chicago market and could generate over \$188 million in benefits to the Chicago area. It also states that approval of Virgin Atlantic's request is consistent with the bilateral obligations of Bermuda 2 and affirmative action by the Department could facilitate liberalization of the U.S.-United Kingdom bilateral regime.

Virgin Atlantic filed a reply to United's answer. Virgin Atlantic notes that its proposed operations in the London-Chicago market have already been authorized by the bilateral agreement and it asserts that seeking a slot exemption is its only means for implementing those operations. It argues that O'Hare and Heathrow Airports operate under different slot regimes and that United's Heathrow access is based on nondiscriminatory procedures.

## **REGULATORY 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 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 Virgin Atlantic two exemptions to enable it to perform one scheduled flight arrival and one departure per day at O'Hare in the London Heathrow -Chicago at O'Hare market during the 1999-2000 winter season. We find that grant of this exemption authority is consistent with the public interest and with the objectives of the U.S.-United Kingdom bilateral air services agreement, which contemplates reasonable access to the market for carriers of either nation.

As we have noted previously,<sup>2</sup> we view access at foreign airports to be a relevant factor in our consideration of foreign carrier slot exemption requests at U.S. slot-controlled airports. Nevertheless, we do not agree that United has been denied corresponding access at London Heathrow airport.

It is true that the U.S. and United Kingdom slot regimes and procedures are different, but there is no evidence that the U.K. government has treated United in a discriminatory manner with respect to slot allocation at Heathrow airport contrary to the provisions of Bermuda 2. Absent such evidence, we do not find, as United argues, that U.S. flag carriers suffer a lack of reciprocity that would cause us to disapprove this exemption request.

In reaching our decision, we recognize that Virgin Atlantic 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 frames. Moreover, we note that aviation relations with United Kingdom are governed by the U.S.-United Kingdom Air Services Agreement, which provides for the proposed London-Chicago service, and Virgin Atlantic has been properly authorized by its government to provide scheduled foreign air transportation in the London-Chicago market.<sup>3</sup>

As we have recently affirmed,<sup>4</sup> 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, including all appropriate industry practices for slot acquisition, before filing a slot exemption request with the Department. In this case, Virgin Atlantic followed those standard slot-allocation procedures.

Since grant of this exemption authority is dependent upon the applicant's existing U.S.-United Kingdom operating authority, we attach the condition that this exemption authority may be used only in the provision of Virgin Atlantic's scheduled service between London Heathrow 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 Virgin Atlantic with only a temporary slot allocation at

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<sup>2</sup> Order 99-2-22 at 4.

<sup>3</sup> While our findings in this matter will allow for the improvement of services in the London-Chicago market, we emphasize that airline requests for exemption authority will be decided by the Department on a case-by-case basis.

<sup>4</sup> See Orders 97-4-1 at 4 and 97-3-31 at 5.

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

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

**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 Virgin Atlantic Airways Limited to the extent necessary to enable it to operate one daily scheduled arrival between 12:45 P.M. and 1:14 P.M. (local time) and one daily scheduled departure between 4:45 P.M. and 5:14 P.M. (local time) at Chicago's O'Hare International Airport in a pattern to be determined in consultation between Virgin Atlantic Airways Limited and the Slot Administration Office, FAA;
2. As a condition of approval, Virgin Atlantic Airways Limited may use this exemption authority only to provide scheduled service between London Heathrow Airport, and the terminal point 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 Virgin Atlantic Airways Limited 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 single exemption 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 November 1, 1999, and expires on April 1, 2000;
7. We will serve this order on the Ambassador of the United Kingdom in Washington, D.C.; the City of Chicago; Virgin Atlantic Airways Limited; 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:

**A. BRADLEY MIMS**  
Acting Assistant Secretary for Aviation  
and International Affairs

**(SEAL)**

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