

AFFIDAVIT OF DAN SMILEY

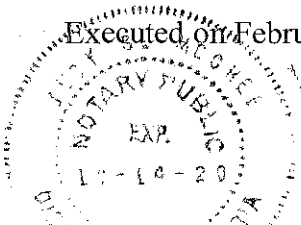
I, Dan Smiley, state under oath:

1. I am employed by the Federal Aviation Administration (“FAA”) in the position of Acting Vice President for System Operations Services, Air Traffic Organization. In this position, I am responsible for overseeing administration of FAA’s management of operational authorizations (“slots”) at airports, including Newark Liberty International Airport (“Newark”). I have the knowledge and authority to make the following representations about FAA’s practices.
2. In order to manage congestion, the FAA limits scheduled operations at Newark pursuant to its Order Limiting Operations at Newark Liberty International Airport, 73 Fed. Reg. 29,550 (May 21, 2008) (“Newark Slot Order”). This Order was extended and is in effect until October 29, 2016. 79 Fed. Reg. 16857 (March 26, 2014). Under the Newark Slot Order, carriers must obtain an operational authority (or slot) to conduct an arrival or departure at Newark between 6 A.M. and 10:59 P.M. The Newark Slot Order permits carriers to lease or trade slots to other carriers on a temporary basis, provided that the lease does not exceed the duration of the Newark Slot Order.
3. The FAA has granted waivers under special circumstances on two occasions to allow the permanent transfers of slots at John F. Kennedy International Airport and LaGuardia Airport under the Slot Orders in effect at those airports. (Operating Limitations at New York LaGuardia Airport, 71 Fed. Reg. 77,854 (Dec. 27, 2006) and Operating Limitations at John F. Kennedy International Airport; Order Limiting Scheduled Operations at John F. Kennedy International Airport, 73 Fed. Reg. 3,510 (Jan. 18, 2008.) First, in 2011, a joint grant of waiver was issued by the Department of Transportation (DOT) and the FAA to allow the transfer of slots at Reagan National and LaGuardia airports between US Airways and Delta Air Lines. Notice of Grant of Petition with Conditions, 76 Fed. Reg. 63702 (Oct. 13, 2011). The waiver was conditioned on the divestiture of slots at Reagan National and LaGuardia to remedy prospective harm. Second, as part of a November 2013 settlement agreement with the Department of Justice on the American Airlines and US Airways merger, the FAA issued a grant of waiver from the Orders to allow the permanent transfer of divested slots at Kennedy and LaGuardia airports.
4. The FAA has authorized a number of slot lease transactions, all of much smaller scale than the waiver application described above. The FAA’s approval of slot transactions is an administrative function and pursuant to paragraph 7 of the Order, allows FAA to maintain accurate records on which carrier operates (as opposed to “holds”) each slot. In each case, the parties notify the FAA of plans, and the FAA reviews the transaction details to confirm the status of the holder. Once the status of the holder is confirmed and the FAA determines the transfer meets the requirements in the Newark Slot Order, the FAA authorizes the transaction consistent with the Newark Slot Order.

5. In a Notice of Proposed Rulemaking (“NPRM”), 80 Fed. Reg. 1274 (Jan. 8, 2015), the DOT/FAA has proposed a comprehensive scheme for slot management at Newark, LaGuardia, and Kennedy. The NPRM proposes to permit carriers to buy, sell, lease, or trade slots and provide for DOT review of these kinds of slot transactions for competitive effects. The DOT/FAA is currently reviewing the comments received regarding the proposal and has not determined when the rulemaking will be finalized. However, the DOT/FAA does not expect that the rulemaking will be completed in 2016.
6. The Newark Slot Order requires that a carrier use its slots at least 80 percent of the time to retain historic rights (“80% rule”) is intended to “encourage carriers to hold no more slots than their markets demand, potentially freeing up underutilized slots for use by other carriers...” 57 Fed. Reg. 37308 (Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport Final Rule, Aug. 18, 1992).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 11, 2016.



District of Columbia: SS

Subscribed and sworn to before me, in my presence,  
this 11 day of February, 2016

Judy S. McGhee  
Judy S. McGhee, Notary Public, D.C.

My commission expires October 14, 2020.

[SIGNATURE]