



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

Issued by the Department of Transportation
on the 7th day of May, 2013

Applications of:

**SOUTHWEST AIRLINES CO.;
JETBLUE AIRWAYS CORPORATION; and
US AIRWAYS INC.**

For exemptions from 14 C.F.R. Part 93, Subparts
K and S, pursuant to 49 U.S.C. § 41718(b),
Special rules for Ronald Reagan Washington
National Airport (within-perimeter slot
exemptions)

Docket DOT-OST-2000-7182

**ORDER REALLOCATING WITHIN-PERIMETER SLOT EXEMPTIONS AT
RONALD REAGAN WASHINGTON NATIONAL AIRPORT**

SUMMARY

By this Order, the Department of Transportation reallocates two within-perimeter slot exemptions at Ronald Reagan Washington National Airport (DCA) to Southwest Airlines Co. (Southwest) to operate one daily nonstop round trip to William P. Hobby Airport (HOU) in Houston, Texas.

BACKGROUND

On February 27, 2008, under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), the Department issued Order 2008-2-28, reallocating two within-perimeter slot exemptions at DCA to Spirit Airlines, Inc. (Spirit) to operate one daily nonstop round trip to Fort Lauderdale-Hollywood International Airport (FLL) in Fort Lauderdale, Florida.

On July 3, 2012, Spirit informed the Department that, due to access constraints at DCA, it was unable to operate its limited DCA slots profitably and therefore planned to relocate its service from DCA to Baltimore/Washington International Thurgood Marshall Airport (BWI).

Upon termination of its DCA-FLL service, Spirit returned the two AIR-21 slot exemptions to the Department for reallocation.

On November 13, 2012, the Department issued a Notice instituting this proceeding and requesting applications for the returned slot exemptions from air carriers, using Stage 3 aircraft, to provide service to DCA from airports that were designated as medium hub, small hub, or nonhub airports in 1997¹ within the 1,250-mile perimeter established for civil operations at DCA under Title 49 U.S.C. § 49109.

As stated in the Notice, in granting the slot exemptions, the Department is required to apply the selection criteria in Title 49 U.S.C. § 41718(b), which directs the Secretary to distribute within-perimeter slot exemptions in a manner that promotes air transportation: (1) by new entrant air carriers and limited incumbent air carriers;² (2) to communities without existing nonstop air transportation to DCA; (3) to small communities; (4) that will provide competitive nonstop air transportation on a monopoly nonstop route to DCA; or (5) that will produce the maximum competitive benefits, including low fares.

In addition, Congress set the following limits for the 20 within-perimeter slot exemptions that the Department may grant: “(A) without regard to the criteria contained in subsection (b)(1), six shall be for air transportation to small hub airports and nonhub airports; (B) ten shall be for air transportation to medium hub and smaller airports; and (C) four shall be for air transportation to airports without regard to their size.”³ Under this provision, then, we may grant a maximum of four slot exemptions for service to large hubs. Currently, we have allocated all large hub opportunities, and we also have allocated the six exemptions specifically for small and nonhub airports. Therefore, to be eligible for an award under this proceeding, the Department required carriers to propose service with Stage 3 aircraft to a medium hub or smaller airport within the 1,250-mile perimeter.

APPLICATIONS

As summarized below, the Department received applications from Southwest, JetBlue Airways Corporation (JetBlue), and US Airways, Inc. (US Airways). The entire public record for this proceeding, including proposals and responses, may be accessed online through the Federal Docket Management System at www.regulations.gov by performing a search for docket number DOT-OST-2000-7182.

Southwest: Washington DCA-Houston, Texas⁴

Southwest requests the two available within-perimeter DCA slot exemptions for service between DCA and HOU. Southwest proposes to operate the route with 143-seat Boeing 737-700 aircraft. Southwest asserts that its application meets three of the statutory selection

¹ Definitions of nonhub, small hub, and medium hub airports are set forth in Title 49 U.S.C. §§ 41714(h)(7), (8), and (9), which require that hub classifications be based on the Federal Aviation Administration’s (FAA) Primary Airport Enplanement Activity Summary for Calendar Year 1997.

² A new entrant carrier or limited incumbent carrier is an air carrier that holds or operates fewer than 40 slots and/or slot exemptions at DCA. See 49 U.S.C. §§ 41714(h)(3) and (5), as amended by the FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, 126 Stat. 11 (Feb. 14, 2012) (FAA 2012).

³ 49 U.S.C. § 41718(A)-(C).

⁴ Application of Southwest Airlines Co., DOT-OST-2000-7182-1917, December 5, 2012.

criteria: (1) Southwest is a limited incumbent carrier at DCA, operating 30 slots and slot exemptions at the airport; (2) the new service would provide competitive nonstop service on a monopoly nonstop route; and (3) the new service would provide maximum consumer benefits through low-fare service.

Southwest contends that it will bring large-jet, low-fare service to one of the largest and most over-priced monopoly routes at DCA. Currently, United Airlines (United) provides the only service between DCA and the City of Houston, to George Bush Intercontinental Airport (IAH). Southwest asserts that the average United one-way nonstop fare between DCA and IAH is \$334, or 43% higher than average DCA fares for trips of a similar distance.

Southwest argues that its proposed service will save consumers millions of dollars annually through reduced fares. Southwest points to the BWI-Houston market, where it competes with United,⁵ and claims that United's fares to IAH are 30% lower than at DCA. Southwest believes that, should it be awarded the exemptions, the market will be stimulated by an additional 105,000 annual passengers as a result of new competition and reduced fares.

JetBlue: Washington DCA-Jacksonville, Florida⁶

JetBlue requests the two available within-perimeter DCA slot exemptions for service between DCA and Jacksonville International Airport in Jacksonville, Florida (JAX). JetBlue would operate the route with 150-seat Airbus A320 aircraft. JetBlue asserts that its application meets three of the statutory criteria: (1) JetBlue is a limited incumbent carrier at DCA, operating 36 slots and slot exemptions; (2) the new service would provide competitive nonstop service on a monopoly nonstop route; and (3) the new service would provide maximum consumer benefits through low-fare service.

JetBlue contends that the DCA-JAX market is currently underserved and suffers as a result of US Airways' monopoly in the market. JetBlue states that US Airways currently operates the route with 80-seat jets.⁷ JetBlue points to previous competition on the route by Delta Air Lines, a legacy carrier, and argues that the Delta service helped to reduce fares and increase traffic. JetBlue also claims favorable market response to its entry into DCA in 2010, serving Boston, Orlando, and Fort Lauderdale. JetBlue asserts that its service would increase the size of the market by 50% and reduce fares by 30% in the first year. If awarded, JetBlue states that it would offer continuing service to San Juan, Puerto Rico (SJU).

US Airways: Washington DCA-Oklahoma City, Oklahoma⁸

US Airways requests the two available within-perimeter DCA slot exemptions for service between DCA and Will Rogers World Airport in Oklahoma City, Oklahoma (OKC). US Airways would operate the route with Embraer E-190 aircraft with 99 passenger seats in a

⁵ United operates BWI-IAH and Southwest operates BWI-HOU.

⁶ Application of JetBlue Airways Corp., DOT-OST-2000-7182-1916, December 5, 2012.

⁷ Id. See also March, 2013, published schedules including weekend operations, showing that US Airways operates the route with a mixture of 50- to 80-seat aircraft.

⁸ Application of US Airways, Inc., DOT-OST-2000-7182-1915, December 5, 2012.

two-class configuration.⁹ US Airways asserts that its application meets three of the statutory selection criteria: (1) it proposes new nonstop service to a community without existing nonstop DCA service; (2) the new service would be to a small community; and (3) the new service would produce maximum consumer benefits. US Airways argues that Oklahoma City is the largest metropolitan area currently without nonstop service to DCA. If awarded the exemptions, US Airways also would inaugurate service from OKC to its hub in Charlotte, North Carolina (CLT).

Summary of Comments

Answer of Southwest¹⁰

Southwest contends that it should be chosen over both JetBlue and US Airways because its proposed service meets more of the statutory criteria than the other applicants and surpasses the other proposals in several key aspects. Southwest maintains that, rather than meeting three of the statutory criteria, JetBlue and US Airways actually meet only two and one of the statutory criteria, respectively. Southwest dismisses JetBlue and US Airways' claims to offer the greatest consumer benefits, stating that neither carrier provided economic analyses or traffic forecasts, making those claims impossible to substantiate. They also dismiss US Airways' assertion that providing service to OKC would satisfy the small community service criterion.

With respect to consumer benefits, Southwest asserts that its service would generate the greatest annual consumer fare savings (\$19.1 million) and have the lowest overall fares and fare-per-mile of all the applicants. Southwest further argues that its proposed service would generate 105,382 new annual passengers, greater than the 69,315 and 8,919 passengers it projects for JetBlue and US Airways' proposed service, respectively. Southwest states it will offer connecting or one-stop service to 11 cities through HOU, including single-plane through service to Albuquerque, New Mexico. In addition, because JetBlue already serves SJU nonstop from DCA, Southwest questions the one-stop flow traffic in the DCA-SJU market that would be available to support JetBlue's proposed DCA-JAX service.

Southwest also argues that, when adjusted for population, Houston has less nonstop service to DCA than does Jacksonville, and experiences higher fares. In contrast to US Airways' application, Southwest asserts that it would offer service on much larger aircraft than US Airways and would offer low-fare service compared to US Airways' legacy pricing.

Consolidated Response of JetBlue¹¹

JetBlue contends that the Department should not award more slot exemptions to US Airways since it is already the dominant carrier at DCA and doing so would not serve the legislative intent of AIR-21 to enhance competition. JetBlue also argues that its application is superior to that of Southwest, and states that Southwest fails to meet the statutory criterion of promoting service to small communities; JetBlue claims that, since it proposes to serve

⁹ US Airways notes that, on occasion, the route may be operated by its affiliated express carriers, using smaller regional jet equipment.

¹⁰ Answer of Southwest Airlines Co., DOT-OST-2000-7182-1932, December 19, 2012.

¹¹ Consolidated Response of JetBlue Airways Corp., DOT-OST-2000-7182-1933, December 19, 2012.

Jacksonville, which is smaller than Houston, its proposed service would better meet that criterion. JetBlue also claims that Southwest's application does not completely satisfy the criterion of providing competition on a nonstop monopoly route, since its proposed DCA-HOU service would not directly compete with United's DCA-IAH service.

JetBlue further asserts that its proposed service would provide greater consumer benefits than Southwest's proposal. JetBlue contends that its DCA-JAX service would generate \$10.6 million in consumer fare savings annually, and disputes Southwest's calculation of consumer benefits. Specifically, JetBlue questions Southwest's calculation of the average fare in the DCA-IAH market, arguing that Southwest's removal of zero-fare passengers from the average and inclusion of an allowance for checked baggage, cancellation/change, and other fees artificially increases the average fare, and therefore the resulting fare savings. JetBlue also contends that, in other markets where Southwest and United compete, fares still remain above the average for similar markets. JetBlue asserts that, with only one round trip per day competing against United's eight daily round trips, it is unlikely that United would match Southwest's fares in the DCA-Houston market. JetBlue also believes its application is superior in that it would provide direct competition to US Airways, the dominant carrier at DCA, while Southwest's service would compete only against the fourth largest DCA carrier.

Consolidated Answer of US Airways¹²

US Airways argues that nonstop access to DCA from Oklahoma City is warranted due to the city's faster-than-average economic and population growth over the past decade, noting that the city generates the most passengers per day to DCA of any within-perimeter community without DCA air service. US Airways restates its position that its application meets three of the statutory criteria. US Airways also asserts that Southwest and JetBlue have not availed themselves of recent opportunities to gain slot exemptions at DCA. The carrier also states that OKC has the fewest weekly frequencies to any of the Washington, DC, area airports compared to the other proposed cities.

Regarding Southwest's application, US Airways questions whether Southwest would be able to achieve the level of traffic stimulation and fare reduction that it claims. US Airways believes that the Washington-Houston market is already well served with 19 daily frequencies from the three Washington airports to Houston's two airports. Likewise, regarding JetBlue's application, US Airways contends that JetBlue's claims of 50% traffic stimulation are unrealistic. US Airways points to JetBlue's service between DCA and Fort Lauderdale and Orlando as examples where similar new service failed to achieve 50% stimulation.

Comments of the City of Houston and the Greater Houston Partnership¹³

The City of Houston and the Greater Houston Partnership (Houston) submitted joint comments in which they "strongly and enthusiastically" support Southwest's application, with Houston arguing that Southwest's proposed service would provide the most pro-competitive outcome. Houston also references the area's economic vitality, citing the city's

¹² Consolidated Answer of US Airways, Inc., DOT-OST-2000-7182-1934, December 19, 2012.

¹³ Comments of the City of Houston and the Greater Houston Partnership, DOT-OST-2000-7182-1931, December 19, 2012.

above-average job and population growth, and expresses a need for competition against the monopoly service provided by United between Houston and the Washington, DC area. Houston argues that the addition of Southwest's low-fare competitive service between HOU and DCA will provide the greatest public benefits when compared to either of the other applications in this proceeding.

Answer of Oklahoma City Department of Airports¹⁴

The Oklahoma City Department of Airports (Oklahoma City) filed comments in support of US Airways' application. Oklahoma City claims that US Airways' proposal best meets the AIR-21 selection criteria by "providing the 'maximum competitive benefits to a small community that lacks nonstop DCA air transportation.'" Oklahoma City also emphasizes its growing economy and status as a regional economic engine.

Oklahoma City claims that OKC-DCA is currently the largest within-perimeter market without nonstop service, generating 53.9 passengers per day each way in the year-ended second quarter of 2012. Oklahoma City states that these passengers opted for connecting itineraries to DCA, rather than using nonstop services to BWI or IAD, which demonstrates the community's need for access to DCA. Oklahoma City also notes that Houston and Jacksonville already have nonstop access to DCA. By awarding the slot exemptions to US Airways, it would represent the first nonstop service to DCA from anywhere in the State of Oklahoma.

Consolidated Reply of Southwest Airlines¹⁵

Southwest filed additional comments to rebut JetBlue's claim that HOU should not be considered eligible for an exemption under this proceeding because it serves a large metropolitan area. Southwest states that HOU is a medium hub, and therefore eligible, regardless of the fact that it serves a large city. Southwest references Order 2000-7-2 (DOT July 5, 2000), where the Department awarded slot exemptions to American Trans Air, Inc. (ATA) for service to Chicago's Midway International Airport (MDW) and found that MDW, as a medium-hub airport, was an eligible destination even though MDW serves a large market. Southwest also disputes JetBlue's argument that serving DCA-HOU would not completely satisfy the statutory criteria of providing competition on a "monopoly nonstop route to [DCA]." Southwest again cites as support Order 2000-7-2, where the Department found that granting slots to ATA for service to MDW would provide competition in the DCA-Chicago market, which at the time was served only through Chicago-O'Hare International Airport (ORD).

Southwest also questions the economic forecasts contained in JetBlue's Consolidated Response, arguing that JetBlue artificially increased its estimated market stimulation after reviewing Southwest's original application. Southwest also defends its average fare calculations against JetBlue's argument that they are inflated, stating that including checked-baggage and cancellation/change fees accurately represents passengers' total cost of travel.

¹⁴ Answer of Oklahoma City Department of Airports, DOT-OST-2000-7182-1935, December 19, 2012.

¹⁵ Consolidated Reply of Southwest Airlines Co. and Motion for Leave to File, DOT-OST-2000-7182, December 31, 2012.

In response to US Airways, Southwest contends that US Airways' methodology of combining the several Washington-area airports into a "metro area" creates an apples-to-oranges comparison when examining the DCA-Houston market, and Southwest argues that DCA is the only relevant Washington, D.C. area market for slot exemption proceedings. Southwest also disagrees with US Airways' assertion that Southwest's estimated fare decreases are exaggerated. According to Southwest, US Airways "cherry-picked" two city pairs (MDW-SNA and MDW-ONT) for its analysis. Southwest points to several other markets where the claimed fare decreases were observed.

Additional Comments of the City of Houston and the Greater Houston Partnership¹⁶

Houston filed additional comments in reply to the pleadings of JetBlue and US Airways, and in support of Southwest's application. In response to JetBlue, Houston disagrees with the assertion that Southwest's HOU application "contravenes Congressional intent and exceeds the Department's discretion." In support of HOU's eligibility as a destination, Houston cites Order 2000-7-2, in which the Department found that medium-hub airports serving large markets are eligible destinations. Houston also argues that the quotations about market size from the Congressional Record used by JetBlue were in reference to the phasing-out of slots at ORD and LaGuardia Airport, and not slot exemptions at DCA. Houston further disagrees with JetBlue's position that Southwest's DCA-HOU service would not completely satisfy the "monopoly route" criterion. Houston points to Order 2000-7-2, in which the Department held that ATA's DCA-MDW service would compete with existing DCA-ORD service.

Regarding US Airways' comments, Houston disagrees with US Airways' assertion that the new entrant/limited incumbent criterion does not apply in this proceeding. Houston argues that, while the new entrant/limited incumbent criterion does not apply to the allocation of six slot exemptions reserved for service to small and non-hub airports, this proceeding is allocating slot exemptions that may be used for service to medium-hub airports. Additionally, Houston notes that the "small community service" criterion is not automatically met by the smallest community in the proceeding.

Consolidated Reply of JetBlue¹⁷

JetBlue takes issue with Southwest and the Greater Houston Partnership's characterization of its argument that HOU is ineligible because it serves a large metropolitan area. JetBlue claims Southwest and Houston have missed the point of its argument: JetBlue did not assert that, because HOU serves a large metropolitan area, it is ineligible; instead, it argued that, when all the statutory criteria are considered, JetBlue's proposal best meets Congress's intent in creating the AIR-21 slot exemptions. JetBlue also disagrees with Southwest's treatment of its argument that the Southwest proposal fails to completely satisfy the "monopoly route" criterion. Stating that "both technically satisfy the statutory criterion," JetBlue contends that

¹⁶ Motion for Leave to File and Reply of the City of Houston and the Greater Houston Partnership, DOT-OST-2000-7182-1942, December 31, 2012.

¹⁷ Opposition of JetBlue Airways Corporation to Motions of Southwest Airlines and the City of Houston for Leave to File Unauthorized Pleading/Consolidated Reply of JetBlue Airways Corporation, DOT-OST-2000-7182-1944, January 14, 2013.

its proposal's direct competition along the same routing as US Airways' service would provide more vigorous price and service competition than Southwest's proposal.

Surreply of the City of Houston and the Greater Houston Partnership¹⁸

Houston filed additional comments objecting to JetBlue's characterization of quotes from the Congressional Record seeming to indicate that DCA slot exemptions should be reserved to service to small communities. Houston argues that no such restriction exists in the text of the legislation then under consideration or in the final statute.

Comments of the Southwest Airlines Pilots' Association¹⁹

Captain Mark Richardson, President-Elect of the Southwest Airlines Pilots' Association (SWAPA), submitted a letter on behalf of SWAPA in support of Southwest's application. In the letter, Captain Richardson notes that, while HOU is close to downtown Houston and convenient for a large segment of the city's population, nonstop service to DCA is not available from HOU. According to Captain Richardson, "Houston residents are painfully aware of the cost of limited airline competition from the Houston area to slot-controlled airports such as Washington Reagan" and he urges approval of Southwest's application to bring low-cost competition access to DCA from HOU.

DECISION

We have carefully reviewed the entire record, including the applications, responsive pleadings, and comments. We have evaluated the application under the standard we reaffirmed in *Order Reallocating Within-Perimeter Slot Exemptions at Ronald Reagan Washington National Airport*, Order 2012-7-26 (DOT July 24, 2012), which we stated we would apply in this and all within-perimeter slot exemption proceedings. We have also carefully reviewed our prior within-perimeter slot exemption decisions. After reviewing all these materials, we have determined to award these two slot exemptions to Southwest for service to William P. Hobby Airport (HOU) in Houston, Texas, because, based on our analysis and judgment in this proceeding, its application best meets the objectives of the slot exemption statute. Our reasoning to support this decision is set out below.

As we recently explained in Order 2012-7-26, the Department may grant within-perimeter slot exemptions to a carrier satisfying the greatest number of criteria, less than the greatest number of criteria, or even one criterion listed in Section 41718(b), based upon the Department's analysis of the relative merits of each carrier's proposal when evaluated under the Section 41718(b) criteria.

In this proceeding, each applicant proposes service to a medium hub or smaller airport within the 1,250-mile DCA perimeter using Stage 3 aircraft, and each application is therefore responsive to the solicitation. While each application has merit, based on the applications received, and under our analysis of the relative merits of each carrier's proposal when evaluated under the Section 41718(b) criteria, we are persuaded that we should allocate these slot exemptions to Southwest for service to HOU. In analyzing the applications, we have

¹⁸ Motion for Leave to File and Surreply of the City of Houston and the Greater Houston Partnership, DOT-OST-2000-7182-1946, January 16, 2013.

¹⁹ Captain Mark Richardson, DOT-OST-2000-7182-1930, December 17, 2012.

concluded that the criterion set forth in Section 41718(b)(5) – promoting service that produces maximum competitive benefits, including low fares – carries the most weight in this proceeding and that Southwest’s application best satisfies this criterion. This proceeding presents a unique opportunity to connect the close-in, downtown airport serving the nation’s capital (DCA) with a close-in, downtown airport in the nation’s fifth largest metropolitan area (HOU), and to do so with a low-fare air carrier. HOU is approximately 12 miles from the Houston city center, compared to 22 miles for IAH, making HOU convenient and accessible for many travelers.

In comparing the merits of the applications under the Section 41718(b)(5) criterion, we find that both Southwest and JetBlue would likely offer low-fare service. Both carriers have affirmatively asserted their intention to offer low fares in their applications and have well-established records of providing competitive, low-fare service upon entering markets. In contrast, US Airways made no mention of offering low-fare service in its application, instead stating that fares would be “competitive with current OKC-Washington and OKC-Charlotte fares.” In addition, US Airways proposes to operate the route with 99-seat E-190 aircraft. This is the smallest proposed aircraft in this proceeding and would not utilize the available capacity at DCA as efficiently as the Southwest or JetBlue proposals to use 143-seat and 150-seat aircraft respectively. Moreover, US Airways’ application stated that the route may be operated from time to time by its regional affiliates, which would use even smaller aircraft. Given these factors, we do not believe the merits of US Airways’ application with respect to Section 41718(b)(5) reach those of either Southwest’s or JetBlue’s applications.

Having made this determination, we turned to a comparative analysis of the Southwest and JetBlue applications under Section 41718(b)(5). In comparing the applications, we examined the patterns of air service between DCA and Houston, and DCA and Jacksonville, including the average fares in each market. Our examination led us to find that Southwest’s average fare calculation methodology (removing zero-fare passengers and including an allocation for baggage fees) is logical and produces results within a reasonable margin of error. Based on these calculations, we find that travelers pay a 45% (\$98 per passenger) fare premium for travel between DCA and Houston compared to other markets of similar size and distance. By contrast, the fare premium in the DCA-Jacksonville market is only 10.4% (\$21 per passenger).

Further analysis revealed several instances in which Southwest’s inauguration of service at HOU has had a positive competitive effect on otherwise-monopoly service from IAH. Southwest began HOU-DEN service in 2006, prior to which the Houston to Denver market was operated on a monopoly basis by United through IAH. After Southwest’s HOU-DEN service began, fares on the IAH-DEN route dropped significantly and passenger usage increased. Similar patterns can be seen where Southwest inaugurated HOU service to Greenville/Spartanburg, SC; Philadelphia, PA; and Jacksonville, FL; as well as the New York City and San Francisco metropolitan areas. Given this history, together with Southwest’s presence at HOU, including the many connecting opportunities, we are confident that the award of these slot exemptions to Southwest will have a competitive effect in the greater Houston market.

Moreover, Houston is a much larger market than Jacksonville, providing for a larger pool of potential passengers. When examining current schedules (both on a city-pair and airport-pair level) we found, consistent with the City of Houston's claims, that, when adjusted for population size, there is less air service between DCA and Houston than between DCA and Jacksonville. HOU also offers more online connecting opportunities for passengers than does JAX.

While JetBlue's application has merit, we find that Southwest's application will likely produce greater consumer benefits, particularly fare savings for a large pool of passengers in a market experiencing significant fare premiums, than would JetBlue's Jacksonville service.

In evaluating the relative merits of the applications submitted in this proceeding under the remaining Section 41718(b) criteria, we conclude that Southwest and JetBlue both satisfy Section 41718(b)(1), as they are limited incumbent carriers holding or operating fewer than 40 slots and slot exemptions at DCA, while US Airways does not meet the criterion.²⁰

US Airways' application satisfies the Section 41718(b)(2) criterion, promoting service to communities without existing nonstop transportation to DCA. No commercial airline currently serves Oklahoma City on a nonstop basis from DCA. Conversely, United provides nonstop service to Houston from DCA, and US Airways provides nonstop service to Jacksonville from DCA.

With respect to the Section 41718(b)(3) criterion, we find that none of the applicants would offer service to a small community. Houston is the fifth largest metropolitan area in the country with a population of more than six million people. While both Jacksonville and Oklahoma City are comparatively smaller, they both have populations well in excess of one million people. As we have noted previously, service to a community with a population of well over one million people would not meet the small community criterion.²¹

Finally, with respect to the Section 41718(b)(4) criterion, we find that both Southwest and JetBlue satisfy the criterion of providing competitive nonstop air transportation on a monopoly route.²² Southwest proposes nonstop service from HOU, competing with United's Houston-DCA monopoly service from IAH, and JetBlue proposes nonstop service to JAX, competing with US Airways' monopoly service to Jacksonville. As discussed above, while the proposals from both Southwest and JetBlue would bring competition to their respective proposed markets, we conclude that the maximum competitive benefits will be realized by the award of these two slot exemption to Southwest for service to HOU.

²⁰ Southwest operates 30 slots and slot exemptions while JetBlue operates 36, according to March, 2013 published schedules. For the definition of limited incumbent carrier, see note 2.

²¹ See Order 2004-12-6, December 6, 2004, where the Department held that Fort Lauderdale, Florida, with a population over one million, does not qualify as a small community.

²² In fact, JetBlue acknowledges that both JetBlue and Southwest technically meet the Section 41718(b)(4) criterion. Consolidated Reply of JetBlue Airways Corp., supra note 17, at pp. 7-8.

Conditions

Start-up:

We will require Southwest to inaugurate full service by no later than August 5, 2013. If, for any reason, Southwest is not able to use the slot exemptions awarded, we request that it notify the Department as soon as possible, but no later than 10 days after the service date of this Order.

Assignment of Slot Times:

We are directing Southwest to file in the Docket, no later than 10 business days from the date of this Order, its proposed flight schedule.

Section 414(b) of the FAA Modernization and Reform Act of 2012 (FAA 2012)²³ allows the Department to assign two additional slot exemptions per one-hour period, an increase from the three per hour authorized in Vision 100 (for a total of five). There are 15 hourly periods beginning at 7:00 a.m. and ending at 9:59 p.m., and all slot exemptions must fit into those 75 slot times. We advised applicants of slot-exemption time constraints in Order 2012-11-13. In coordination with FAA's Slot Administration Office, we shall assign slot exemption times corresponding with the authority granted in this proceeding, and in accordance with the requirements of FAA 2012, in a notice subsequent to our decision.

Environmental Issues:

Although Title 49 U.S.C. § 41718(e) specifically exempts our action here from review under the National Environmental Policy Act,²⁴ we remain sensitive to the environmental impact of increased operations at DCA. Consistent with the statute, we will require that all operations authorized by this Order be conducted with Stage 3 aircraft.

Also, under Section 47117(e), the Department will give DCA priority in making grants for airport noise compatibility planning and programs.

Administrative Terms:

Under the provisions of Title 49 U.S.C. § 41714(j), a carrier may not buy, sell, lease, or otherwise transfer these slot exemptions, except through an air carrier merger or acquisition.

Further, the granting of these slot exemptions in no way is to be construed as allowing a carrier to operate services that it could not otherwise operate. The carrier granted the slot exemptions must still meet all the requirements of the Department and FAA, including, but not limited to, use-or-lose provisions, and all other statutes and regulations governing air transportation.

²³ FAA 2012, Pub. L. No. 112-95, 126 Stat. 11 (Feb. 14, 2012).

²⁴ Section 41718(e) states, "Neither the request for, nor the granting of an exemption, under this section shall be considered for purposes of any Federal law a major Federal action significantly affecting the quality of the human environment."

This Order is issued under authority delegated in 49 C.F.R. § 1.25(b)(4)(ii)(D).

ACCORDINGLY,

1. The Department grants the two reallocated slot exemptions to Southwest for service to William P. Hobby Airport (HOU) in Houston, Texas;
2. The Department directs Southwest to file in Docket OST-2000-7182 no later than 10 business days after the service date of this Order its proposed flight schedule and effective date for operations authorized by this Order. The service to HOU: (a) must be conducted with single-aisle Stage 3 aircraft; (b) may not be conducted between the hours of 10:00 p.m. and 7:00 a.m.; and (c) may not increase the number of operations at Ronald Reagan Washington National Airport in any one-hour period during the hours of 7:00 a.m. and 9:59 p.m. by more than five operations. We advise Southwest to exercise maximum flexibility in proposed operating times to ensure compliance with these limits;
3. In coordination with the FAA Slot Administration Office, the Department will make the final assignment of operating times for these within-perimeter slot exemptions in a separate notice, as soon as possible. To facilitate this assignment, we direct Southwest to contact the FAA Slot Administration Office regarding its proposed schedules associated with the slot exemptions. FAA will assign slot exemption numbers, effective dates, and operating times consistent with statutory limitations;
4. The Department prohibits Southwest from selling, leasing, or otherwise transferring the slot exemptions granted by this Order, except through an air carrier merger or acquisition;
5. The Department grants all motions to file otherwise unauthorized documents and denies motions to strike such documents;
6. Except as otherwise granted, we deny all other applications for exemptions from 14 C.F.R. Part 93, Subparts K and S, filed in this docket;
7. The authorities granted under these slot exemptions are subject to all other requirements in 14 C.F.R. Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use-or-lose requirements;
8. This docket will remain open until a further order of the Department; and

9. We will serve this Order on all interested parties, including the Metropolitan Washington Airports Authority and the FAA Slot Administration Office.

By:

SUSAN L. KURLAND
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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