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Application of	)	
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AMERICA WEST AIRLINES, INC.	)	
	)	Docket No. OST-00 -
for an exemption pursuant to	)	
49 U.S.C. § 41714	)	
Columbus - New York LaGuardia Airport	)	
Phoenix/Las Vegas - John F. Kennedy	)	
International Airport	)	
	)	

Communications with respect to this document should be addressed to:

Stephen L. Johnson  
Senior Vice President,  
Corporate Affairs  
America West Airlines  
4000 E. Sky Harbor Boulevard  
Phoenix, Arizona 85034

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America West Airlines, Inc. ("America West") respectfully requests an exemption pursuant to 49 U.S.C. § 41714(c) from the requirements of subparts K and S of Part 93 of the Federal Aviation Regulations to ensure its ability to continue its current service between Columbus and New York LaGuardia Airport (LGA) and between Phoenix/Las Vegas and John F. Kennedy International Airport (JFK).<sup>1</sup> To maintain its service at JFK, America West requests three exemption slots and authority to slide the two slots it owns to times that are usable for its flights to Las Vegas and Phoenix. At LaGuardia, America West requests that it be permitted to slide two

<sup>1</sup> The Secretary of Transportation may under the provisions of 49 U.S.C. § 41714(c) provide exemptions from the rules governing high density airports to enable new entrant air carriers to serve these airports when the service is in the public interest and the circumstances are exceptional. Since America West holds fewer than 12 slots at both LaGuardia and JFK, it falls within the definition by 14 C.F.R. § 93.213(a)(5), and qualifies as a new entrant under 49 U.S.C. § 14714(h)(3).

slots held by Mesa Airlines for America West Express flights to more useable times and be awarded four exemption slots to continue four daily Columbus roundtrip flights with connections to points in the West. As discussed in detail below America West is forced to request these exemptions because the slots it has been able to obtain in the past from other carriers will soon be withdrawn and no slots at reasonable times are available on fair terms to buy or lease. Loss of this service would cause substantial harm to consumers currently flying on America West, through reduced service options and higher fares. Accordingly, this request amply meets both the public interest and exceptional circumstance requirements of Section 41714.

## **I. BACKGROUND**

The pernicious effect on slot restrictions at the four high-density airports has been well documented in various studies and Department orders. Public attention focused on the slot problem following publication of the General Accounting Office report, *Airline Deregulation: Barriers to Entry Continue To Limit Competition in Several Key Domestic Markets* (Report) in October 1996. The Report detailed how significant "barriers to entry persist" and "access to airports continues to be impeded by . . . federal limits on takeoff and landing slots at major airports . . ."<sup>2</sup> GAO found the buy-sell rule instituted in 1985 has led to greater concentration, and the impact of the 1986 lottery "disappointing" as most of the original lottery winners subsequently went out of business or merged with larger, established carriers. GAO also criticized the "use or lose" provision of the slot rules finding that to avoid losing grandfathered slots under this provision,

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<sup>2</sup> General Accounting Office, *Airline Deregulation: Barriers to Entry Continue to Limit Competition in Several Key Domestic Markets*, GAO/RCED-97-4, at 2 (Oct. 1996).

"incumbent airlines lease unused slots to other airlines . . . on a short-term basis."<sup>3</sup> This type of leasing arrangement, which often takes place between a major carrier and its commuter operator ("babysitting"), dampens competition because major slot holding carriers can remove from the pool otherwise available slots needed by new entrant carriers attempting to introduce competitive air service. In response to the GAO reports the Department awarded a limited number of exemption slots at O'Hare, LaGuardia and JFK. See e.g. Orders 97-10-16, 98-4-21, 98-4-22 and 98-10-29. Notwithstanding these efforts slots remain a critical problem. Last year the National Research Council's Transportation Research Board (TRB) addressed the competitive ramifications of slot controls in its Special Report of August 2, 1999.<sup>4</sup> The TRB Report stated that "increased opportunities for entry and competition in the domestic airline industry" are an important public interest goal, but found that there were obstacles to achieving this goal, "including longstanding rules that curb access to some of the country's largest airport," among them New York's JFK and LaGuardia Airports. The TRB Report also noted that "high average fares in many of the city-pair markets involving the hub airports of major airlines have been a recurrent subject of public concern and policy debate during the past two decades . . ." and that "slot-controlled airports consistently are among the highest-priced markets in the country." Recently the Department awarded 75 JFK slots to a new entrant which plans to use the airport as a hub for service in short and medium haul markets. Order 99-7-11.

Notwithstanding these actions by the Department, slot restraints continue to inhibit competition and expanding access to high-density airports is a high priority for Congress. The

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<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Application of New Air Corporation*, Order 99-9-11, Sept. 16, 1999.

pending FAA Reauthorization legislation, which passed the House, would lift the current slot restrictions at LaGuardia and JFK for regional jets in March 2000 and for large aircraft on January 1, 2007. The Senate bill would also eliminate all slot restrictions at LGA and JFK in 2007 and provide more limited relief prior to that date. However, even if this legislation passes it will not protect America West's immediate need to insure that it can continue its current service at these airports. America West's service both at LaGuardia and JFK has provided important competitive options for travelers to Columbus and the West. The continuation of this service by America West is critical to ensuring that domestic competition envisioned by Congress and promoted by the Department can be maintained and continue to grow at slot controlled airports until these restrictions can be eliminated.

## **II. AMERICA WEST HAS A COMPELLING NEED FOR SLOTS TO MAINTAIN ITS CURRENT SERVICE AT JOHN F. KENNEDY AND LAGUARDIA AIRPORTS**

To preclude America West, the only post deregulation major full service, low fare, hub-and-spoke carrier from continuing to provide critically needed competitive service from its hubs to key New York airports is unquestionably an exceptional and compelling circumstance within the meaning of 49 U.S.C § 41714(c). System-wide through three hubs, America West provides everyday low fares at 84 nonstop destinations in the United States, Mexico and Canada. Currently the ninth-largest carrier in the U.S., America West is the only post deregulation carrier which has succeeded in joining the ranks of the majors in an extremely competitive market by providing low fares and high quality full service to consumers. From its primary hub in Phoenix, America West and America West Express offer travelers 321 daily flights to 78 destinations. America West also operates a hub in Las Vegas, serving 40 destinations with 89 daily flights and from Columbus,

Ohio, operating 36 daily flights to 11 destinations. Service to JFK and LaGuardia is critical to America West's ability to maintain its status as major competitor throughout the United States and to continue to provide highly competitive service to consumers travelling to or from New York to the Mid West and the West.

As recently described in the Environmental Assessment prepared by the Department in connection with JetBlue's slot application for JFK, New York City is served by three airports, Newark, LaGuardia and JFK and each plays a differing role for travelers. Environmental Assessment, September 16, 1999 at 2-5. As a full service low fare carrier committed to the New York market, America West currently serves all three airports. However, the ability to maintain viable service to JFK and LaGuardia is now in doubt unless the requested exemptions are granted.

**A. JFK**

In 1997, the three major New York area airports handled 83.9 millions passengers, of which JFK handled the largest share, a record 31.3 million domestic and international passengers.<sup>5</sup>

But, as noted in the Environmental Assessment, JFK remains a woefully underutilized airport, primarily serving international and domestic leisure traffic with only limited low fare domestic service. To a large extent the low fare full service available to the West has been and continues to be provided by America West. The carrier currently owns two slots in JFK and utilizes four additional slots through leases and other arrangements for nonstop service to both Phoenix and Las Vegas. Through these two hubs it provides connecting service to the West Coast. The two slots owned by America West, a 15:00 arrival and 15:30 departure, are not usable for America West and it had traded the slots with other carriers for more usable times at 16:30 and 17:30. Two of the

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<sup>5</sup> O&D Survey, 1997.

three leased slots are from a major carrier, and will no longer be available after April 2000. America West has been able to replace these with slots from another major carrier only through October 2000, after which it will be forced to discontinue these flights. Similarly, America West anticipates that the airline with which it has arranged the slot trade will not be in a position to continue the slot trade or to continue to lease the other two slots now used by America West at the required times.<sup>6</sup> The pre-deregulation incumbent carriers currently control 97 percent of the slots at JFK and it is not reasonable to expect that any of these slots will be available to America West.<sup>7</sup> Indeed the inability to count on the availability of the slots now used by America West and the effort involved in seeking replacement slots has been a constant drain on the time and resources of the Company. Thus the critical concerns raised by GAO in the 1996 Report regarding the dominance of the pre-deregulation carriers at key slot constrained airports remain a potent obstacle to competition four years later. Indeed, the current plight of America West will have particularly serious repercussions for travelers if America West is forced to discontinue important existing services to its three hubs. Such a result would not only penalize travelers in these specific city pair markets through unmet demand and higher fares but would have negative repercussions for travelers throughout America West's system through the loss of network efficiencies. This situation should not be allowed by the Department to occur. The loss of this service is exactly the kind of compelling and exceptional circumstance that slot exemptions issued by the Secretary of Transportation are intended to cure.

Las Vegas and Phoenix are the fifth and eighth largest domestic O&D markets from JFK

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<sup>6</sup> The 19:58 slot America West will shift to a non-slot controlled time after 20:00.

<sup>7</sup> This does not include the slot exemptions recently awarded to JetBlue, which are nontransferable.

respectively and America West has been the price leader among the major carriers in ensuring low fares in these markets. America West currently provides 64 percent of the available seat departures in the JFK/PHX market and 33 percent in the JFK/LAS market. America West's load factors at JFK average 71 percent on an annual basis and exceed its system-wide load factors by 3 percent. In the peak months of July and August 1999 its load factors at JFK were 80 and 84 percent respectively and demonstrate the strong public interest in enabling America West to continue to serve this airport. Importantly, America West also provides the only real low fare option from JFK to the West Coast. America West's average JFK-LAX fare is 46 percent lower than the major carriers in that market. *See* Exhibit 1. America West's walk-up fares are 40 below those of the other major carriers. *See* Exhibit 2.

The times requested by America West at JFK are set forth in Chart A. The approval of this request will have virtually no impact on the environment or on other operations. The two slots America West seeks to permanently slide to a 17:30 departure and a 16:30 arrival will not increase total slots use since these are regular slots owned by America West. America West understands from the FAA that the sliding of these two slots will have no impact on other operations during the requested slot periods. Similarly, it is clear both from the recent award of slot exemptions to JetBlue and the pending legislation to lift the slot restrictions at JFK that awarding America West three slot exemptions to continue its current service to JFK would have no negative impact on the environment or cause any traffic delays at the times requested.<sup>8</sup>

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<sup>8</sup> America West at JFK operates the same "environmentally friendly" A320 aircraft as will be operated by JetBlue. *See* Order 99-9-11 (Sept. 16, 1999) at 7-8. Also as noted in Order 99-9-11, safety is not effected by the grant of additional slots "since air traffic control procedures, not the High Density Rule, are used to maintain aircraft separation." *Id.* at 13.



**B. LAGUARDIA**

In October 1997 America West filed an application for eight slots at LaGuardia so it could operate four round trips a day to Columbus. America West pointed out that it was the only major carrier prohibited by the perimeter rule from operating nonstop service to its principal hub. At that time America West operated two CMH/LGA round trips with four slots received from American in trade for 3 America West slots at O'Hare. If it had received the eight slots in 1998, America West would have terminated its slot exchange with American, and added two additional flights.<sup>9</sup> The Department in Order 98-4-22, found that America West's proposal would bring "substantial benefits to many consumers" but the Department did not have sufficient slot exemptions to make an award to the airline. Subsequently, America West through its codeshare arrangement with Mesa, operating as America West Express with regional jets, has been able to provide four daily roundtrips to Columbus by using four Mesa slots and the four slots from American.

Currently, New York is Columbus's second largest O&D market and Columbus is LaGuardia's 21st largest O&D market. US Airways is the principal carrier in the LGA/Columbus market and offers twice the capacity of America West. Nevertheless, American West has built up a 27 percent market share by offering highly competitive fares that average 26 percent below those of US Airways. In addition as with America West's service to JFK, it is able to offer passengers connecting service through Phoenix and Las Vegas to 37 cities in the West at fares approximately 40 percent below its major competitors. As noted above, America West uses four commuter slots held by Mesa and the four slots from American to provide this service. However, only two of the

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<sup>9</sup> America West also would have been able to add service from Chicago O'Hare because it would not have had to trade its O'Hare slots to American for LGA slots.

Mesa slots are at useable times for the required pattern of service to make connections at the Columbus hub. Until now America West and Mesa have been able to swap the other two commuter slots with Comair and Business Express to enable America West to maintain a workable service pattern. However with the recent purchase of Comair by Delta and Business Express by American, these two regional carriers no longer have the same flexibility to engage in these slot swaps and America West anticipates that it will be unable to conduct these trades. Accordingly, America West on behalf of itself and Mesa request the Department to permit Mesa to permanently slide its 12:00 arrival to 13:30 and its 10:30 departure to 14:00. As with the proposed slot slide at JFK this action will not change the total operations at LaGuardia and will have no impact on noise or other environmental problems. America West also seeks to be awarded four slot exemptions to replace the American slots it currently uses in exchange for three slots at O'Hare.

As discussed above with respect to JFK, America West believes that American will soon wish to reclaim its LaGuardia slots which would force America West to reduce its service to Columbus to a noncompetitive level. Granting America West four air carrier exemption slots, which it could use with large aircraft or by Mesa with regional jets depending on traffic levels, will ensure that America West is able to provide needed competition in the LGA/CMH market and beyond. The specific slots requested are shown on Chart 2. Adding four flights a day would have no impact on congestion, noise or other environmental concerns and is consistent with pending legislation that would permit additional service at LaGuardia.<sup>10</sup> Continuing its four roundtrips between LaGuardia and Columbus is critically important for passengers flying in this market who

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<sup>10</sup> The grant of these slots would also permit America West to operate three additional flights at O'Hare, thus enabling it to increase service to Las Vegas to the level it proposed to the Department in its 1997 slot application.

would essentially be left with no competition for US Airways if America West was forced to exit. Moreover, these flights are important to America West's overall ability to sustain its Columbus hub and provide low fare options to the West Coast through this airport.

**III. AMERICA WEST'S PROPOSED SERVICE  
SIGNIFICANTLY ADVANCES THE PUBLIC INTEREST  
BY MAINTAINING NEEDED COMPETITION IN MAJOR MARKETS**

Granting America West's application would substantially promote key public interest factors set forth in the Airline Deregulation Act which are to guide the Department's actions. These factors are:

- Promoting the availability of a variety of . . . economic, efficient, and low-priced services”;
- “Placing maximum reliance on competitive market forces and on actual and potential competition”;
- Avoiding unreasonable industry concentration, excessive market domination, [and] monopoly power;
- Encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.

49 U.S.C. § 40101(a)(4), (6), (10), (13). See Order 98-4-21 (April 21, 1998) awarding five slots to America West at O'Hare International Airport.

America West as the only major post deregulation carrier has brought new competition to the entire country and has served these public interest objectives. The slot slides and exemptions it requests at JFK and LaGuardia will advance these public interest objectives by ensuring the continued availability of the carrier's highly competitive full service to consumers at these two major New York airports. Only America West offers the pro-competitive network benefit of a hub

system coupled with low fares which extend the reach of passengers from New York to numerous cities throughout the United States. Continued access to these slots permits America West to maintain and increase competition from JFK and LaGuardia to Ohio and the West.

#### **IV. CONCLUSION**

Since deregulation, America West as a new entrant offering low-fare full service has reduced prices in air transportation in markets where it competes. Despite its minuscule slot pool, the carrier has demonstrated its commitment to maximizing its presence at high-density airports where possible by slot trades and leases.

It is clearly in the public interest to meet consumer demand by enabling America West to continue service at JFK and LaGuardia during slotted time periods. The slot slides and exemptions requested at JFK and LaGuardia will allow America West to continue its highly successful, low fare full service to Columbus, Phoenix, Las Vegas and 37 other points in the Western United States. If America West were forced to withdraw from these two airports the traveling public would lose a major competitive force in the New York area the many cities served by America West and fares to Columbus, Phoenix, Las Vegas would surely go up. The benefits that deregulation has brought to these markets would be lost, and the Department's procompetitive policies would suffer a severe setback. Certainly, there exists in this situation exactly the kind of exceptional circumstance to support the grant of the requested relief.

WHEREFORE, for the reasons stated above, America West respectfully requests that the Department grant it an exemption from Subparts K and S of Part 93 of the Federal Aviation Regulations to slide two America West slots and to award it three exemption slots at JFK and to slide two Mesa slots and grant America West four exemption slots at LaGuardia and to grant such

other and further relief as the Department deems appropriate.

Respectfully submitted,

Joanne W. Young  
David M. Kirstein  
BAKER & HOSTETLER, L.L.P.  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036-5304  
(202) 861-1532

Counsel for America West Airlines

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