



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

Issued by the Department of Transportation
on the 1st day of April, 2004

Applications of

**ALASKA AIRLINES, INC.
ALOHA AIRLINES, INC.
AMERICA WEST AIRLINES, INC.
AMERICAN AIRLINES, INC.
DELTA AIR LINES, INC.
FRONTIER AIRLINES, INC.
PRIMARIS AIRLINES, INC.
UNITED AIR LINES, INC.
US AIRWAYS, INC.**

Served: April 1, 2004

Docket OST-2000-7181

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

**ORDER GRANTING BEYOND-PERIMETER SLOT EXEMPTIONS AT
RONALD REAGAN WASHINGTON NATIONAL AIRPORT**

SUMMARY

By this Order, the Department partially grants the requests of four carriers for 12 slot exemptions at Ronald Reagan Washington National Airport ("DCA") in order to provide nonstop service to a number of communities, as follows:

1. Alaska Airlines, Inc., four (4) slot exemptions to provide (a) one daily nonstop round trip between DCA and Seattle, Washington, and (b) one daily nonstop round trip between DCA and Los Angeles, California;
2. America West Airlines, Inc., two (2) slot exemptions to provide one daily nonstop round trip between DCA and Phoenix, Arizona;
3. Frontier Airlines, Inc., four (4) slot exemptions to provide two daily nonstop round trips between DCA and Denver, Colorado;
4. United Air Lines, Inc., two (2) slot exemptions to provide one daily nonstop round trip between DCA and Denver, Colorado.

BACKGROUND

On December 12, 2003, President Bush signed into law the Vision 100 – Century of Aviation Reauthorization Act, P.L. 108-176 (“Vision 100”), which, among other things, directs the Department to grant 12 new slot exemptions at DCA for nonstop service to/from cities beyond the 1,250-mile perimeter.¹ To that end, we issued a Notice on December 17, 2003, requesting proposals by January 9, 2004. Replies were due on January 23, 2004. In total, we received applications from nine carriers for a total of 44 slot exemptions.²

This is our fourth allocation of slot exemptions in the beyond-perimeter docket. Following the passage of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), we originally awarded all 12 slot exemptions available under the law to America West, Frontier, National Airlines, and TWA for various nonstop services to communities beyond the perimeter. Order 2000-7-1 (July 5, 2000). In 2001, we reallocated two of the 12 slot exemptions to Alaska after TWA returned its holdings during its bankruptcy and acquisition by another carrier. Order 2001-6-20 (June 22, 2001). In 2002, we reallocated two more of the slot exemptions to Delta after National Airlines ceased operations at DCA. Order 2002-11-20 (Nov. 27, 2002).

For the 12 DCA beyond-perimeter slot exemptions that are now available as a result of Vision 100, the Department considers, using the criteria set forth in 49 U.S.C. § 41718(a), applications from air carriers to provide nonstop service to DCA from airports beyond the 1,250-mile perimeter. The statutory criteria require that the granted exemptions will: (1) provide air transportation with domestic network benefits beyond the 1,250-mile perimeter; (2) increase competition by new entrant air carriers³ or in multiple markets; (3) not reduce travel options for communities served by small hub airports and medium hub airports within the 1,250-mile perimeter; and (4) not result in meaningfully increased travel delays.

¹ Specifically, at DCA, 49 U.S.C. § 41718(a), amended by Vision 100, provides that the Secretary shall, subject to certain findings, grant 24 slot exemptions to air carriers for the provision of air transportation beyond the 1,250-mile perimeter established for air transportation under 49 U.S.C. § 49109. By prior orders, the Department fully allocated 12 beyond-perimeter slot exemptions. Therefore, the Department must now to distribute an additional 12 DCA beyond-perimeter slot exemptions. In like manner, 49 U.S.C. § 41718(b), as amended by Vision 100, provides that the Secretary shall grant 20 slot exemptions to air carriers for the provision of air transportation within the 1,250-mile perimeter, and 10 of the exemptions had been permanently allocated by prior orders. Therefore, the Department must distribute an additional 10 DCA within-perimeter slot exemptions, which the Department will do in a separate order.

² The Department received more than 12 comments filed *after* the January 23 deadline established by our Notice. Each commenting party sought leave to file comments out of time. In the interest of a complete record, we grant all leave requests, however, we have not found these additional submissions to contain any new dispositive information. Thus, they do not inform our decision in this Order.

³ The terms “new entrant air carrier” and “limited incumbent air carrier” are defined in 49 U.S.C. § 41714(h). In addition, under 49 U.S.C. § 41714(k) “...an air carrier that operates under the same designator code, or has or enters into a code-share agreement, with any other air carrier shall not qualify for a new slot or slot exemption as a new entrant or limited incumbent air carrier at an airport if the total number of slots and slot exemptions held by the 2 carriers at the airport exceed 20 slots and slot exemptions.”

APPLICATIONS AND RESPONSIVE PLEADINGS

A. Application of Alaska Airlines, Inc. (“Alaska”)

Alaska has requested eight (8) total slot exemptions in order to establish two daily nonstop round trips to Los Angeles International Airport (“LAX”) and two additional daily round trips to Seattle-Tacoma International Airport (“SEA”).⁴

Arguments in Support

In general support of its application, Alaska cites the success of its single daily DCA roundtrip flight to Seattle (with high load factors), its transcontinental expansion program, usage of Boeing 737 Next Generation aircraft, numerous awards for service, and its marketing know-how in the DCA market. Alaska claims that it satisfies all of the criteria of § 41718(a).⁵

Regarding its proposed service to **LAX**, Alaska argues that Los Angeles is the largest beyond-perimeter market without nonstop service to DCA, and one of the largest markets in the Alaska system without direct access to DCA. Alaska claims that its request would permit passengers to connect to 26 beyond markets. The airline touts attractive departure times at DCA and practical departure times at LAX. The fact that Alaska serves another Washington-area airport ensures Alaska’s commitment to develop the DCA-LAX service, according to Alaska. California in general, and Los Angeles in particular, are strategic markets for Alaska – at LAX, Alaska enplaned more than 1.3 million passengers in 2003, and the airline has recently rebuilt its facilities to be the “airport of the future.” Finally, Alaska asks the Department to consider the needs of local-market, nonstop passengers, in addition to those passengers connecting to beyond markets since beyond-market passengers can already fly to DCA on a one-stop basis. Alaska believes the Department should look to the total number of local *and* beyond-market network passengers, where Alaska asserts it has a strong application. Alaska proposes to serve both local-market and beyond-market passengers without bias in its reservations system.

Regarding its proposed service to **SEA**, Alaska notes that its second DCA-SEA proposed round trip would continue on a single-plane basis to Fairbanks, linking military bases and the interior and arctic regions to Washington, DC. A third round trip would continue on a single-plane, seasonal basis to Juneau, which establishes new service for the residents of Alaska’s capital city. Because Alaska already operates one daily nonstop from DCA to SEA, the airline argues that additional service will provide substantial network benefits. For one, Alaska asserts that new service will maximize connections to the three largest cities in Alaska, and to 70 additional nonstop destinations, including 30 new communities, served by Alaska and its code-share partners.

⁴ In the 2001 proceeding, the Department reallocated two returned slot exemptions to Alaska for service to SEA. Order 2001-6-20 (June 22, 2001).

⁵ On January 14, Alaska requested that Exhibit AS-103 of its application be replaced with a revised schedule. The Department grants Alaska’s request.

On January 23, Alaska filed consolidated comments. In those comments, Alaska highlights the size of its proposed markets, its status as a fully-qualified limited incumbent at DCA, its exemplary record of developing new DCA markets, its incentives to market and promote new service, its network benefit potential, and its financial strength and stability. Alaska argues that four applicants – American, Delta, United and US Airways – are substantial slot holders that do not merit slot exemption awards.

Responsive Pleadings

Numerous carriers commented on Alaska's application. Carriers most commonly argued that Alaska's choice of aircraft – a B737-700 configured to seat 120 passengers – provided less capacity than other proposals, and that Alaska's alleged network benefits were exaggerated. Regarding network benefits, carriers asserted that Alaska proposed to carry a disproportionate share of local traffic from LAX and that it claimed credit for serving cities in Canada via SEA, which is irrelevant under the controlling statutory criteria, which focus exclusively on "domestic network benefits." In other isolated comments, carriers assert that Alaska is not the best choice for a beyond-perimeter award because: (1) it is not a low-fare carrier; (2) its proposal for DCA-LAX service overlaps with its existing DCA-SEA service; (3) its new entrant status is not sufficient for an award; (4) it already holds slot exemptions; (5) it is more focused on its DCA-SEA service, not its proposed DCA-LAX service; and (6) it has not committed to serving the Washington, D.C. region.

B. Aloha Airlines, Inc. ("Aloha")

Aloha has requested a total of four (4) slot exemptions to establish new service to John Wayne Airport ("SNA") in Orange County, California. The two new round trips would continue on a single-plane basis to Honolulu.

Arguments in Support

In general support of its application, Aloha asserts that its proposed service would be the only nonstop DCA-SNA service. Aloha argues that Hawaii is separated from the mainland and dependent on reliable, affordable air service. According to Aloha, the airline meets the statutory criteria of § 41718(a). Aloha emphasizes the importance of its new entrant status at DCA and the Washington-Baltimore area, and argues that its network will improve service and connections at its domestic hub, and at its "focus" airports in Kona, Kahului, Reno, and Phoenix. Using Boeing 737s, Aloha's business plan proposes to avoid congested terminals, match fares with those of low-fare and legacy carriers, and provide upscale amenities.

On January 23, Aloha filed consolidated comments. In those comments, Aloha argues that it is the only true new entrant among the applicants in this proceeding. To support its claim, Aloha states that it is the only operating carrier with no presence at DCA, and thus is uniquely positioned to enhance competition and maximize the number of new DCA competitors. Aloha compares itself to Alaska, which in 2001 had no presence on the East Coast, and was awarded beyond-perimeter slot exemptions by the Department.

Aloha reiterates its need for four slot exemptions, notwithstanding that one of its operations has a planned arrival at DCA at 12:25 a.m.⁶ Aloha believes that the Department has sufficient authority to issue exemptions under these circumstances, but suggests that if the Department disagrees, the airline will accept an award of three slot exemptions.

Aloha asserts that its proposal would provide the first nonstop service between any of the three Washington area airports and Orange County. All other destinations proposed by the applicants either have existing DCA service or have service from a Washington area airport. Aloha adds that its proposal adds new single-plane service to a major market in Honolulu, with convenient connections to other important Hawaiian and Pacific markets.

Aloha also asserts that it is the only applicant to offer low fares in combination with significant new network benefits. The network carriers, according to Aloha, cannot enhance competition to the same degree, and should be precluded from being awarded slot exemptions. Aloha singles out US Airways, American, Delta, and United as large DCA incumbent network carriers.

Responsive Pleadings

Numerous carriers commented on Aloha's application. Carriers most commonly argued that Aloha provides few network benefits, both by proposing to serve SNA instead of the larger LAX, and also because of the relatively small number of one-stops (or spokes) that it offers from SNA. Carriers also commonly noted that its proposed schedule precludes it from consideration by the Department under § 41718(c)(2), that it has no presence in the East of the United States, and that its network is duplicated by other applicants that can reach Hawaii with one-stops while simultaneously offering more network benefits. In other isolated comments, carriers assert that Aloha is not the best choice for a beyond-perimeter award because: (1) it is not a low-fare carrier; (2) it does not have the necessary slots at SNA to realize its proposal; (3) it has less capacity on its proposed aircraft than other applicants; and (4) it is not strong financially.

C. America West Airlines, Inc. ("America West")

America West has requested a total of six (6) slot exemptions to establish two additional nonstop round trips to Phoenix Sky Harbor International Airport ("PHX") and one additional nonstop flight to Las Vegas' McCarran International Airport ("LAS"). Alternatively, America West requests ten (10) slot exemptions to establish two new daily nonstop round trips to LAX, two new daily nonstop round trips to San Francisco International Airport ("SFO"), and one additional nonstop round trip to PHX.⁷

⁶ Section 41718(c)(2) states that "[t]he exemptions granted under [the within perimeter and beyond perimeter subsections] may not be for operations between the hours of 10:00 p.m. and 7:00 a.m...."

⁷ In the 2000 proceeding, the Department awarded America West four exemptions (two round trips) to Phoenix and two exemptions (one round trip) to Las Vegas.

Arguments in Support

In general support of its application, America West asserts that it is the largest low-fare, full-service, hub-and-spoke airline, positioning it to serve 20 million passengers a year at 44 western cities, including 36 competitive one-stop destinations and two hubs. America West also touts the fact that it serves the most passengers in the West of any new entrant network carrier, that it generates substantial consumer value with its current DCA slot portfolio, that it will be able to fully serve business and leisure travelers with additional slot holdings, that it will be able to compete vigorously with legacy carriers with additional slot holdings, and that it is generally in the public interest to award new slot holdings to the airline.

Regarding its proposed service to **PHX**, America West argues that it is best able to maximize consumer benefits and serve the public interest by continuing to serve Phoenix. To support that argument, America West emphasizes its network in Phoenix, which provides 191 daily departures. The airline asserts that it could generate substantial consumer value (mainly in the way of lower fares) with additional DCA-PHX slot exemptions. To compete with legacy carriers – that are expanding domestic alliances and scheduling more within-perimeter flights connecting to the West – America West argues that it requires additional access in the key east-west time channels in order for its DCA-to-the-West concept to work. Although it has fewer slots than some legacy carriers, America West claims that its load factors are higher than all the legacy carriers – on average, 77 percent in the DCA-PHX market. America West’s load factors during peak business travel hours average 90 percent.

Regarding its proposed service to **LAS**, America West’s arguments in support of its proposed DCA-LAS service mirror those of its proposed DCA-PHX service. America West points out that it provides 57 daily departures from its LAS hub, serving 64,000 DCA passengers annually with its current slot exemption authority to LAS.

Regarding its **alternative proposed service to LAX, SFO and PHX**, America West asserts that, as the largest east-west low-fare, full-service carrier, it is the best choice for point-to-point awards because it has the network scope and scale to influence the pricing of the legacy carriers. America West also argues that its experience with transcontinental service will be an asset. The airline claims that its entry into the JFK-LAX and BOS-LAX markets has dramatically decreased incumbent walk-up and leisure fares. With additional slot exemptions to LAX, SFO and PHX, America West expects to generate \$94.7 million in annual consumer savings. The point-to-point awards, according to America West, will also free up seats on its existing beyond-perimeter service to PHX, which will enhance low-fare service for travelers seeking to reach other western destinations served by America West.

On January 23, America West filed consolidated comments. In those comments, America West argues that, as a new entrant with a substantial western hub and spoke network, it is the best choice for beyond-perimeter awards. The airline touts its ability to provide substantial competitive benefits in multiple markets and solid network benefits.

Responsive Pleadings

Numerous carriers commented on America West's application. Carriers most commonly argued that America West already holds the most beyond-perimeter slot exemptions, and should therefore not be considered for additional awards. Along the same lines, some carriers added that because America West already has four exemptions to PHX and two to LAS, it can add very few new network benefits; furthermore, the network benefits it does claim to add are duplicative between LAS and PHX. Some carriers also point to the fact that America West's alternative "point-to-point" proposal is weak because it relies too much on local traffic in California and contains no code-sharing benefits. Delta argues that America West fails to meet a statutory criterion because it has reduced travel options by abandoning its Columbus hub. United argues that America West is not the best choice for a beyond-perimeter award because it has less capacity on its proposed aircraft than other applicants. *See* Comments of United at 17 (stating that America West uses a 190-seat B757 for one DCA-PHX operation and a 124-seat A319-100 for one DCA-PHX operation and a DCA-LAS operation).

D. American Airlines, Inc. ("American")

American has requested a total of two (2) total exemptions to establish one daily nonstop round trip to LAX.

Arguments in Support

In general support of its application, American claims that its new service will bring substantial competitive benefits to the large LAX market, as well as to other cities in California and Hawaii. American argues that it meets the criteria of § 41718(a). Additionally, American argues that, because the Department has awarded beyond-perimeter slot exemptions to cities smaller than Los Angeles in prior proceedings, the airline's application is worthy of an award. American asserts that it is well positioned to benefit the public with service to LAX because it can add one-stop service to five small cities in California, and numerous other large, small, and international destinations. With renovated and enhanced airport facilities, and Boeing 757 jets, American believes it will be competitive and attractive to consumers. American also asserts that it can help redress the competitive imbalance at LAX, reducing the majority market share of United. Lastly, American argues that the Department should restore direct service to LAX, which was contemplated by Congress during deliberation of AIR-21 and originally awarded to TWA in the 2000 proceeding.

On January 23, American filed consolidated comments. In those comments, American argues that reinstatement of LAX service should be a top priority for the Department. Furthermore, American's proposal offers significant capacity, has widespread support, and is well positioned to challenge the alleged dominance of United at LAX.

Responsive Pleadings

Numerous carriers commented on American's application. Carriers most commonly argued that American already holds numerous slots at DCA, has a dominant presence at LAX, offers no substantial network benefits, and has presented the same proposal that

has been rejected several times by the Department. With regard to weak network benefits, carriers cite the high percentage of local market passengers, backhaul and circuitry problems inherent in an LAX hub, and the fact that American can reach DCA through within-perimeter hubs. In other isolated comments, carriers assert that American is not the best choice for a beyond-perimeter award because: (1) it is not a low-fare carrier; and (2) it has no incentive to aggressively promote DCA-LAX nonstop service.

E. Delta Air Lines, Inc. (“Delta”)

Delta has requested a total of two (2) slot exemptions to establish one additional daily round trip to Salt Lake City International Airport (“SLC”).⁸

Arguments in Support

In general support of its application, Delta argues that cities in the Intermountain West are critically underserved, and that Salt Lake City is the only nonstop-to-nonstop DCA gateway for eleven communities in five intermountain states. According to Delta, the single daily round trip awarded to Delta in the 2002 proceeding is insufficient to meet the demands of the region. Highlighting “domestic network benefits” and “competition in multiple markets,” Delta claims that a second daily round trip to SLC would create important public interest benefits and significantly enhance the service and competitive benefits of Delta’s existing SLC hub. Delta argues that its request will produce important domestic network benefits because SLC is a Delta hub, providing over 300 daily departures to 70 destinations. Twenty-two cities will gain two daily travel times to DCA via SLC, Delta claims. Delta argues that it needs a second daily flight to compete effectively with other carriers who have been awarded beyond-perimeter slot exemptions in the West. The perimeter rule, Delta asserts, prevents the airline from offering the frequency of service that it would otherwise offer to DCA. Lastly, Delta maintains that its proposed additional service will not reduce travel options or result in increased delays.

On January 23, Delta filed consolidated comments. In those comments, Delta argues that its proposal will benefit the most beyond-perimeter network passengers (as opposed to local market passengers in California cities). Delta touts its performance in its current DCA-SLC nonstop service and the fact that it has carried more passengers to DCA than Alaska.

Responsive Pleadings

Numerous carriers commented on Delta’s application. Carriers most commonly argued that Delta is a large slot holder at DCA, that it can effectively serve DCA through several within-perimeter hubs, and that it offers few new network benefits. With regard to network benefits, carriers allege that Delta can – at most – reach two new cities with its current proposal, which is not the same level of network benefits proposed by other applicants. Alaska suggests that Delta may be precluded from receiving an award under

⁸ In the 2002 proceeding, the Department reallocated two returned slot exemptions (one round trip) to Delta for service to SLC. Order 2002-11-20 (Nov. 27, 2002).

the Department's authority based on its proposed 10:50 p.m. arrival time at DCA.⁹ In other isolated comments, carriers assert that Delta is not the best choice for a beyond-perimeter award because: (1) it is not a low-fare carrier; (2) it has low load factors on its existing DCA-SLC service; and (3) it has reduced capacity on its existing DCA-SLC service.

F. Frontier Airlines, Inc. ("Frontier")

Frontier has requested four (4) slot exemptions to establish two additional nonstop round trips to Denver International Airport ("DEN").¹⁰

Arguments in Support

In general support of its application, Frontier points to its growing traffic, expansion plans, and position as an east-west hub operator that offers friendly fares and service. Frontier argues that its service will produce substantial network benefits in underserved areas and small to mid-sized communities located beyond the perimeter. Frontier's hub in Denver carries nearly 15 million passengers to 42 cities. Frontier claims that it can bring the first one-stop service to DCA to a number of markets. According to Frontier, it is a good choice for new slot exemptions because of its uncomplicated low-fare options, and because it requires additional frequencies to fully serve customers when security, mechanical, or weather problems occur. Frontier also argues that, as a new entrant with a flexible fare structure, its proposal would increase competition in multiple markets. It cites United's creation of the new brand "Ted" as a reaction to competition injection by Frontier. Frontier asserts that granting multiple slots to low-fare carriers using hubs is the most effective way to stimulate competition in multiple markets. The airline's entry into the Washington/Baltimore-DEN and New York-DEN markets has dramatically reduced fares, according to Frontier. Finally, Frontier argues that its proposed service would not reduce travel options or increase travel delays.

On January 23, Frontier filed consolidated comments. In those comments, Frontier argues that it is committed to the Washington-Denver market, but requires additional access to DCA and relief from United, who operates a hub in Denver.

Responsive Pleadings

Numerous carriers commented on Frontier's application. Carriers most commonly argued that Frontier already received slot exemptions in the 2000 proceeding, and therefore proposes no new network benefits. What network benefits do exist, some carriers believe, are overstated. In other isolated comments, carriers assert that Frontier is not the best choice for a beyond-perimeter award because: (1) it has no First Class service; (2) it

⁹ Alaska refers to § 41718(c)(2), which states that "[t]he exemptions granted under [the within-perimeter and beyond-perimeter subsections] may not be for operations between the hours of 10:00 p.m. and 7:00 a.m...." We note that Delta stated, on the record, that it is willing to accept a slot time prior to 10:00 p.m., if necessary. See Response of Delta (Jan. 30, 2004). However, the Department's decision in this Order is not based on the issue of Delta's proposed schedule.

¹⁰ In the 2000 proceeding, the Department awarded two slot exemptions (one round trip) to Frontier for service to DEN.

carries significant local traffic from Denver; (3) it has less capacity on its proposed aircraft than do other applicants; (4) it already has nonstop service from Denver to Washington Dulles, and (5) it proposes to serve Denver, which has a smaller population than the cities other applicants propose to serve.

G. Primaris Airlines, Inc. (“Primaris”)

Primaris has requested four (4) slot exemptions to establish two new daily nonstop round trips to LAX.

Arguments in Support

In general support of its application, Primaris states that it will soon introduce premium, all business-class service at very low fares in high volume origin and destination markets. Primaris states that, having completed Department certification, it expects to complete Federal Aviation Administration (FAA) certification in late winter or early spring 2004.¹¹ Primaris argues that, despite its current status as a carrier without effective authority, it is eligible to receive slot exemptions based on the Department’s decision in Order 99-9-11 (Sept. 16, 1999) (awarding JFK slot exemptions to JetBlue). Primaris argues that it would substantially increase competition by introducing a new-entrant, low-fare carrier in the Washington-Los Angeles market. Los Angeles is the largest market beyond the perimeter that remains unserved, according to Primaris. The airline argues that it will provide domestic network benefits by entering into code-share relationships reaching many cities in California and other western states.¹² Primaris also argues that its proposal would not reduce travel options or result in travel delays.

On January 23, Primaris filed consolidated comments. In those comments, Primaris stresses that it is a new entrant airline, stating that the “new entrant” criterion of § 41718(a) is the weightiest of the statutory criteria. Primaris points to the fact that it proposes to serve the largest DCA origin and destination market without existing nonstop service.

Responsive Pleadings

Numerous carriers commented on Primaris’s application. Carriers unanimously agree that Primaris should be precluded from consideration because it is not a fully-funded operating carrier with effective authority from either the Department or FAA. Some carriers also point to the fact that Primaris is not proposing to become a network carrier, and, for that reason, cannot offer any substantial network benefits or competition in multiple markets. United argues that Primaris does not propose adequate capacity to

¹¹ The Department notes that as of February 1, Primaris holds a certificate of convenience and public necessity. Order 2003-9-19 (Sept. 24, 2003). This certificate, when effective, will permit Primaris to operate scheduled service to domestic and limited foreign destinations. The certificate is not yet effective because Primaris has not met its start-up funding goals nor received an FAA Air Carrier Operating Certificate. FAA notified the Department on February 2 that “Primaris is well along the way toward certification, and, barring any unexpected problem, we anticipate that Primaris would receive its Air Carrier Certificate and Operations Specifications in April of this year.”

¹² Citing Orders 2000-7-1 (July 5, 2000) and 2001-6-20 (June 22, 2001), Primaris states that code-sharing is sufficient to fulfill the network benefits prong of § 41718(a).

DCA, since it plans to configure Boeing 757s with all first-class seating (with no middle rows). Frontier and United also distinguish Order 99-9-11 (Sept. 16, 1999), upon which Primaris relies to show its eligibility for an award of slot exemptions. Frontier and United argue that Order 99-9-11 involved proceeding with no competing applications whereby the Department awarded slot exemptions to JetBlue at John F. Kennedy International Airport (JFK) following submission of a detailed business plan. Even though JetBlue was not a certificated carrier when the Department granted its request for JFK slot exemptions, Frontier and United point out that no other carriers had applied. Furthermore, United argues that the Department made its award to JetBlue based on a full record. United asserts that Primaris' situation is more analogous to Order 98-4-22 (April 21, 1998), where the Department denied AccessAir's request for LaGuardia slots noting that AccessAir's certification at FAA was not complete.

H. United Air Lines, Inc. ("United")

United has requested six (6) slot exemptions to establish two new nonstop round trips to SFO and one new nonstop round trip to DEN.

Arguments in Support

In general support of its application, United argues that the Department should correct an imbalance in the current allocation of slot exemptions, which United believes is skewed in favor of smaller network carriers. United argues that it has the best beyond-perimeter network of any carrier, and that its proposal would incorporate DCA service at two geographically distant hubs and promote network-versus-network and gateway-versus-gateway competition for connecting services between the largest possible number of western communities and DCA.

Regarding its proposed service to **SFO**, United argues that it can offer superior domestic network benefits by serving SFO and connecting DCA to its network, which serves 51 medium, small and non-hub beyond-perimeter airports in the contiguous U.S. United claims that SFO generates as many or more business and leisure travelers than the biggest western cities with beyond-perimeter service, and that SFO connects to numerous small and medium-sized communities in California and western states, some of which do not have one-stop access to DCA. United also argues that its proposed service will increase competition in multiple markets by providing new and competitive one-stop services. United asserts that its choice of aircraft and extensive network will foster competition, especially for its broad transcontinental operations. United maintains that its proposed service will not reduce travel options or result in increased travel delays. Because United has a strong beyond-perimeter network reaching more domestic beyond-perimeter airports, the airline concludes that its proposal is in the public interest.

Regarding its proposed service to **DEN**, United argues that its proposal to serve DEN complements its SFO proposal, because each hub offers online connections to distinct geographical areas in multiple western states. United argues further that it offers superior domestic network benefits, especially with respect to Frontier's operations in Denver. As noted above, United points out that it serves the most medium, small, and non-hub

airports of any carrier. United further points out that Denver is a major economic center that can easily support two additional nonstop round trips from DCA. Several cities in the region would gain new one-stop service to DCA. United asserts that it can reach 54 more communities than can Frontier. United argues that its proposed service will increase competition in multiple markets by expanding its network and the aircraft capacity in the DCA-DEN market. United can compete directly with Frontier, according to United. United also argues that its proposed service will not reduce travel options or increase travel delays. Finally, United concludes that granting its request is in the public interest because Denver is a major economic center, where United has a superior network.

On January 23, United filed consolidated comments. In those comments, United argues that it is the only non-incumbent applicant proposing to serve a western hub. United claims to have a more extensive network, more capacity, and a greater number of potential markets to offer than does any other applicant. United also notes an “incrementality” problem with incumbent slot exemption holders; those carriers that already received slot exemptions from the Department in the 2000 proceeding cannot claim to offer new network benefits of the same magnitude that United can.

Responsive Pleadings

Numerous carriers commented on United’s application. Carriers most commonly argued that United’s proposal raises competition concerns because of its extensive service between Washington, DC, and DEN/SFO. Carriers also commonly note that awarding slot exemptions to a carrier in Chapter 11 bankruptcy would constitute unsound public policy. Numerous carriers point out that United’s proposed network benefits are illusory because service to DEN and SFO is duplicated by other carriers, duplicative of service that United can offer from its hubs within the perimeter, and because international connections, backhaul, and local traffic complicate United’s proposal to serve SFO. In other isolated comments, carriers assert that United is not the best choice for a beyond-perimeter award because: (1) its proposal to serve SFO benefits fewer passengers than do other proposals to serve LAX; (2) it is not a new entrant; and (3) it has no incentive to aggressively promote DCA-DEN/SFO service.

I. US Airways, Inc. (“US Airways”)

US Airways has requested eight (8) slot exemptions to establish two new nonstop round trips to Luis Muñoz Marín International Airport in San Juan, Puerto Rico (“SJU”) and two new nonstop round trips to SFO.

Arguments in Support

In general support of its application, US Airways notes that the Department has awarded beyond-perimeter slot exemptions to major incumbents such as Delta, and that the Department has considered substantial route networks in making its route selections. As a new entrant carrier when it comes to operating beyond-perimeter service, US Airways argues that the Department should give priority to those carriers prohibited from operating beyond-perimeter service. The airline claims to be able to offer substantial

consumer network benefits if it were awarded beyond-perimeter slot exemptions, among them service to/from 42 communities. US Airways touts its foresight in developing a strong network at DCA prior to, and especially after, September 11.

Regarding its proposed service to **SJU**, US Airways argues that its proposed service will enhance competition by injecting a major third competitor to the daily nonstop Washington-Puerto Rico market. Besides building its growing Caribbean network, US Airways asserts that new service to SJU will provide code-share connections to 12 total destinations, including domestic destinations such as St. Thomas and St. Croix in the U.S. Virgin Islands. Those beyond-SJU destinations will be able to connect, on a one-stop basis, to 33 destinations in the continental U.S. US Airways also argues that its proposed service would not reduce travel options or increase travel delays.

Regarding its proposed service to **SFO**, US Airways argues that its proposed service to SFO, a first-ever scheduled nonstop service, will save time and provide consumers and shippers with additional options to important regions of the country. Using a simplified fare structure, and maximizing consumer choice and connecting opportunities, US Airways believes it can compete vigorously with other Washington-Bay Area services, including those of JetBlue and Southwest Airlines. US Airways asserts that numerous small and large communities will enjoy connecting service through code-share partners. With additional slots exemptions to SFO, US Airways can improve the value and operation of its mainly East Coast network, more effectively serving West Coast communities than it could through its within-perimeter hubs in Pittsburgh, Philadelphia, and Charlotte. US Airways also argues that its proposed service would not reduce travel options or increase travel delays.

On January 23, US Airways filed consolidated comments. In those comments, US Airways argues that it is the only non-incumbent applicant proposing new service with significant network benefits. US Airways claims to be a new entrant for the purposes of this beyond-perimeter slot exemption proceeding. US Airways points to its large capacity aircraft and ability to draw passengers from behind DCA.

Responsive Pleadings

Numerous carriers commented on US Airways' application. Carriers most commonly argued that US Airways is the largest slot holder at DCA. With respect to its proposal to serve SJU, many carriers note a lack of network benefits and a small local market. With respect to its proposal to serve SFO, many carriers note that SFO is the hub of US Airways' code-share partner United, and US Airways has no on-line connections there. In other isolated comments, carriers assert that US Airways is not the best choice for a beyond-perimeter award because: (1) it is not a low-fare carrier; (2) it is not financially sound; and (3) it can serve its proposed destinations through its within-perimeter hubs.

Answer of the Utah and Salt Lake City Parties

On January 23, the State of Utah, the Mayor of Salt Lake City, the Salt Lake Chamber, Salt Lake City Department of Airports and the Utah Air Travel Commission jointly filed

an answer. The parties support the application of Delta. The parties believe that Delta's application provides the most significant new and improved service benefits to the traveling public.

DECISION

A. Summary

We have decided on the following selections: Alaska for two slot exemptions for nonstop service to Seattle and two slot exemptions for nonstop service to Los Angeles; America West for two slot exemptions for nonstop service to Phoenix; Frontier for four slot exemptions for nonstop service to Denver; and United for two slot exemptions for nonstop service to Denver. In making our decision, we have carefully reviewed the applications and responsive pleadings, and conclude that service to these communities by these carriers best meets the applicable statutory criteria and creates the greatest public benefits.

B. Statutory Criteria

To award beyond-perimeter slot exemptions, the Department must find that an applicant meets all four criteria enumerated by § 41718(a). First, under (a)(1), we must find that an award of slot exemptions will provide domestic network benefits beyond the perimeter. Second, under (a)(2), we must find that an award of exemptions will increase competition by new entrant carriers or in multiple markets. This second criteria is disjunctive; the Department may consider the impact on competition by carriers with *either* new entrant status *or* an ability to serve multiple markets, *or both*. Third, under (a)(3), we must ensure that an award of exemptions would not reduce travel options for communities served by small hub airports and medium hub airports within the perimeter. Fourth, under (a)(4), the exemptions granted must not result in meaningfully increased travel delays.

Congress did not provide any specific guidance as to the weight we should assign among these criteria in our decisional process. Because we find that each of the proposals would not reduce travel options for communities served by small and medium hub airports within the perimeter under (a)(3)¹³ and would not result in meaningfully increased travel

¹³ Under (a)(3), we must ensure that an award of exemptions would not reduce travel options for communities served by small hub airports and medium hub airports within the perimeter. In our earlier decisions, we concluded that Congress sought to ensure that new services provided through the AIR-21 exemptions would not displace or disrupt existing services at small or medium hubs. Order 2000-7-1 at 20 (July 5, 2000); Order 2001-6-20 at 7 (June 22, 2001); Order 2002-11-20 at 6 (Nov. 27, 2002). In our view, no party has raised a legitimate concern that any of the proposed applications would produce this result. The Department rejects Delta's argument that America West should be precluded from an award of slot exemptions based on past service reductions in Columbus, Ohio. We find no evidence that America West's actions in Columbus were connected to its operation of slot exemptions at DCA. Similarly, we have no basis upon which to conclude that an award of new slot exemptions to America West would cause a reduction of services within the perimeter.

delays under (a)(4),¹⁴ we affirm our previous statements that the determinative criteria for the allocation of beyond perimeter slot exemptions are those involving network benefits and increased competition by new entrants or in multiple markets under (a)(1) and (a)(2). *See* Order 2000-7-1 at 20 (July 5, 2000); Order 2001-6-20 at 7 (June 22, 2001); Order 2002-11-20 at 6 (Nov. 27, 2002).

As between (a)(1) and (a)(2), we conclude that the Department can best meet Congress' direction by awarding slot exemptions to carriers that can provide the greatest network benefits beyond the perimeter, and that have little or no presence at DCA *and* offer competitive benefits in multiple markets. In practical terms, carriers meeting all elements of the statutory criteria – the domestic network benefits of (a)(1) and both the 'new entrant' and 'multiple markets' element of (a)(2) – will likely demonstrate the greatest public benefits. Carriers that can demonstrate domestic network benefits will logically be able to offer benefits in multiple markets. Carriers that can demonstrate domestic network benefits and new entrant status further increase the number of competitive benefits at DCA and beyond by injecting a new competitor into the relevant markets. Moreover, where new entrants operate their only hubs and focus cities beyond the perimeter, they lack the slot holdings to effectively connect their networks to DCA. Granting exemptions to such carriers can, in many cases, facilitate one-stop service to DCA from beyond-perimeter points, delivering further competitive benefits to underserved communities across the country.

Our approach has been consistent over time. In Order 2000-7-1, we chose service opportunities by new competitors over existing carriers at DCA because we determined that this course would produce a greater competitive impact than would additional service by the larger DCA incumbents, thereby best satisfying the statutory objective of increasing competition. *See* Order 2000-7-1 at 20-21 (July 5, 2000). In Order 2001-6-20, in the process of reallocating slot exemptions that had been returned to the Department, we determined that Alaska best met the statutory criteria because it most successfully combined domestic network benefits with enhanced competition as a result of new entrant status. *See* Order 2001-6-20 at 8 (June 22, 2001). In Order 2002-11-20, the Department again sought to reallocate slot exemptions that had been returned. After having given primary consideration to new entrants in two prior proceedings, involving the same pool of AIR-21 slot exemptions, we determined that Delta, even though it was not a new entrant, best met the statutory criteria. We found that Delta could provide

¹⁴ Under (a)(4), we must ensure that an award of exemptions would not result in meaningfully increased travel delays. The General Accounting Office, in 1999, found that additional operations at DCA would not cause significant delays. The Federal Aviation Administration later concluded that 24 additional operations at DCA, spread out over the entire slot-controlled period to comply with the statutory limitation of no more than two additional operations per hour, would not meaningfully increase travel delays at DCA. *See* Order 2000-7-1 at 21 (July 5, 2000); Order 2001-6-20 at 8 (June 22, 2001); Order 2002-11-20 at 7 (Nov. 27, 2002). Although our past conclusions were drawn from an analysis of 12 total beyond-perimeter exemptions, no party contended – and no evidence in the docket exists to show – that 12 additional slot exemptions would meaningfully increase travel delays at DCA or anywhere else in the U.S. aviation system. To the contrary, each applicant stated that its proposed services would have no appreciable affect on travel delays.

superior network benefits and could increase competition by adding capacity in multiple markets. *See* Order 2002-11-20 at 8-9 (Nov. 27, 2002).

In this proceeding, the Department performed qualitative and quantitative analysis to gauge the network benefits and competitive impact offered by each applicant under (a)(1) and (a)(2). Our analysis focused on the potential number of online single connection markets that could be served via the applicants' proposed points, the size of those potential connecting markets, the extent to which the applicants already competitively serve those potential connecting markets via their existing service at DCA, and the applicants' status as a new entrant or incumbent. We applied this analysis carefully to the pleadings and found that applicants typically stressed their comparative strengths under one or the other of (a)(1) or (a)(2), depending upon the size of their hubs and presence at DCA. Those with the strongest presence at DCA highlighted the scope and size of their respective networks and the competitive benefits that could be brought to multiple markets via those networks (American, Delta, United, and US Airways). Applicants with little or no presence at DCA (Alaska, Aloha, America West, Frontier, and Primaris) stressed the competitive benefits afforded by their new entrant or limited incumbent status, coupled with their ability to discipline multiple markets with low fares and network benefits. The applicants in this latter group of carriers argued that, even though their networks might be smaller, enhancement of their presence at DCA would create a stronger competitive impact than an award to the more established DCA incumbents.

Using this analysis, and following § 41718(a), we find that Frontier, Alaska, and America West fully meet the requirements of the statute by offering substantial domestic network benefits beyond the perimeter under (a)(1) and increasing competition as new entrants *and* in multiple markets under (a)(2). These carriers stand out from the rest in this respect. Aloha and Primaris, although they are new entrants, do not satisfy the statutory criteria to the same degree. We find that Aloha offers far fewer domestic network benefits than Frontier, Alaska, America West, and United, and thus cannot increase competition in the same multiple of markets. We find also that it is not in the public interest to award slot exemptions to Primaris based on its status as a carrier without effective authority from the Department or FAA.

The Department further finds that the competitive benefit of granting additional frequencies to Frontier, Alaska (in the case of Seattle) and America West on routes that they already serve nonstop from DCA is greater than if we only granted new frequencies to incumbent carriers. The reason is that the incumbent carriers in this proceeding can, in many cases, already offer DCA travelers numerous connecting opportunities via their within-perimeter hubs, often with multiple frequencies per day, and in particular to large beyond markets. Frontier, Alaska, and America West each have only limited slot exemptions, enabling them to offer, at most, three round trips per day and limited connecting opportunities in their DCA markets. As frequency of service and schedule convenience is a major driver of airline choice, the Department believes an award of additional frequencies will have a large impact on competition for DCA passengers. Also, Frontier, Alaska, and America West each operate their only hubs and focus cities beyond the perimeter. Thus, unlike the incumbents that possess inherent frequency and

flexibility advantages with respect to the DCA market by virtue of their within-perimeter hubs, these new entrant carriers cannot otherwise provide the same level of networked service to points beyond.

We gave the same careful consideration to American, Delta, United, and US Airways, all of whom are incumbents at DCA. While § 41718(a) specifically mentions new entrants, we have never found that it precludes incumbent carriers from being awarded beyond-perimeter slot exemptions. In fact, an incumbent carrier offering strong domestic network benefits that could increase competition in multiple markets meets the demands of § 41718(a)(1) and (a)(2). We so found in Order 2002-11-20, where we awarded Delta two AIR-21 slot exemptions to serve its Salt Lake City hub. *See* Order 2002-11-20 (Nov. 27, 2002). In this Order, we find that the incumbent carriers submitted meritorious proposals demonstrating a range of domestic network benefits and abilities to increase competition in multiple markets. We find that United meets the requirements of § 41718(a) and deserves an award of two slot exemptions for service to its hub in Denver. United's application, as explained further below, demonstrates unrivaled network benefits and a pro-competitive effect in multiple markets beyond Denver.

C. Awards

We conclude that **Alaska** merits an award of four exemptions. Alaska's status as a new entrant/limited incumbent will have a positive effect on competition at DCA and in multiple markets beyond its hub in Seattle and focus city in Los Angeles. Alaska has a proven track record of providing domestic network benefits in DCA origin and destination markets; since Alaska began service at DCA, nearly half of its DCA origin and destination traffic has been in connecting markets.

In the case of its Seattle hub, Alaska could provide single connection service from DCA to as many as 38 domestic points, both large and small. Alaska plans to offer single-plane continuing service to Fairbanks and Juneau (seasonally), which would provide more convenient travel options for passengers in markets that are among Alaska's largest DCA origin and destination markets.

In the case of Los Angeles, Alaska could provide online single connection service from DCA to as many as 17 domestic points. While this is less than half the number of destinations Alaska could serve via Seattle, they account for more than three-fourths of the total traffic in Alaska's beyond-Seattle connecting markets, since many of these beyond-Los Angeles destinations are large cities.¹⁵ While there is overlap between the connecting markets that Alaska could serve over Seattle and Los Angeles, passengers would benefit from an alternative competitive nonstop choice to DCA on Alaska. *See* Order 2000-7-1 at 21 (July 5, 2000). Furthermore, connections to many of the destinations Alaska could serve via both Los Angeles and Seattle, such as major cities in California, would be less circuitous if routed over Los Angeles rather than Seattle, making those services more attractive competitive options. In many cases, Alaska serves those destinations with more frequency in Los Angeles versus Seattle, thereby increasing

¹⁵ Source: DOT DB1B data, for the year ended third quarter 2003.

the opportunity for more timely connections. There are also a couple of smaller cities that Alaska does not serve out of Seattle but does serve out of Los Angeles that would receive new online single connection service from DCA.

Since our 2002 proceeding, Alaska has improved its services at Los Angeles. Besides adding its own service to Reno, Nevada, and code-share service to San Jose, California, Alaska has expanded its marketing alliance with American (which has a large presence at Los Angeles), invested in new facilities and equipment at LAX, and launched additional nonstop transcontinental services. The Department believes that Alaska's growing network and future potential at LAX, combined with its status as a new entrant/limited incumbent and successful operator of two DCA slot exemptions, overshadow any perceived reliance on local market passengers in Los Angeles. *See* Order 2000-7-1 at 23 (July 5, 2000); *cf.* Orders 2001-6-20 at 11 (June 22, 2001) (awarding service to a community other than Los Angeles on the grounds that the carriers proposing Los Angeles service either held a dominant position at LAX or were unable to offer significant domestic network benefits) and 2002-11-20 at 7 (Nov. 27, 2002) (stating that the Department cannot award slot exemptions based only on the size of the local market).

We are not persuaded by the comments opposing an award to Alaska. Carriers most commonly argued that Alaska's choice of aircraft – a B737-700 configured to seat 120 passengers – provides less capacity than other proposals. However, in this instance, the Department will not deny slot exemptions to Alaska solely on this basis. Any lack of capacity is outweighed by the potential domestic network benefits and increased competition that Alaska offers. *See* Order 2001-6-20 at 9, footnote 5 (June 22, 2001) (discussing the Department's view of capacity, and in particular, its view of Frontier's and Alaska's fleet). We note that Alaska indicated in its application that it plans to eventually increase capacity by upgrading to a B737-900 with 172 seats on the DCA-Los Angeles route.

We conclude that **America West** merits an award of two exemptions. America West's status as a new entrant/limited incumbent, price competitor, and successful operator of DCA slot exemptions will have a positive effect on competition at DCA and in multiple markets in the West. America West operates a very strong hub in Phoenix. In the case of Phoenix, America West could provide single connection service from DCA to as many as 38 domestic points, both large and small. The beyond points that America West could serve via Phoenix account for the second highest passenger total of any limited incumbent proposal (slightly less than Frontier).¹⁶

We are not persuaded by the comments opposing an award to America West. Carriers most commonly noted that America West should be precluded from further awards because it holds the most beyond-perimeter exemptions of any carrier and cannot offer new network benefits. The Department recognizes the fact that America West holds and operates six slot exemptions from the 2000 proceeding, but we believe that the statutory criteria require us to consider incumbency in a broader context. Even with its new allocations, America West remains a limited incumbent, but it is one that can serve

¹⁶ Source: DOT DB1B data, for the year ended third quarter 2003.

multiple markets competitively. Although it has six beyond-perimeter slot exemptions, the Department believes that the competitive benefit of granting an additional frequency to America West is still higher than it would be if we granted frequencies to carriers that in many cases already offer DCA travelers numerous connecting opportunities to the destinations beyond their proposed points via their within-perimeter hubs. At the same time, an award of additional frequency will make America West's still comparatively limited DCA service pattern more competitive with incumbent carriers that, in many cases, offer travelers many more frequencies in these beyond-Phoenix markets with their existing DCA services. Finally, based on the circumstances in this proceeding, the Department rejects the argument that America West's choice of aircraft should preclude it from being awarded slot exemptions.

We conclude that **Frontier** merits four exemptions for service to Denver. Frontier is a new entrant/limited incumbent with a record as a low-fare competitor that will help discipline the multiple markets that it serves via its Denver hub. Frontier's network in Denver is already strong and is expanding. The Department estimates that Frontier could provide single connection service from DCA to as many as 45 domestic points, both large and small, via Denver. In comparison to other limited incumbent applicants, the airline offers the largest number of potential online single connection destinations, and these markets combine to account for the most origin and destination traffic of any other connecting point proposed by a limited incumbent.¹⁷ Like Alaska, Frontier has a proven track record of providing domestic network benefits in DCA origin and destination markets; since Frontier began service at DCA, nearly 40 percent of its origin and destination traffic has been in connecting markets.

No party to this proceeding disputes Frontier's new entrant/limited incumbent status or its capacity to offer substantial network benefits out of Denver. However, carriers most commonly noted that Frontier already received two slot exemptions in the 2000 proceeding, and, therefore, proposed no new network benefits. We disagree with that logic, as we have discussed above. Carriers also argued that Frontier could not provide sufficient capacity to merit slot exemptions, since it proposes to use an A319 aircraft, with seating for 132 in a single-class configuration. The Department does recognize capacity as an important part of enhancing competition, but will not, in this instance, deny slot exemptions to Frontier solely on this basis. Any lack of capacity is outweighed by the potential domestic network benefits and increased competition that Frontier offers. *See* Order 2001-6-20 at 9, footnote 5 (June 22, 2001) (discussing the Department's view of capacity, and in particular, its view of Frontier's and Alaska's fleet).

We conclude that **United**, even though it is not a new entrant/limited incumbent, merits an award of two exemptions for service to Denver. United's application wins our approval based on the strength of its network and ability to increase competition by adding capacity and new one-stop connections to DCA in multiple markets. *Cf.* Order 2002-11-20 (Nov. 27, 2002) (awarding slot exemptions to Delta for service to its western hub, SLC, based on strong network benefits and the ability to increase competition in multiple markets). The Department's action to grant two exemptions to United ensures

¹⁷ Source: DOT DB1B data, for the year ended third quarter 2003.

that many new beyond points in the West are served by more than one competitor, with more than one service option to DCA. Specifically, we note that our award will provide competition with Frontier in the DCA-Denver and beyond markets.

With respect to domestic network benefits, United could provide single connection service from DCA to as many as 68 domestic points via Denver, the most points of any applicant. Although 17 of the 68 points are already served on a one-stop basis via United's within-perimeter hub at Chicago O'Hare, the Department finds that many new destinations are served via Denver, with substantial traffic to support an award of nonstop service to DCA.

With respect to competition by new entrants or in multiple markets, we find that United's ability to serve multiple markets – including many new markets without single connection service to DCA – will enhance competition in the markets involving DCA and areas beyond the perimeter. The Department emphasizes that, having zero slot exemptions in its portfolio, United is currently unable operate nonstop DCA-Denver service. United's only destination out of DCA is Chicago O'Hare, and we find that a beyond-perimeter award will help to discipline western markets through increased competition.

Under the present circumstances, we are not persuaded by the comments opposing an award to United for service to Denver. Carriers most commonly noted United's dominant presence in Denver and its extensive Washington-Denver service. Although the Department does consider the impact on competition that comes from a carrier's position in a given community and a given market, we must also consider the size and reach of a carrier's network in that community. In the case of Denver, the domestic network benefits offered by United at its Denver hub rival those of all applicants in this proceeding – yet, while we frequently look to low-fare competitors, new entrants or other limited incumbents to bolster competition, we believe United's presence will increase competition in the multiple markets that it serves via Denver. Additionally, while the Department believes it is significant that United serves Denver with multiple frequencies from Washington Dulles, we must also recognize the uniqueness of service to DCA, existing DCA-Denver nonstops operated by Frontier, and the fact that United is not otherwise able to offer nonstop service to that market from its Denver hub. Lastly, Alaska and American argued that it would constitute poor public policy to award slot exemptions to United while it is operates in bankruptcy. We disagree, and decline to consider United's status under the bankruptcy code for the purposes of this slot exemption proceeding. United is a fully operating carrier, with effective authority from the Department and FAA, and can thus be considered for slot exemption awards. The Department must consider the public benefits that could be created by awarding slot exemptions to United. In this instance, we believe nonstop service to United's hub in Denver offers substantial public benefits.

D. Other Applications

Aloha's application, emphasizing the airline's new entrant status, demonstrated that it could bring competitive benefits to DCA and beyond markets. Aloha is correct to note that the Department has emphasized the measurable competitive impact of granting new entrants slot exemptions at DCA. Besides new entrant status, Aloha offers the additional benefits of attractive in-flight amenities and single-plane service to Honolulu. The Department is concerned, however, that Aloha does not offer the kind and quality of domestic network benefits via Orange County as other applicants have offered in this proceeding. We note that Aloha could only offer single connection service to, at most, five points.

American's application has merit. In particular, the Department recognizes American's commitment to improving domestic network benefits in Los Angeles and its ability to serve DCA with large capacity Stage 3 jets. However, we find that American's application constitutes a weaker mix of network benefits and increased competition in multiple markets than proposed by other applicants. American applied for exemptions only to Los Angeles, where it has a large presence in market share, but where it offers fewer online single connection markets than Alaska. Importantly, of the 13 points that American could potentially offer DCA travelers on a one-stop basis, eight may already be reached via one or more of its within-perimeter hubs. We also note that American is not a new entrant/limited incumbent or low-fare price competitor.

Delta's application builds largely on its successful track record of operating DCA slot exemptions to Salt Lake City. The Department recognizes the benefit to consumers and beyond-perimeter passengers that additional frequencies could have – among them, increasing the reach, convenience and competitiveness of Delta's Intermountain West network. However, we find Delta's proposal to add frequency at Salt Lake City – when it simultaneously maintains several within-perimeter hubs – less compelling than the proposals of other applicants. We also note that Delta is not a new entrant/limited incumbent or low-fare competitor.

Primaris's application proposes to introduce a premium, business-class service in medium- and long-haul routes at "comparatively" low fares in high volume O&D markets. We fully recognize that Primaris would be a new entrant, if not for its current status as a carrier without effective certificate authority from the Department or FAA.¹⁸ Under these circumstances, we are reluctant to take the extraordinary step of granting slot exemptions to Primaris when its certification by the FAA is still pending, as is its final fitness certification. *See* Order 98-4-22 at 24 (April 21, 1998) (denying LaGuardia slot exemptions to AccessAir on the grounds that it did not have effective authority from the Department or FAA). We therefore find that it is not in the public interest to award slot

¹⁸ Although Primaris was found fit to engage in interstate scheduled air transportation by Order 2003-9-19 (Sept. 24, 2003), the effectiveness of that authority is conditioned upon the carrier's providing the Department with evidence that it has received its FAA Air Carrier Certificate and that it has available to it sufficient financial resources to meet the Department's financial fitness criteria. To date, Primaris has not filed such evidence.

exemptions to Primaris. Order 99-9-11 (Sept. 16, 1999), which Primaris cites in support of its application, is inapposite. Among other differences, there were no competing applications for the slot exemptions in that proceeding. We also note that Primaris is not a network carrier, thus at the outset it cannot argue a strong case for providing domestic network benefits, even with future code-share agreements. On the date of its application, Primaris demonstrated no network benefits in Los Angeles. Furthermore, its capacity is less than other carriers due to its all-business class configuration.

US Airways' application offers substantial capacity and service to new beyond-perimeter cities. However, we find that US Airways is clearly the dominant carrier at DCA, which weighs against it on § 41718(a)(2). In the case of San Francisco, US Airways could provide online connection service from DCA to as many as 20 domestic points. However, eight of those 20 points are already served one-stop from DCA via one or more of US Airways' within-perimeter hubs and/or via code-share with United, via United's within-perimeter hub at Chicago O'Hare. The eight points account for 88 percent of the total traffic generated in the 20 total potential connecting markets. In the case of San Juan, the Department finds that there are almost no network benefits; the additional beyond-perimeter points available via San Juan are already served on a single connection basis via US Airways' within-perimeter hubs. We also note that US Airways is not a low-fare competitor.

CONDITIONS

A. Start-up

We will require that the awardees inaugurate full service within 90 days of the date on which the Department allocates slot times. If, for any reason, an awardee is not able to use the slot exemptions awarded, we request that it notify the Department as soon as possible, but not later than 30 days after the date of service of this order, so that we can reallocate them.

B. Assignment of Slot Times

We are directing Frontier, Alaska, America West, and United to file in the Docket no later than seven business days from the service date of this Order, their proposed flight schedules and effective dates for inauguration of operations authorized by this Order.

As we stated in our Notice of December 22, 2003, 49 U.S.C. § 41718(c)(2) allows us to assign only one additional slot exemption per one-hour period, an increase from the original two per hour authorized in AIR-21. The Department will evaluate the assignment of slot times for both the within- and beyond-perimeter slot exemptions as one "pool." Because many one-hour periods are likely to be over-subscribed, we may not be able to accommodate carrier requests for slot exemption times. There are 15 hourly periods beginning at the 0700 period and ending at the 2100 period and a total of 44 slot

exemptions must fit into those 45 slot times.¹⁹ Thus, under both AIR-21 and Vision 100, the following slot times are available: 0700 (two available), 0800 (one available), 0900 (one available), 1000 (two available), 1100 (three available), 1200 (two available), 1300 (three available), 1400 (one available), 1500 (one available), 1600 (one available), 1700 (one available), 1800 (one available), 1900 (one available), 2000 (two available), 2100 (one available). In instances where carriers granted slot exemptions in the instant proceedings have conflicting requested scheduled times, the Department can be expected to give priority to those carriers with the least flexibility provided by current DCA slot and slot exemption holdings. Moreover, given their longer stage lengths and flight times as well as the requirement for network benefits at § 41718(a)(1) that may require that their DCA slot times be conducted with connecting banks, beyond-perimeter services may have less scheduling flexibility and merit a priority over within-perimeter services. In applying for specific times, applicants granted slot exemptions should be prepared to justify their requests. Applicants should keep these constraints in mind prior to submitting any schedules and should understand that these slot-time constraints may cause some proposals not to be viable. In coordination with Federal Aviation Administration's Slot Administration Office, we shall assign slot times corresponding with the authority granted in these proceedings in a notice subsequent to our decision.

Thereafter, the awardees may request the FAA Slot Administration Office to approve temporary exchanges of the assigned slot exemptions times with other slots or slot exemptions for the purpose of conducting the operations authorized by this Order in a different hour. In acting on such a request, the FAA will employ standard practices in conjunction with applicable statutory and regulatory requirements for the utilization of slot times between and among individual air carriers. Regardless of subsequent approved slot time exchanges, the slot times assigned by the Department or the FAA's Slot Administration Office pursuant to this Order will be tagged such that, if any of the service granted by this Order is suspended or is not inaugurated in a timely manner, the Department will withdraw the slot exemptions based on their tagged slot time rather than by any subsequent slot time operated.

ENVIRONMENTAL ISSUES

Although 49 U.S.C. §41718(e) specifically exempts our action here from review under the National Environmental Policy Act,²⁰ 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 will be conducted with Stage 3 aircraft. Also,

¹⁹ AIR-21 authorized 24 DCA slot exemptions and Vision 100 authorized an additional 20 slot exemptions. As our Notice of October 22 states, the AIR-21 times allocated for the Corporate Airlines' DCA service in the within-perimeter proceeding are in the 1000 and 1100 hour period, and these times will be available. There are times available at the 0700, 1100, 1200, 1300 (two openings available), and 2000 hour periods based on the previous AIR-21 slot times assigned in previous proceedings. Additionally, the Vision 100 legislation increased the amount of permissible operations per hour at DCA by one.

²⁰ 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."

under 49 U.S.C. § 47117(e), the Department will give DCA priority in making grants for airport noise compatibility planning and programs.

ADMINISTRATIVE TERMS

As the FAA slot regulation makes clear, “slot(s) 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 C.F.R. § 93.223(a). Moreover, under the provisions of 49 U.S.C. § 41714(j), these carriers may not sell, trade, transfer, or convey the operating authorities granted by the subject exemptions unless otherwise authorized herein.

Further, granting of these exemptions in no way is to be construed as allowing a carrier to operate services that it could not otherwise operate. Each of the awardees must still meet all the requirements of the Department of Transportation, the Federal Aviation Administration, and all other statutes and regulations governing air transportation.

This order is issued under authority delegated in 49 C.F.R. § 1.56(a).

ACCORDINGLY,

1. The Department grants slot exemptions from 14 C.F.R. Part 93, Subparts K and S, to Alaska Airlines, Inc. (two slot exemptions to serve Seattle-Tacoma International Airport and two to serve Los Angeles International Airport); America West Airlines, Inc. (two slot exemptions to serve Phoenix Sky Harbor International Airport); Frontier Airlines, Inc. (four slot exemptions to serve Denver International Airport); and United Air Lines, Inc. (two slot exemptions to serve Denver International Airport);

2. The Department directs Alaska Airlines, Inc., America West Airlines, Inc., Frontier Airlines, Inc., and United Air Lines, Inc. to file in Docket OST-2000-7181 no later than seven business days after the service date of this Order their proposed flight schedules and effective date for operations authorized by this Order. Further, Alaska Airlines, Inc., America West Airlines, Inc., Frontier Airlines, Inc., and United Air Lines, Inc. must commence their proposed service no later than 90 days after the date on which the Department allocates slot times pursuant to this Order. The slot exemptions granted must be conducted with Stage 3 aircraft, may not be used for operations between the hours of 10:00 p.m. and 7:00 a.m., and 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 three operations. These carriers are advised to exercise maximum flexibility in proposed operating times to ensure compliance with these limits;

3. The Department will make the final determination of slot times as soon as possible after the schedules are filed to enable the carrier to conduct the operations authorized by this Order. The Department directs the awardees to contact the FAA Slot Administration Office after the Department’s determination of slot times. The FAA will

assign slot exemption numbers, effective dates, and operating times consistent with statutory limitations;

4. We grant all motions to file otherwise unauthorized documents;
5. 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;
6. The authorities granted under these exemptions are subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use-or-lose requirements;
7. This docket will remain open until further order of the Department; and
8. We will serve this order on all interested parties and the Federal Aviation Administration Slot Administration Office.

By:

KARAN K. BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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