

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION
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DOCKET SECTION

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Application of)
)
ALITALIA-LINEE AEREE ITALIANE-)
S.p.A)
)
For an exemption from Subparts K and S of Part)
93 of Title 14, C.F.R., pursuant to 49 U.S.C.)
section 41714(b)(1))
)

Docket OST-99-5427 -5

REPLY OF ALITALIA

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Dated: April 9, 1999

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REPLY OF ALITALIA

Alitalia hereby replies to the Answers filed by American Airlines and United Air Lines to Alitalia's Application for an exemption authorizing use of slots at Chicago's O'Hare Airport. The slot authorization will enable Alitalia to restore its Chicago – Rome service with five weekly flights from June 1 to the end of the summer season on October 30, 1999.

The only opposition to the request comes from the two airlines that dominate Chicago's air service and traditionally use every possible maneuver to prevent other airlines from obtaining the slots necessary to operate competitive services. Their opposition is no surprise, but it has nothing to do with the public interest.

American argues that the Department's single decision two years ago denying the request of Pakistan International Airlines (PIA) to change the times of its slots establishes a "firm policy" requiring denial of Alitalia's application as "untimely". American claims that granting Alitalia's request would "be setting a terrible precedent that would allow foreign carriers to disrupt the orderly process for slot allocation at O'Hare." (AA Answer, p. 3)

Nowhere, of course, does American mention the enormous service benefits of restoring nonstop service between Chicago and Rome that American itself set forth extensively in support of its pending application for such authority in the 1999 U.S.-Italy Combination Service Case, Docket OST-98-4854. These benefits to the traveling public far outweigh any speculative concern about the Department setting some “terrible precedent” in this case.

Although the Department has pending before it a similarly “untimely” request for O’Hare slots by another carrier, Virgin Atlantic Airways, (to which American has not objected), there is no real-world threat of the Department being flooded with late slot requests by foreign airlines if it grants Alitalia’s application here. For basic operational and commercial reasons, airlines must and do commit their aircraft, crews, marketing efforts and other resources months ahead of the start of operations in intercontinental services. Only in exceptional, and necessarily few circumstances, will foreign airlines find it feasible and worthwhile to propose at a relatively late date to operate intercontinental flights at Chicago.

Certainly the Department is not now faced with a stack of such requests. Alitalia is seeking slots only to operate five weekly roundtrips from June 1 through the end of the summer season on October 30. For its part, Virgin Atlantic is proposing seven weekly flights from August 11 through the end of season. There simply is no plausible claims that the Department somehow will face and be unable to deal with speculative flood of similar slot requests from other airlines.

The Department is fully capable of handling requests for operating authorities of all kinds, including slots, on a case by case basis, exercising its discretionary power on an analysis of the facts and circumstances of individual applications. Indeed, the very premise of the Department’s statutory power to grant exemptions for slots is that the Department will examine

individual requests on their merits under a broad public interest standard. In short, the Department need not, and should not, slam the door on all requests for slots as being “untimely” simply because the applicant did not ask the FAA for slots back on October 15 of last year.

The decision in the PIA case does not compel denial of Alitalia’s request. In that case the FAA had granted PIA the slots it initially requested and, in doing so, the FAA withdrew certain slots from the U.S. carrier pool under the rules and procedures applicable at that time. The withdrawal also required U.S. carriers to readjust their own schedules and, upon PIA’s desire to have different slots, the withdrawn slots were said by American to be unusable. Also, as a holder of slots PIA had the option to work out a trade with another airline to obtain its preferred slot times or, as a worst case, still operate its service with the slots it held. Under these circumstances, the Department found that PIA had been afforded an opportunity to compete in the Pakistan – Chicago market and its subsequent desire for differently timed slots did not justify an exemption award. (Order 97-4-1, April 1, 1997)

No comparable circumstances exist here. Alitalia’s request will have no adverse effect on U.S. carrier operations and no wastage of surrendered slots. It has neither the option to use slots already awarded to it nor the option to trade for slots in order to operate at different, preferred times.

Moreover, the nature of PIA’s request was to change its slot times, the very type of request that could indeed lead to numerous similar future requests by other airlines. Here, as pointed out above, Alitalia’s request is to enable operation of an intercontinental service that almost always is planned well in advance. Thus, unlike PIA’s request, Alitalia’s will not lead to a rash of similar late requests or affect the orderly allocation of slots. Grant of exemptions to

change slot times could open the door for numerous similar requests; but, proposals like Alitalia's would be few and far between.

United argues that Alitalia is "ineligible" for grant of an exemption because it did not request the slots from the FAA back on October 15, 1998, citing the PIA decision for this nonsensical proposition. In that decision, however, nowhere did the Department even suggest that PIA was "ineligible" under the statute to make its request or have it considered on its merits. Instead, the Department carefully examined the detailed circumstances of the request, saying:

"Rather, our decision here is based on our consideration of the factors noted below, that are relevant to its request in this Docket and, based on our consideration of those specific factors, we have decided to deny the request for exemption authority." Order 97-4-1, p.4

It appears that United itself attaches little weight to its spurious legal argument about "ineligibility" because United goes on to claim that Alitalia's request is unjustified on the merits.

United calls "untrue" Alitalia's claim that the EC strictures on the scope of Alitalia's fleet size and operations are relevant to its inability to plan last October to continue its Chicago – Rome service. The facts, however, are as stated in Alitalia's application. While a commercial decision was made to use the existing slots at O'Hare for the Chicago – Milan service, the EC strictures prevented Alitalia at that time from allocating resources to also continue the Chicago – Rome service.

United complains also that Alitalia is seeking "preferential treatment" that is unjustified because the bilateral agreement does not yet permit United to place its code on Lufthansa flights to Italy. Suffice it to say that the Department is fully aware of Italy's responsiveness to the U.S. open skies initiative. After only a brief transition of a few months, full open skies will occur.

Meanwhile, Alitalia seeks only to maintain its Chicago – Rome service that has been bilaterally authorized for decades.

In summary, Alitalia urges the Department not to slam the door on Alitalia's request but to consider the circumstances on the merits. No danger exists here, as American fears, of "setting a terrible precedent". Nor is Alitalia "ineligible" to ask the Department to exercise its clear authority to grant the few slots at O'Hare necessary to provide the traveling public with the substantial service benefits of its proposed Chicago – Rome operation. Alitalia requests prompt approval of its application.

Respectfully submitted,



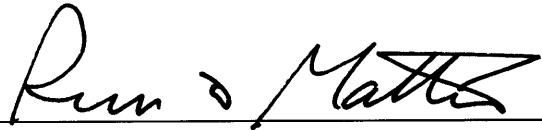
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Dated: April 9, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 1999, a copy of the foregoing was served by first class mail, postage prepaid, on all persons served with Alitalia's application.

A handwritten signature in black ink, appearing to read "Richard D. Mathias", written over a horizontal line.

Richard D. Mathias