

Posted: 10/29/99

Order 99-10-26



1:00 p.m.

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

Issued by the Department of Transportation
on the 29th day of October, 1999

Application of

**COMPANIA MEXICANA DE AVIACION,
S.A. DE C.V.**

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: October 29, 1999

Docket OST-99-6080

ORDER GRANTING EXEMPTIONS

APPLICATION

On August 6, 1999, Compania Mexicana de Aviacion, S.A. de C.V. (Mexicana) requested exemptions 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 provide a single, nonstop, round-trip flight each day between Monterrey, Mexico and Chicago, Illinois (O'Hare International Airport)¹, using Stage 3 aircraft for the 1999-2000 winter season.² Mexicana requests the exemptions to accommodate an O'Hare arrival during the half-hour slot period beginning 11:15 A.M. and a departure during the period beginning at 2:15 P.M. No answers in opposition to the application have been filed.

In support of its request, Mexicana states that it had made a timely request for additional slots with the Federal Aviation Administration (FAA) on May 6, 1999 for the 1999-2000 winter season, but by oral notification on July 16, 1999 the FAA informed the carrier that Mexicana's request, along with those of other carriers, exceeded the number of slots that FAA could allocate. Mexicana argues that it has successfully operated O'Hare-Mexico services for several years and until recently has obtained needed slots through the FAA's standard slot allocation procedures or through barter arrangements with other airlines. The carrier alleges that despite its best efforts it has been unable to obtain slots except as short-term leases at very high rates.

¹ Mexicana notes that its proposed Monterrey flight would also provide Leon, Mexico, with daily one stop O'Hare service. Mexicana's application also requested exemptions to enable it to continue its existing O'Hare-Mexico City service. That portion of Mexicana's request became moot as a result of other action the FAA has taken to accommodate the operations, and is being dismissed in a separate order.

² The winter season begins October 31, 1999 and ends April 1, 2000.

Mexicana contends that its O'Hare slot exemption request is similar to those of other foreign carriers recently approved by the Department; that its proposed new Monterrey-O'Hare service will provide a competitive alternative to American Airlines' existing service; and that given its current codeshare agreement with United Air Lines, online service benefits will accrue to numerous O'Hare markets served by United. Mexicana also argues that approval of its request is authorized by the 1960 U.S.-Mexico Air Transport Agreement and under the terms of its foreign air carrier permit.³

RESPONSIVE PLEADINGS

On August 23, 1999, the City of Chicago filed an answer in support of the Mexicana application. Chicago contends that grant of the Mexicana request would allow continuation and expansion of important competitive service benefits that Mexicana is providing to the Chicago region.

No answers were filed opposing the application.

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 (Reagan 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.

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 Reagan 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 Mexicana an exemption to enable it to perform one daily scheduled flight arrival and one daily scheduled flight departure at O'Hare to implement round trip service to Monterrey during the 1999-2000 winter season. 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 U.S.-Mexico bilateral air services agreement.

In reaching our decision, we recognize that Mexicana filed a timely request with the FAA for these additional slots, and that due to hourly slot 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 Mexico are governed by the U.S.-Mexico Air Transport

³ Order 78-6-127.

Agreement, which provides for the proposed Monterrey-Chicago services, and Mexicana has been properly authorized by its government to provide scheduled foreign air transportation in the Monterrey-Chicago market.⁴

As we have recently affirmed,⁵ 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, Mexicana followed those standard slot-allocation procedures.

Since grant of this exemption authority is dependent upon the applicant's existing U.S.-Mexico operating authority, we attach the condition that this exemption authority may be used only in the provision of Mexicana's scheduled service between Monterrey 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 Mexicana with only a temporary slot allocation at 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)(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 Compania Mexicana de Aviacion, S.A. de C.V. to the extent necessary to enable it to operate one daily scheduled arrival at Chicago's O'Hare International Airport between 11:45 A.M. and 12:14 P.M. (local time), and one daily scheduled departure 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 Compania Mexicana de Aviacion, S.A. de C.V. and the Slot Administration Office, FAA;
2. As a condition of approval, Compania Mexicana de Aviacion, S.A. de C.V. may use this exemption authority only to provide scheduled service between Monterrey, Mexico, 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 While our findings in this matter will allow for the initiation of new services in the Monterrey-Chicago market, we emphasize that airline requests for exemption authority will be decided by the Department on a case-by-case basis.

⁵ See Orders 98-6-8 at 3 and 98-8-26 at 3.

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 Compania Mexicana de Aviacion, S.A. de C.V. 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 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 October 31, 1999, and expires on April 1, 2000;
7. We will serve this order on the Ambassador of Mexico in Washington, D.C.; the City of Chicago; Compania Mexicana de Aviacion, S.A. de C.V., 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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