

carrier is a new entrant. Air Canada and ATA Airlines both hold slots in the low-demand hours. Mesa previously has held EAS slots at DCA. Consequently, Air Canada and Mesa are incumbents and ATA Airlines is a limited incumbent.

For several reason we conclude that the definition of "new entrant" should be applied as written, with the result that carriers who do not hold any slots at the airport according to the FAA's records will be considered new entrants for purposes of this lottery, regardless of whether they also operate any slots at the airport. First, in 1985, when the definition of "new entrant" was promulgated as part of the "buy/sell" rule, (50 FR 52189; December 20, 1985), the industry operated much differently than today. At that time, most commuter service was provided by independent companies who held their own slots and entered into feeder or marketing relationships with the larger carriers. The Department did not want to define "new entrant" in such a way as to create a disincentive toward such arrangements by making it more difficult for carriers to conduct operations at the airport through leased slots to obtain permanent slots of their own. Chautauqua, and Atlantic Coast's access to DCA is a result of lease arrangements and neither of these carriers hold slots outright. The underlying policy goal that was the basis for first defining a new entrant in this way remains a valid consideration today.

Second, leasing a slot that is necessary to enter competition is a far cry from holding the slot outright. Both air carriers who would be adversely affected by an interpretation that equated "operations" with "holdings" are independent companies who have entered into codeshare arrangements with larger carriers to operate commuter flights. We have no information to suggest that these carriers cannot conduct operations on their own, outside of their codeshare arrangements, competing against incumbents.¹ ACAA's proposed interpretation of our rules would potentially inhibit competition.

Lastly, interpreting the definition of "new entrant" in the manner suggested by ACAA—that is, against its literal language—would necessitate a lengthier proceeding that we believe is warranted. It may well be that a review of this

definition along with other important questions is justified in view of the changes that have occurred in the industry since 1985, and the plethora of arrangements by which slots are made available under the rule (common ownership, contracts, leases and multiple codeshare arrangements). For now, however, the FAA finds that the public interest lies in allocating these slots promptly. Therefore, the new entrant definition will be applied in its present form.

2. New Entrant Preference

ATA claims that the FAA's intended procedure, by which we will permit the first ranked new entrant carrier to select four of the available six air carrier slots, is inconsistent with the regulatory requirements and fundamentally unfair. ATA contends that the original rationale for our rule allowing new entrants to select four slots in the first sequence of the lottery—i.e., that four slots are minimally necessary for an economically viable operation—is clearly no longer justified. ATA would prefer that we remake the procedures so as to maximize the number of carriers who receive slots in the lottery, by allowing three new entrant carriers to select two slots each.

The regulation governing slot lotteries establishes two preferences for new entrant carriers: (1) In the first selection sequence, 25 percent of the slots available in the lottery, or no less than 2, are reserved for new entrants ("new entrant set-aside"); and (2) new entrant carriers may select four slots, if available in the first sequence. (See 14 CFR 93.225(h) and (f) respectively.)

The upcoming lottery offers six slots in the air carrier category. A rank order of all carriers eligible to participate in the lottery will be established at the start of the lottery. Incumbent carriers may only select after all new entrant and limited incumbent carriers have made their selections. After the rank order is established, the first new entrant may select two slots. This will complete the new entrant set-aside. The lottery continues with the first selection sequence by starting at the top of the established rank order and moving to the first new entrant or limited incumbent carrier. If the first carrier in the rank order is a new entrant (that also selected two slots in the new entrant set-aside), that this new entrant is eligible to select only two additional slots, which completes its selection of four slots in the first selection sequence, as provided for in the regulation. Alternatively, after completing the new entrant set-aside selections, if the first non-incumbent carrier in the rank order

is a limited incumbent carrier, then that carrier may select two slots. Following the rank order to the next new entrant or limited incumbent carrier, that carrier would in this case select the remaining two slots.

ATA asks the FAA to disregard the governing regulatory provisions referenced above and instead adopt an *ad hoc* allocation approach that ATA argues will better achieve the policy goal of maximizing competitive services at DCA. In promulgating the lottery procedures, the FAA and the Department of Transportation specifically found that the two articulated preferences for new entrants were warranted to further policies enunciated in the Airline Deregulation Act of 1978 (50 FR 52193; December 20, 1985). The resulting lottery provision is quite specific in this regard and the FAA does not find that it has the latitude suggested by ATA to arbitrarily change this provision, or ignore it. Given the limited number of slots available in this lottery relative to the number of participants, it may be that only a few carriers will get to select slots. As discussed below, the FAA and the Department are neither amending nor abandoning the agencies' position that the opportunity for a new entrant carrier to select four slots is preferable in meeting the stated goals.

ATA also argues that all the new entrants already have some slots (or slot exemptions) and that four slots are not economically necessary for new entrants to establish service at the airport. ATA points to service conducted by Alaska Airlines and Frontier Airlines, which have both been successful conducting a single roundtrip at DCA. In recent FAA and Department proceedings however, several new entrant carriers have argued the opposite, contending that even four slots during peak hours are not enough today to launch viable service.

We recognize that ATA successfully operates at DCA using only four peak hour AIR-21 exemption slots and two off-peak hour slots. Likewise, both Alaska Airlines and Frontier Airlines are the recipients of AIR-21 slot exemptions by the Department for beyond the perimeter service at DCA. Frontier Airlines provides the only nonstop DCA/Denver service (Order 2000-7-1) and Alaska Airlines (Order 2001-6-20) provides the only nonstop DCA/Seattle service. That nonstop service from DCA to these markets can be operated successfully in the absence of other non-stop competition is not surprising; new entrant carriers seeking to provide competitive alternatives on city-pairs already served by other

¹ Indeed, very recently one of these carriers—Atlantic Coast announced it anticipates that its longstanding relationship with United Airlines will end, and that it will establish a new, independent low-fare airline. See <http://www.atlanticcoast.com/pressreleasearchive/2003/july/728.htm>.