

257018



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

Issued by the Department of Transportation on October 16, 2003

AMENDED NOTICE OF ACTION TAKEN -- DOCKET OST-2003-15946- 5

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).

Joint Application of US Airways, Inc.¹ and Deutsche Lufthansa AG (Lufthansa)² filed 8/13/03 for:

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

Scheduled foreign air transportation of persons, property, and mail between any point or points in the United States, and any point or points in Germany, directly and via intermediate points, and beyond Germany to any point or points in third countries, and to integrate this authority with US Airways' existing certificate and exemption authority. US Airways further requests any necessary exemption authority (including the right to integrate such authority with its existing certificates and exemptions) in order to engage in code-sharing arrangements with Lufthansa.

XX Statement of authorization for US Airways under CFR Part 212 to:

Permit US Airways to display the "LH" code of Lufthansa on flights operated by US Airways between (1) any point in the United States and any point in Germany (either nonstop or via third-country points); (2) any points in the United States in conjunction with services held out by Lufthansa between Germany and the United States (either nonstop or via third-country points); and (3) any point in the United States and any point beyond the United States.³

XX Statement of authorization for Lufthansa under 14 CFR Part 212 to:

Permit Lufthansa to display the "US" code of US Airways on flights operated by Lufthansa between (1) any point or points in Germany and any points in the United States (either nonstop or via third-country points); (2) any points in Germany in conjunction with services held out by US Airways between the United States and Germany (either nonstop or via-third-country points); and (3) any point in Germany and any point beyond Germany.⁴

Applicant reps: John P. Schmitz (202) 263-3000 (US Airways) DOT Analyst: Sylvia Moore (202) 366-6519
Ali M. Stoepfelwerth (202) 663-6000 (Lufthansa)

(See Reverse Side)

¹ US Airways also applied on behalf of its affiliated carriers, Allegheny Airlines, Inc.; Piedmont Airlines, Inc.; and PSA Airlines.

² Lufthansa also applied on behalf of its affiliate, Lufthansa CityLine GmbH (Lufthansa CityLine).

³ See Attachment A for the Routes US Airways and Lufthansa initially propose to serve.

⁴ *Id.*

DISPOSITION

By Notice of Action Taken dated October 10, 2003, the Department granted exemption authority to US Airways to operate to various foreign points and deferred action on US Airways' exemption request and US Airways' and Lufthansa's statements of authorization to operate code-share services involving those points in Appendix A marked with an asterisk, pending security clearances. We have now received security clearances for those cities previously marked with an asterisk. We are, therefore, amending our October 10 action to grant the applicants the requested authorities to serve the additional points for which we have received security clearance.

XX Granted remainder of US Airways' request for exemption authority

XX Granted remainder of the US Airways and Lufthansa statements of authorization (subject to conditions, see below)

The above action with respect to US Airways' amended exemption authority was effective when taken: **October 16, 2003**, through **October 10, 2005**

The amended statements of authorization granted were effective when taken: **October 16, 2003**, and will remain in effect indefinitely, subject to the conditions listed below.

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 Germany.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated: **XX US Airways' certificates of public convenience and necessity**

XX Lufthansa's foreign air carrier permit

XX Standard exemption conditions (Attachment B)

Remarks: In a letter dated August 26, 2003, Counsel for US Airways informed the Departments that US Airways would soon schedule a code-share safety audit of Lufthansa CityLine, consistent with the provisions of the Department's Code Share Safety Program, and would provide the results of that audit to the Federal Aviation Administration. Since US Airways has not yet conducted a safety audit of Lufthansa CityLine, we will limit the authority granted to Lufthansa and its CityLine affiliate in the above statement of authorization so as not to permit the carriage on City Line of any U.S. Airways' traffic. We will continue to defer action on the application to the extent that Lufthansa CityLine seeks to carry code-share traffic of US Airways.

Conditions: 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 the award of the route integration authority requested 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 carriers(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.

The authority granted to serve intermediate and 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 statements of authorization granted are subject to the following conditions:

(a) The statements of authorization will remain in effect only as long as (i) US Airways and Lufthansa continue to hold the necessary underlying authority to operate the code-share services at issue, and (ii) the code-share agreement providing for the code-share operations remains in effect.

(b) US Airways and/or Lufthansa must promptly notify the Department (Office of International Aviation) if the code-share agreement providing for the code-share operations is no longer effective or if the carriers decide to cease operating all or a portion of the approved code-share services. Such notices should be filed in Docket OST-2003-15946.⁵

(c) US Airways and/or Lufthansa must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, which carrier will be operating the aircraft in the code-share market added, and the date on which the service will begin. (Such notice should be filed in this Docket.)

(d) The code-sharing conducted under this authority must comply with Part 257 and with any amendments 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 the 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. Further, the operating carrier shall not permit the code of its U.S. air carrier code-sharing partner to be carried on any flights that enter, depart, or transit the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

(e) The authority to operate to third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, (i) nothing in the award of this blanket statement of authorization should be construed as conferring upon US Airways rights (including code-share, 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;⁶ and (ii) 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 blanket statement of authorization granted here, but that are not then being used by US Airways, the holding of such authority 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.

⁵ We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

⁶ The notice in paragraph (c) above can be used for this notification.

(f) The authority granted here is specifically conditioned so that neither US Airways nor Lufthansa shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.⁷

On the basis of data officially noticeable under Rule 24(g) of the Department's regulations, we found US Airways 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 or deferred, 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.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

⁷ We note that the code-share arrangement as submitted did not include provisions regarding exclusive dealings between the code-share parties. Should the parties subsequently amend their code-share agreement or any other agreement affecting the code-share services to include a provision relating to an exclusive arrangement between the parties, that amended language must first be submitted for consideration by the Department.

Proposed Initial Routes“LH” Code on Flights Operated by US Airways**To Frankfurt from**

Charlotte, NC
Pittsburgh, PA
Philadelphia, PA

To Munich from

Philadelphia, PA

To Philadelphia from

Allentown, PA	Elmira/Corning, NY	Philadelphia, PA
Nantucket, MA	Newark, NJ	Phoenix, AZ
Atlantic City, NJ	Ft. Lauderdale, FL	Pittsburgh, PA
Albany, NY	Freeport, Bahamas	Presque Isle, MA
Antigua, West Indies	Frankfurt, Germany	Punta Canta, Dominican Republic
Atlanta, GA	Grand Cayman, Cayman Islands	Providence, RI
Aruba, Aruba	Grenada, Grenada	Portland, ME
Augusta, ME	New London, CT	Reading, PA
Wilkes-Barre, PA	Greensboro, NC	Raleigh/Durham, NC
Bermuda	Greenville, SC	Richmond, VA
Bradley Int'l, CT	Westchester Co., NY	Rockland, ME
Barbados	New Haven, CT	Roanoke, VA
Binghamton, NY	Houston, TX	Rochester, NY
Bangor, ME	Indianapolis, IN	Southwest Florida Regional, FL
Bar Harbor, ME	Long Island, NY	Rutland, VT
Birmingham, AL	Jacksonville, FL	San Diego, CA
Nashville, TN	Las Vegas, NV	Salisbury, MD
Boston, ME	Los Angeles, CA	State College, PA
Burlington, VT	New York, NY	Louisville, KY
Buffalo, NY	London (Gatwick) U.K.	Santo Domingo, Dominican Republic
Baltimore, MD	Montego Bay, Jamaica	Seattle/Tacoma, WA
Columbia, SC	Kansas City, MO	San Francisco, CA
Charlottesville, VA	Orlando, FL	San Juan, PR
Charleston, SC	Harrisburg, PA	St. Kitts, Leeward Islands
Cleveland, OH	Manchester, NH	Orange County, CA
Charlotte, NC	Miami, FL	St. Louis, MO
Columbus, OH	Milwaukee, WI	Newburg, NY
Charleston, WV	Minneapolis/St. Paul, MN	St. Maarten, Netherlands Antilles
Cancun, Mexico	New Orleans, LA	Syracuse, NY
Cincinnati, OH	Martha's Vineyard, MA	Tampa, FL
Dayton, OH	Myrtle Beach, SC	Knoxville, TN
Washington, DC	Nassau, Bahamas	St. Lucia
Denver, CO	Norfolk, VA	Ottawa, Ontario
Dallas-Ft. Worth, TX	West Palm Beach, FL	
Wayne County, MI	Newport News, VA	

To Boston from

Allentown, PA	Elmira/Corning, NY	Punta Canta, Dominican Republic
Nantucket, MA	Newark, NJ	Providence, RI
Atlantic City, NJ	Ft. Lauderdale, FL	Portland, ME
Albany, NY	Frankfurt, Germany	Reading, PA
Antigua, West Indies	Frankfurt, Germany	Raleigh/Durham, NC
Atlanta, GA	New London, CT	Richmond, VA
Aruba, Aruba	Greensboro, NC	Rockland, ME
Augusta, ME	Greenville, SC	Roanoke, VA
Wilkes-Barre, PA	Westchester Co., NY	Rochester, NY
Bermuda	New Haven, CT	Southwest Florida Regional, FL
Bradley Int'l, CT	Houston, TX	Rutland, VT
Barbados	Indianapolis, IN	San Diego, CA
Binghamton, NY	Long Island, NY	Salisbury, MD
Bangor, ME	Jacksonville, FL	State College, PA
Bar Harbor, ME	Las Vegas, NV	Louisville, KY
Birmingham, AL	Los Angeles, CA	Santo Domingo, Dominican Republic
Nashville, TN	New York, NY	Salisbury, MD
Boston, ME	Montego Bay, Jamaica	Seattle/Tacoma, WA
Burlington, VT	Kansas City, MO	San Francisco, CA
Buffalo, NY	Orlando, FL	San Juan, PR
Baltimore, MD	Harrisburg, PA	St. Kitts, Leeward Islands
Columbia, SC	Manchester, NH	Orange County, CA
Charlottesville, VA	Miami, FL	St. Louis, MO
Charleston, SC	Milwaukee, WI	Newburg, NY
Cleveland, OH	Minneapolis/St. Paul, MN	St. Maarten, Netherlands Antilles
Charlotte, NC	New Orleans, LA	Syracuse, NY
Columbus, OH	Martha's Vineyard, MA	Tampa, FL
Charleston, WV	Myrtle Beach, SC	Knoxville, TN
Cancun, Mexico	Norfolk, VA	St. Lucia
Cincinnati, OH	West Palm Beach, FL	Ottawa, Ontario
Dayton, OH	Newport News, VA	
Washington, DC	Philadelphia, PA	
Denver, CO	Phoenix, AZ	
Dallas-Ft. Worth, TX	Pittsburgh, PA	
Wayne County, MI	Presque Isle, MA	

“US” Code on Flights Operated by Lufthansa

To Boston from

Frankfurt, Germany
Munich, Germany

To Philadelphia from

Frankfurt, Germany

To Frankfurt from

Amman, Jordan	Muenster, Germany	Milan, Italy
Stockholm, Sweden	Gothenburg, Sweden	Nice, France
Bologna, Italy	Geneva, Switzerland	Nurenberg, Germany
Bremen, Germany	Hanover, Germany	Oslo, Norway
Brussels, Belgium	Hamburg, Germany	Prague, Czech Republic
Basel, Switzerland	Helsinki, Finland	Stuttgart, Germany
Copenhagen, Denmark	Istanbul, Turkey	Turin, Italy
Dresden, Germany	Leipzig, Germany	Tegel, Germany
Dusseldorf, Germany	Lagos, Nigeria	Venice, Italy
Dubai, UAE	Lyon, France	
Florence, Italy	Malta	
	Marseilles, France	

To Munich from

Stockholm, Sweden	Hamburg, Germany	Bucharest, Romania
Bremen, Germany	Helsinki, Finland	Prague, Czech Republic
Cologne/Bonn, Germany	Istanbul, Turkey	Stuttgart, Germany
Copenhagen, Denmark	Lyon, France	Tegel, Germany
Dusseldorf, Germany	Marseilles, France	Vienna, Austria
Muenster, Germany	Naples, Italy	Warsaw, Poland
Gothenburg, Sweden	Nice, France	Zurich, Switzerland
Hanover, Germany	Oslo, Norway	

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. 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 Principal Security Inspector (PSI) to advise the PSI 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.