U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

APR 14 2011

Mr. Ronald Thomas
US Airways, Inc.
4000 E Sky Harbor Blvd.
Phoenix, Arizona 85034

Dear Mr. Thomas:

This letter responds to your request for a legal interpretation relating to the flight time requirements of flag operations under subpart R of part 121.

You state that a U.S. Airways flag flight from Rio de Janeiro to Charlotte was delayed on the day of departure due to circumstances beyond your control. The flight was going to arrive in Charlotte after customs closed; therefore, it was rescheduled to land in Miami to clear customs, and the flight continued as a part 91 ferry flight (without any passengers) to Charlotte. You ask whether the FAA agrees with the following specific statement:

> We believe past FAA legal rulings allow a flag flight that originates outside the 48 contiguous States to land in the US, deplane passengers, refuel and continue on to another destination within the 48 contiguous States as a flag flight. If through passengers deplane to clear customs and reboard the aircraft (no new passenger or cargo enplanements) we believe the flight would still be able to continue as a flag flight.

We agree that past FAA interpretations allow a flag flight that originates outside the United States to fly to a point within the United States, without enplaning passengers or cargo, and continue to a final destination in the continental United States under flag rules for flight time limitations, instead of conducting the final leg under the domestic flight rules of subpart Q. *See* Legal Interpretation from Neil R. Eisner to John C. Lenahan (July 7, 1977) concerning a flag flight that originated in Honolulu. ("If the carrier enplanes and deplanes passengers or cargo at Los Angeles before proceeding to its final destination in the continental United States, the domestic limitations would apply for the flight from Los Angeles to the point of final destination. The flag flight time limitations would apply to the flight from Honolulu to Los Angeles.") In 2008, we further clarified that the limitation on enplaning passengers [and cargo] at an intermediate stop within the United States applies to "new passengers" only. *See,* Legal Interpretation from Rebecca MacPherson to Captain Tim Riley (July 16, 2008).

In response to your specific question, the flight could continue from Miami to Charlotte under flag flight time limitations if there were no *new* passengers or cargo on board the flight; therefore, only those passengers and cargo enplaned in Rio de Janeiro may continue on the final leg. However, the scheduled flight time from Rio de Janeiro to Charlotte may not exceed the flight time limitations of subpart R, unless the additional flight time is due to "circumstances beyond the control of the air carrier."

Section 121.471(g)[1] (applicable to domestic operations) allows a crewmember to be scheduled for flight time in excess of applicable flight time limitations, if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time. By interpretation, the FAA has extended the "circumstances beyond the control of the certificate holder" exception to flight time questions concerning flight time restrictions for flag carriers under subpart R and supplemental operations under subpart S. *See* Legal Interpretation from Rebecca MacPherson to Randall Kania (April 29, 2004), and Legal Interpretation from Donald P. Byrne to John H. DeWitt (November 8, 1990). The application of this exception is based on the particular circumstances existing at the time of departure demonstrating that the circumstances were truly unforeseeable or beyond the air carrier's control and the schedule was realistic. *See* Legal Interpretation from Rebecca MacPherson to Kevin McCabe (March 10, 2011), enclosed, and cases cited therein. Because your letter does not provide sufficient information to determine whether the circumstances causing the delay of the flight originally scheduled from Rio de Janiero to Charlotte was "beyond your control," we offer no opinion on whether the entire flight sequence (Rio de Janiero – Miami – Charlotte) would comply with the flight time requirements of subpart R.

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[1] 14 CFR §121.471(g) provides:

> A flight crewmember is not considered to be scheduled for flight time in excess of flight time limitations if the flights to which he is assigned are scheduled and normally terminate within the limitations, but due to circumstances beyond the control of the certificate holder (such as adverse weather conditions), are not at the time of departure expected to reach their destination within the scheduled time.

This interpretation was prepared by Lorna John, Senior Attorney, in the Regulations Division of the Office of the Chief Counsel and was coordinated with the Air Transportation Division of the Flight Standards Service (AFS-200). If you need further assistance, please contact us at your convenience at (202) 267-3073.

Sincerely,

Michael E. Chase

for Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200

Enclosure