

US DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

IN THE MATTER OF

DHL AIRWAYS, INC.

DOCKET NO. OST-2002-13089
(Citizenship Proceeding)

ORDER OF CHIEF ADMINISTRATIVE LAW JUDGE

Notice is hereby given that a prehearing conference in the above-entitled matter is scheduled to be held on April 29, 2003, at 10:00 A.M. (local time) in Room 5332, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590, before the undersigned.

The Order Instituting Formal De Novo Review, Order 2003-4-14, dated April 17, 2003, provides that “this proceeding is being instituted to consider *de novo* the current citizenship of DHL Airways only.” (Emphasis in original.) That issue has been pending before the Department since late 2000 and in several dockets (Order 2003-4-14, pp. 1, 2), including Dockets OST-2002-13089, OST-2002-13590, OST-2002-13787, OST-2001-10052, OST-2001-8824, and OST-2001-8736. On March 4, 2003, the Department’s Inspector General issued a response to an inquiry by Representative Don Young, Chairman of the House Transportation and Infrastructure Committee, concerning the process used in reviewing the citizenship of DHL Airways; and on March 5, 2003, the Department issued a Notice Requesting Comments on the letter from the Inspector General. In P.L. 108-11, April 16, 2003, § 2710, Congress directed the Department “to

use an Administrative Law Judge in a formal proceeding to resolve docket number OST-2002-13089.”

The Instituting Order states:

“We believe, after reviewing the comments of the interested parties, along with the filings in the several dockets concerning DHL Airways’ citizenship, and noting the recommendations of the IG and the comments thereon, that ‘a fresh start to this proceeding’ will best serve the public interest. This proceeding is being instituted to consider *de novo* the current citizenship of DHL Airways only. Other issues will not be made a part of this proceeding.” (Emphasis in original.)

The Order notes that “the issue of DHL Airways’ citizenship has been pending in various forms for a considerable period of time” and that “a substantial amount of relevant information has already been filed in this docket.” The Order does not address the question of prehearing discovery under 14 C.F.R. Part 302 but notes that the public interest requires “every effort to expedite this proceeding and to reduce the burden on all parties.” Accordingly, it directs that the Judge issue a Recommended Decision by September 2, 2003, providing that the Judge may request an extension of time, if he determines that additional time is needed. In view of the procedural directives in the Instituting Order and the severely limited time accorded the completion of this proceeding, an early prehearing conference is essential.

In order to facilitate the conduct of the prehearing conference, parties shall serve, file, and deliver two copies to the judge by 5:00 P.M., April 24, 2003: (1) a statement of the issues and subissues in this proceeding discussing its position on each such issue and subissue, including the relevance of any issue discussed in the IG’s correspondence with Rep. Young;¹ (2) a statement of known disputed facts to be tried under each issue and

¹ The IG cited seven factors to use in determining actual control of an air carrier, including: (1) control via super-majority or disproportionate voting rights; (2) negative control/power to veto; (3) buy-out clauses; (4)

subissue, with citations to documents previously filed or submitted;² (3) a statement concerning the implications of the citizenship test in P.L. 108-11 for the determination of citizenship in this proceeding; (4) a statement concerning the burden of proof for each issue and subissue; (5) proposed stipulations; (6) proposed grouping of parties; (7) preliminary requests for information and admissions; (8) a joint or separate chronology of all events relevant to the matters at issue; (9) joint or separate proposed procedural schedules, including proposed dates for prehearing procedures (including requests for information, objections to such requests, other discovery, exchange of information and testimonial and other exhibits, and witness lists), hearing and briefs; (10) any proposed amendment to any date fixed by the Instituting Order, and the effect of any such proposed amendment on the proposed procedural dates; (11) a preliminary list of witnesses, together with a preliminary list of the exhibits and testimony they will sponsor; and (12) a statement concerning the prospect or status of settlement efforts. Parties should be prepared to discuss each issue and subissue and the facts to be tried with respect to each in order to limit the scope of the hearing and enable stipulations and settlement of issues.³ Each party's filing shall include a telephone number where it can be reached by the Judge for the prehearing telephone conference.

Each party shall deliver to the Judge two copies of each document previously submitted or filed by it in this proceeding, or any related proceeding (including

equity ownership; (5) significant contracts; (6) credit agreement/debt; and (7) family relationships/business relationships.

² See infra at note 4.

³ See Administrative Procedure Act, 5 U.S.C. § 556(c)(8).

submissions to the Inspector General),⁴ consecutively numbered, tabbed, and indexed and shall thereafter contemporaneously deliver to the Judge two copies of each document filed by it hereafter in this or any related proceeding. In accordance with the Instituting Order, each party shall designate by April 24, 2003, what previously submitted documents they will proffer for inclusion in the record. Parties shall attempt to obtain agreement with other parties in order to avoid duplicate submissions of documents proposed for the record and other filings.

Any party who objects to disclosure of Rule 12 documents pursuant to the Instituting Order shall file such objection with the Judge by April 24, 2003, together with the basis for such objection. Parties should review the Judge's Order in Discovery Airways, Inc. and Mr. Phillip Hoe, Docket 46760, concerning the management of confidential documents.⁵

The Instituting Order notes that "our rules normally permit petitions to intervene any time prior to the first prehearing conference" and "because of the need to expedite this proceeding, petitions to intervene must be submitted within 15 days of the date of this order." Since the prehearing conference is scheduled for April 29, 2003, petitions to intervene must be served, filed, and delivered to the Judge before April 29, 2003.

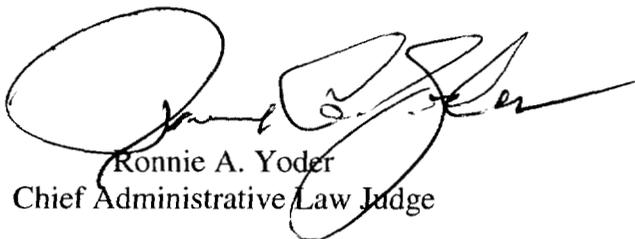
Prospective intervenors shall comply with all terms of this Order. Answers to petitions to

⁴ Any document previously submitted and not filed must be filed.

⁵ Order dated April 6, 1990, 1990 DOT Av. LEXIS 278, at *2-3, n.2. See also Japan Charter Authorization Proceeding (1988/1989), Docket Order 45582, Orders dated May 17 and May 25, 1988; U.S. Australia Service Proceeding, Docket 46034, Order dated May 3, 1989; U.S.-Japan Service Case, Docket 46438, Orders served September 27 and 29, 1989, review denied, Order 89-10-8; Robert O. Nay, Enforcement Proceeding, Docket 45663, Order served May 18, 1989).

intervene shall be filed, served, and delivered to the Judge by May 5, 2003.

SO ORDERED.



Ronnie A. Yoder
Chief Administrative Law Judge

Attachment - Service List

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