

BEFORE THE
OFFICE OF THE SECRETARY
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Application of)	
)	
)	
MIDWEST EXPRESS AIRLINES, INC.)	
)	Docket OST-00-
for an exemption pursuant to)	
49 U.S.C. 40109)	
(U.S.-Canada))	

APPLICATION OF MIDWEST EXPRESS AIRLINES, INC.
FOR AN EXEMPTION

Pursuant to 49 U.S.C. § 40109 and Subpart D of Section 302 of the regulations of the Department of Transportation ("Department"), Midwest Express Airlines, Inc. ("Midwest Express") hereby respectfully requests an exemption from 49 U.S.C. § 41101, and from any applicable Department regulations, to permit Midwest Express to engage in scheduled foreign air transportation of persons, property and mail between any point or points in the United States and any point or points in Canada. In accordance with the terms of a code share agreement with American Eagle Airlines, Inc. ("American Eagle"), Midwest Express seeks to commence service to Canada on or about May 24, 2000, subject to its receipt of all necessary approvals from the Department and the Canadian government. Midwest Express' request for authority to serve Canada is based on and consistent

with the 1995 U.S.-Canada Air Transport Agreement ("Air Transport Agreement").

In further support of this Application, Midwest Express states as follows:

1. Midwest Express is a Wisconsin corporation in good standing, and maintains its principal office at 6744 South Howell Avenue, Oak Creek, Wisconsin 53154. Midwest Express holds certificates of public convenience and necessity authorizing it to provide scheduled interstate and foreign air transportation of persons, property and mail.¹

2. Midwest Express is a citizen of the United States as that term is defined in 49 U.S.C. § 40102(a)(15). By Order 96-4-18, the Department most recently found Midwest Express to be a U.S. citizen, to be managerially and financially fit, and to have a satisfactory compliance disposition. No facts or circumstances have since arisen that might call the DOT's prior determination into question.

3. As DOT has determined in the above-referenced Orders, Midwest Express is fit, willing and able to provide the proposed service and to conform to the provisions of Title 49 and the

¹ See Order 84-6-1, issuing a certificate of public convenience and necessity to Midwest Express to engage in scheduled interstate air transportation; Order 96-9-17, issuing a certificate of public convenience and necessity to Midwest Express to operate scheduled foreign air transportation between Milwaukee, Wisconsin and Toronto, Canada.

rules, regulations and requirements of the Department. To the extent necessary, Midwest Express requests that the Department take official notice pursuant to Rule 24 of the Department's Rules of Practice of the data on file at the Department which establishes the fitness of Midwest Express to operate the services at issue.

4. Midwest Express requests exemption authority to provide scheduled foreign air transportation of persons, property and mail between any point or points in the United States and any point or points in Canada. In the near-term, Midwest Express intends to offer service between Boston, on the one hand, and Halifax, Ottawa and Quebec on the other, in accordance with the terms of a code-share agreement between Midwest Express and American Eagle. Under this agreement, Midwest Express will only act as the marketing carrier. All aircraft operations will be conducted by American Eagle. American Eagle will not place its code on any flights operated by Midwest Express in any U.S.-Canada or any other market.

5. Although Midwest Express initially only intends to code-share in the three markets discussed above, it seeks broad exemption authority to avoid the need to seek new exemption authority each time a new market opportunity develops, either on

a code-share basis or otherwise. In this manner Midwest Express will be responsive to the needs of its passengers for increased international service. Additionally, this authority will strengthen Midwest Express' competitive position with respect to the U.S. and foreign air carriers that now dominate the U.S.-Canada passenger and cargo markets. All of these factors will enable Midwest Express to provide more efficient and expeditious service to the public.

6. Midwest Express submits that grant of the requested exemption authority is entirely consistent with the Air Transport Agreement between the United States and Canada. The Air Transport Agreement permits operations by flag carriers of each country between any point or points in the U.S. and any point or points in Canada. In addition, carriers of both countries are free to engage in unlimited code-sharing operations on trans-border routes. See Air Transport Agreement, Article 10, Section 6. Accordingly, this exemption application is fully consistent with the terms and provisions of the Air Transport Agreement and Department precedent granting numerous statements of authorization permitting trans-border code share operations.

7. Grant of this Application will not result in a near-term

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increase in fuel consumption of ten million gallons or more.
Moreover, approval will not require or result in a major
regulatory action by the Department within the meaning of
Section 313.4(a)(1) of the Department's regulations.

WHEREFORE, Midwest Express respectfully requests that the
Department grant it the exemption authority requested herein, as
well as such other or additional relief as the Department deems
appropriate.

Respectfully submitted,

SILVERBERG, GOLDMAN & BIKOFF, L.L.P.

Attorneys for
MIDWEST EXPRESS AIRLINES, INC.

By:
Robert P. Silverberg

Dated: April 25, 2000

CERTIFICATE OF SERVICE

I hereby certify that the persons on the attached Service List were served by first-class mail, postage prepaid, with Midwest Express' Application for Exemption this 25th day of April, 2000.

Robert P. Silverberg

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Dated: April 25, 2000