



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on October 29, 2003

NOTICE OF ACTION TAKEN -- DOCKET OST-96-1359

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).

Applicant: **British Airways PLC**

Date Filed: October 8, 2003

Relief requested: Exemption from 49 U.S.C. 41301 to conduct scheduled foreign air transportation of persons, property and mail between the United Kingdom and El Paso, Texas; Fresno, Monterey, Santa Barbara, San Luis Obispo, Bakersfield, and Palm Springs, California; and Flagstaff/Grand Canyon, Arizona (all via Phoenix, Arizona) pursuant to British Airways' code share arrangement with America West Airlines, Inc. (America West).

If renewal, date and citation of last action: New authority

Applicant representative: Don Hainbach 202-776-3970

DOT analyst: Shelita Smith 202-366-1226

Responsive pleadings: By letter dated October 27, 2003, the City of Phoenix filed in support of British Airways' request.

DISPOSITION

Action: Approved

Action date: October 29, 2003

Effective dates of authority granted: October 29, 2003 – October 29, 2005

Basis for approval (bilateral agreement/reciprocity): U.S.-U.K. aviation agreement

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated: X Standard exemption conditions (attached) X Foreign air carrier permit conditions (Order 96-9-35) & Statement of Authorization dated October 29, 2003, Docket OST-2001-9973, renewing the American West/British Airways code-share services, and conditions therein.

Special conditions/Partial grant/Denial basis/Remarks:

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

We found that the applicant was qualified to perform its proposed operations.

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/deferred/dismissed, 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*

Foreign Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, 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) from a foreign airport that would be the holder's last point of departure for the United States, 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;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

Docket OST-96-1359



City of Phoenix
AVIATION DEPARTMENT

October 27, 2003

Mr. Paul L. Gretch
Director, Office of International Aviation
U.S. Department of Transportation
400 7th Street S.W.
Washington, D.C. 20590

Re: Application of British Airways Plc for an exemption from 49 U.S.C. §41301, Docket OST-96-1359-23,
and
Joint Application of America West Airlines, Inc., Mesa Airlines, Inc., and Freedom Airlines, Inc. for Statement of Authorization, Docket OST 2001-9973-7

Dear Mr. Gretch:

British Airways and America West have requested that DOT allow the expansion of their code share to add eight western destinations and allow service with America West Express flights. The City of Phoenix Aviation Department would like to add its whole-hearted support to these requests.

Since June 1996, America West has been authorized to place the British Airways' designator code on America West flights between Phoenix and various points carrying British Airways' international traffic. This arrangement has been very beneficial to the air travelers and shippers in our region. The requested code share expansion will add destinations in California, Arizona, and Texas as options for transatlantic passengers traveling from London to the United States via Phoenix Sky Harbor. Further, this expansion will enhance the Phoenix market for British Airways, America West Airlines, and America West Express flights provided by Mesa and Freedom Airlines.

We are delighted that British Airways and America West have seen fit to expand the reach of their cooperative agreement for Phoenix. We are confident that this expanded cooperation will benefit all concerned.

Sincerely,

David Krietor
Aviation Director



AIRPORTS COUNCIL
INTERNATIONAL