

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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Application of :  
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:   
**NATIONAL AIRLINES, INC.** : Docket OST-99-  
:   
for an Exemption from 14 C.F.R. :   
Part 93, Subparts K and S, :   
pursuant to 49 U.S.C. § 41714 :   
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**ANSWER OF ATLANTIC COAST AIRLINES**

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Dated: April 22, 1999

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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Application of	:	
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<b>NATIONAL AIRLINES, INC.</b>	:	Docket OST-99-5521
	:	
for an Exemption from 14 C.F.R.	:	
Part 93, Subparts K and S,	:	
pursuant to 49 U.S.C. § 41714	:	

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**ANSWER OF ATLANTIC COAST AIRLINES**

Atlantic Coast Airlines ("ACA") hereby answers in opposition to the application of National Airlines, Inc. ("National") for an exemption from the provisions of the FAA's High Density Airport Rule (14 C.F.R. Part 93, Subparts K and S) to permit National to conduct operations between Chicago's O'Hare Airport and Las Vegas, Nevada within the controlled hours. The grant of National's request for five exemption slots would not be consistent with the authority of the Secretary of Transportation as set forth in 49 U.S.C. § 41714(c) and, therefore, the application must be denied. In further support of the position of ACA it states as follows:

1. The authority of the Secretary to grant exemptions from the FAA's High Density Airport Rule is set forth in 49 U.S.C. § 41714. With respect to new entrant air carriers, the statute provides that the DOT can exempt such carriers from the rule if the Department "finds it to be in the public interest and the circumstances exceptional." 49 U.S.C. § 41714(c)(1).

2. The meaning of "exceptional circumstances" has evolved over the life of the Secretary's exemption authority. While at

first the standard was more strictly construed by the Department, it no longer interprets the concept to mean that the subject market must lack nonstop service, but is of sufficient size to support such service. Application of Air South Airlines, Inc., Order 96-5-33. Rather, the exceptional circumstances standard has been broadened over the past two years to permit the award of exemption slots to foster new competitive service where there is only a single carrier or where existing services do not produce meaningful price competition. Orders 97-10-16, 98-4-21. While National cites these precedents correctly, it does not appropriately apply the policy to the facts presented in its application.

3. In the parlance of Las Vegas, the National application is a long shot. It is simply impossible to make a case that exceptional circumstances exist to support the award of slots in a market served by no less than six air carriers that will offer in May, 1999, nonstop and one stop flights with a total of over 48,000 weekly seats. See Exhibit 1. Moreover, in terms of nonstop seats, the O'Hare-Las Vegas market will experience almost 20% growth compared to May of 1998. This capacity growth hardly suggests there is a compelling need for the exercise of the Secretary's exemption authority since the incumbent carriers are responding vigorously to growth in the market.

In comparison to other leisure O'Hare markets, Las Vegas is particularly well situated. For example, carriers in the O'Hare-Fort Lauderdale market will offer in May, 1999 only 9990 round trip

seats per week; and in the Tampa market, only 18308 weekly roundtrip seats will be available. When weighed by the number of daily passengers each way the O'Hare-Las Vegas market is shown to be very well served:

<u>BETWEEN</u>	<u>PDEW</u>	<u>SEATS/PDEW</u>
O'Hare - Fort Lauderdale	670	1.06
- Tampa	711	1.84
- Las Vegas	1228	2.80

Clearly, there is no shortage, real or imagined, of capacity in the O'Hare-Las Vegas market. Indeed, O'Hare-Las Vegas compares very favorably to other O'Hare leisure markets.

While National notes the above average load factor on the O'Hare-Las Vegas services of the incumbent carriers, it draws the wrong conclusion from this fact.<sup>1/</sup> The observation of high load factors is hardly surprising in a leisure market which attracts high numbers of discretionary passengers at relatively low fares. In such markets, high load factors are the norm and permit carriers the ability to economically offer low fare service.

As to the National claim that the Chicago-Las Vegas market lacks price competition (a finding necessary to find exceptional circumstances), this claim also lacks merit. The market has an

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<sup>1/</sup> Note that National's analysis excluded the service of America West, Southwest, Frontier and American Trans Air from Midway Airport in drawing its conclusion from the load factor data. National's unwillingness to acknowledge these services suggests that if they were included in its load factor analysis the conclusion would not be as compelling, assuming load factor alone is an indicator of competition levels, which it is not. Second, by looking at historic load factors, National ignores the 20% growth in seats May, 1999 over May, 1998.

average fare of \$147 -- the sixth lowest when compared to fares in a similar mileage block (1501-1600 miles).<sup>2/</sup> In the absence of supra competitive fare levels -- the National application must be denied. Indeed, the Chicago-Las Vegas market is characterized by both high service levels and low fares. This market is not exactly the kind Congress had in mind when adopting § 41714 or the Department thought worthy of relief from the High Density Airport Rule in establishing its slot exemption policy.

4. Even if the Las Vegas-O'Hare market enjoyed only half of the nonstop service it does today, it would not be a candidate for exemption slots as requested by National. Plainly, and correctly so, the DOT's recent emphasis in awarding slot exemptions has been on markets where there is no nonstop service such as is the case in smaller communities. Hence, the DOT rejected, just last month, awards to communities with nonstop service to O'Hare in favor of Savannah/Hilton Head and Greenville/Spartanburg -- both of which lacked any nonstop access to O'Hare. Order 99-3-12, p.2. In doing so, the DOT noted it would be maximizing transportation benefits. See also Orders 98-4-21 and 98-10-28 awarding or transferring slots to ACA in order to serve smaller nonhub communities such as Charleston, W. Virginia, Wilkes-Barre-Scranton and Springfield/Branson Missouri, Fargo and Sioux Falls.

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<sup>2/</sup> Average one way fares in the 1501-1600 mile block, DOT's Domestic Airline Fares Consumer Report, Second Quarter 1998, Passenger and Fare Information dated January 1999.

No such benefit maximization will be realized if National is permitted access to O'Hare by exemption.<sup>3/</sup> Rather, any award to National will squeeze out service to other more deserving communities. ACA has today filed joint slot exemption applications to serve the communities of Charleston, South Carolina and Mobile, Alabama which currently lack any nonstop access to O'Hare, but are sufficiently large to support 50-seat regional jet service. These joint air carrier-community applications deserve more consideration than the National request because the public interest will be better served by allowing new nonstop access to O'Hare rather than enhancing service in a market that is already well served by any objective measure. Accordingly, ACA urges the Department to deny the request of National for five exemption slots and to authorize the release of the 9 available O'Hare slots to address the critical service needs of communities which deserve and are seeking improved and needed access to O'Hare.

WHEREFORE, for the reasons set forth above, Atlantic Coast Airlines respectfully requests the Department to deny the application of National Airlines.

Respectfully submitted,

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Attorneys for  
**ATLANTIC COAST AIRLINES**

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<sup>3/</sup> Even if the DOT rejects the National application, which it should, National still plans to serve the Chicago market through Midway Airport thereby introducing new competition in the city-pair market. National Application, p.14, footnote 24.

By: \_\_\_\_\_  
Robert P. Silverberg

April 22, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have on this 22nd day of April, 1999, served a copy of the foregoing Answer of Atlantic Coast Airlines, by first class mail, postage prepaid, upon the persons on the attached service list.

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