



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

Issued by the Department of Transportation on July 26, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-18017

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 **Bahamasair Holdings Limited** filed **6/3/04** for:

XX Exemption from 49 U.S.C. 41301 to provide the following service:

Scheduled foreign air transportation of persons, property, and mail between points in the Bahamas and points the United States. Bahamasair intends to operate this service pursuant to a code-share arrangement with US Airways and its affiliates Piedmont Airlines and PSA Airlines.

Application of **Bahamasair Holdings Limited** filed **6/4/04** for:

XX Statement of authorization under 14 CFR Part 212 to:

Permit Bahamasair to display the designator code of US Airways on flights operated by Bahamasair between (1) points in the United States and points in the Bahamas, and (2) points in the Bahamas in conjunction with foreign air transportation services held out by US Airways.¹

Application of **PSA Airlines, Inc.** filed **6/3/04** for:

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

Scheduled foreign air transportation of persons, property, and mail between points in the United States and points in the Bahamas, and to integrate this authority with its existing authorities. PSA intends to operate this service pursuant to a code-share arrangement with Bahamasair, Piedmont, and US Airways but seeks broad authority to also operate its own flights.

Application of **US Airways, Inc. (and its affiliates Piedmont Airlines, Inc. and PSA Airlines, Inc.)** filed **6/3/04** for:

XX Statement of authorization under 14 CFR Part 212 to:

Permit US Airways (and its affiliates) to display the designator code of Bahamasair on flights operated by US Airways, Piedmont, and PSA between (1) points in the United States and points in the Bahamas, and (2) points in the United States in conjunction with foreign air transportation services held out by Bahamasair.²

Applicant rep: **Howard Kass (703) 872-5230 (US Airways)** DOT Analyst: **Sylvia Moore, (202) 366-6519**
George U. Carneal (202) 637-6546 (Bahamasair)

¹ Initially, Bahamasair intends to place US Airways' code on flights operated by Bahamasair between the Bahamas and Fort Lauderdale, Miami, Orlando, and West Palm Beach, as well as several intra-Bahamaian flights (no local US-coded traffic).

² Initially, US Airways intends to place Bahamasair's code on flights operated by US Airways between the Bahamas and Boston, Charlotte, New York, Philadelphia, and Washington, DC.

Gulfstream International Airlines filed an answer objecting to the joint application. Gulfstream states that Bahamasair is delinquent in filing its required T-100 traffic reports from October 2002 through at least December 2003, creating a significant competitive disadvantage for other airlines offering U.S. Bahamas service which have reported their traffic.

Bahamasair filed a reply stating it did submit T-100 reports for the period October 2002 through December 2003. Bahamasair states, however, that it learned of some data quality problems with a number of its reports from that period and worked with Bureau of Transportation Statistics (BTS) officials to resolve those problems.

DISPOSITION

XX Granted (subject to conditions, see below)

The above action with respect to Bahamasair's exemption authority was effective when taken: **July 26, 2004**, through **July 26, 2005**

The above action with respect to PSA's exemption authority was effective when taken: **July 26, 2004**, through **July 26, 2006**

The statements of authorization granted were effective when taken: **July 26, 2004**, 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 overall state of aviation relations between the United States and the Bahamas.

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

XX PSA's certificate of public convenience and necessity
XX Standard exemption conditions (attached)

The exemption authority granted to PSA is subject to the following condition:

The route integration authority granted is subject to the condition that any service provided under this authority shall be consistent with the applicable bilateral aviation agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of this authority requested should be construed as conferring upon PSA additional rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless PSA first 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 PSA's authority by virtue of the route integration and code-share authority granted

here, but that are not then being used by PSA, the holding of such authority will not be considered as providing any preference for PSA in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

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 its affiliates) and Bahamasair 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 its affiliates) and/or Bahamasair 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-2004-18017.²
- (c) US Airways (and its affiliates) and Bahamasair 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 granted here is specifically conditioned so that neither US Airways (and its affiliates) nor Bahamasair shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

Remarks: With respect to Gulfstream's comments, we have confirmed with BTS staff that Bahamasair's T-100 traffic reports are current and the data quality problems have been resolved.

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

² We expect this notification to be received within 10 days of such non-effectiveness or of such decision.

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*

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.

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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, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. 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 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;
- (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.

