



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Issued by the Department of Transportation on February 27, 2006

NOTICE OF ACTION TAKEN -- DOCKET OST-2005-23349

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Application of US AIRWAYS, INC. filed 12/13/2005 for:

XX Exemption for two years under 49 U.S.C. 40109 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between the United States and St. Eustatius, Netherlands Antilles, and beyond.¹ US Airways also requests authority to combine this exemption authority with US Airways' existing certificate and exemption authority.

US Airways states that it requests this authority in order to offer initial code-share service with Caribbean Sun Airlines (Caribbean Sun), whereby US Airways will place its "US" code on flights operated by Caribbean Sun between St. Juan, on the one hand, and St. Eustatius and St. Kitts and Nevis, on the other.

Applicant rep: Howard Kass (703) 872-5230 DOT Analyst: Gerald Caolo (202) 366-2406

DISPOSITION

XX **Granted (subject to conditions, see below)**

The above action was effective when taken: February 27, 2006, through February 27, 2008.

**Action taken by: Paul L. Gretch, Director
Office of International Aviation**

XX **The authority granted is consistent with the aviation agreement between the United States and the Netherlands.**

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

- XX** The holder's certificates of public convenience and necessity
- XX** Standard exemption conditions (attached)

Conditions:

The code-share operations conducted under this authorization are subject to the following conditions:

¹ US Airways' initial beyond point will be St. Kitts & Nevis where it currently holds authority. See Notice of Action Taken dated February 16, 2006, Docket OST-2001-10589.

- (a) The code-sharing operations conducted under this authority must comply with 14 CFR 257 and with any amendment to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (i.e., the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected; and
- (b) The authority granted here is specifically conditioned so that neither US Airways nor Caribbean Sun give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

The authority granted to serve beyond points is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority by virtue of either the present action or other action of the Department.

The route integration authority granted is subject to the condition that any service provided under this exemption shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in award of the route integration authority granted should be construed as conferring upon US Airways rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless US Airways notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in US Airways' authority by virtue of the route integration exemption granted here, but that are not then being used by US Airways, the holding of such authority by route integration will not be considered as providing any preference for US Airways in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found the applicant qualified to provide the exemption services authorized.

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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http://dms.dot.gov/reports/reports_aviation.asp

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served; and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.