

Order 99-4-21  
Served: May 4, 1999



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

Issued by the Department of Transportation  
on the 27<sup>th</sup> day of April, 1999

**1999 U.S.-ITALY COMBINATION  
SERVICE CASE**

**Docket OST-98-4854**

**FINAL ORDER**

**SUMMARY**

By this order, we make final our tentative decision to (1) award Delta Air Lines, Inc., certificate authority to operate service in the Atlanta, Georgia-Rome, Italy, market and allocate it seven weekly frequencies for that service, and (2) award US Airways, Inc., backup authority for service in the Philadelphia, Pennsylvania-Milan, Italy, market.

**BACKGROUND**

On November 11, 1998, representatives of the United States and Italy initialed, *ad referendum*, a Protocol to the U.S.-Italy Air Transport Services Agreement. The Protocol establishes an open-skies aviation environment between the United States and Italy for future effectiveness, subject to certain specified conditions subsequent. Pending the effectiveness of the Protocol, the two sides agreed to expand services in the market by permitting airlines of each country to operate a total of seven additional weekly combination service frequencies between any point or points in the United States and any point or points in Italy. The new service could begin as early as April 1, 1999.

By Order 99-2-27, we considered the proposals of Delta to provide daily Atlanta-Rome service, US Airways to provide daily Philadelphia-Milan service, and American to provide daily Chicago-Rome service. We tentatively decided to select Delta to operate the seven weekly frequencies in the Atlanta-Rome market and to select US Airways for backup authority for services in the

Philadelphia-Milan market.<sup>1</sup> We required that objections to our tentative decision be filed by March 5 and that answers be filed by March 10.

In our show-cause order, we tentatively found that major public benefits would be derived from an award in this proceeding that provided for new U.S. gateway services to Italy. We also tentatively concluded that this finding strongly supported the selection of Delta's Atlanta-Rome proposal because only Delta of the applicants in this case would open a new U.S. gateway to Italy. In addition, we tentatively found that Delta's Atlanta proposal would provide more behind-gateway service benefits and would enhance competition in the U.S.-Italy market more than the proposal of either American or US Airways.

Our tentative finding on the public benefits to be derived from new U.S. gateway services to Italy took into account the historical expansion of services in the U.S.-Italy market since 1990 when there was only one U.S. gateway, New York (JFK). As new opportunities to increase services in the U.S.-Italy market developed from our 1990 aviation agreement with Italy, we used those opportunities to create new U.S. gateways to Italy and expand air service and consumer choice in this market. Currently, six U.S. carriers provide service to Italy from five U.S. gateways. As a result of these expansions in gateway services since 1990, traffic in the U.S.-Italy market has grown by nearly 70 percent.<sup>2</sup>

#### **RESPONSES TO ORDER 99-2-27**

US Airways filed comments to our tentative decision. American and the City of Chicago jointly filed objections. Delta and the Georgia and Atlanta parties filed answers.

US Airways states that while it submitted a strong proposal that was well supported by extensive and persuasive evidence, it is clear from the show-cause order that the Department firmly intends to select Delta as the carrier to receive the new Italy frequencies. In these circumstances, US Airways states that by granting final authority to Delta without further delay, the Department will enable Delta to begin marketing its service, thus maximizing the public benefits of the new Italy route authority.

American and Chicago argue that American should have been selected for the primary award because the evidence in this proceeding shows that American's Chicago-Rome proposal would provide greater new service and competitive benefits than those provided by either Delta or US Airways. In this regard, they argue the Department should have first determined that Rome has a greater need for service from the U.S. than does Milan. Once that determination was made, they argue that based on actual traffic data the Department should have found that the local Chicago-Rome market is larger than the local Atlanta-Rome market and that Chicago is a more direct connecting point for more traffic from cities behind the gateway than is Atlanta. Finally, they argue that the Department ignored its previous determination in the *1996 U.S.-Italy Service*

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<sup>1</sup> On March 4, 1999, the Department granted Delta's unopposed request to begin marketing and sales of its proposed service pending a final Department order in this proceeding. (Notice of Action Taken in Docket OST-98-4854, dated March 4, 1999.)

<sup>2</sup> Order 99-2-27 at 3-4.

*Proceeding* that Delta's proposed Atlanta-Rome service would not provide significant new service or competitive benefits in view of Delta's existing New York-Rome service.

Delta argues that the objection of American and Chicago has failed to contradict the Department's critical reasons for selecting Delta, namely that (1) only Delta's Atlanta proposal

would provide new U.S. gateway service to Italy, (2) Delta's Atlanta proposal would provide service to an underserved region of the United States, the South; (3) Delta's proposal would enhance intergateway competition, (4) Delta's proposal would enhance competition against foreign airlines, and (5) Delta's proposal would provide the most online service benefits.

The Georgia and Atlanta Parties argue that contrary to what American and Chicago recommend as a proposed method of analyzing the competing proposals, the Department fairly evaluated all three competing proposals, analyzed the needs of the competing gateways, and reached the proper conclusion that the selection of Delta to provide service from Atlanta, a new gateway for U.S.-Italy service, would provide the most public benefits.

## **DECISION**

We have decided to make final our tentative decision to (1) award Delta Air Lines, Inc., certificate authority to operate service in the Atlanta, Georgia-Rome, Italy, and to allocate it seven weekly frequencies for that service, and (2) select US Airways, Inc., for backup authority.

Our tentative decision determined that an award to Delta would provide the greatest public benefits in this case. We reached this conclusion after carefully weighing and balancing the merits of all the carrier proposals in this case. We have carefully considered the joint objections of American and Chicago to our tentative decision and the responses of Delta and the Georgia and Atlanta parties to those objections, and we conclude that American and Chicago have presented no new arguments or evidence that warrant changing our tentative decision.

### **Primary Award**

We tentatively selected Delta for an award in this case because it is the only applicant that would open a new U.S. gateway to Italy, and because we tentatively concluded that it would provide the most significant behind-gateway benefits and enhance competition in the U.S.-Italy market. In this regard, we noted that Delta would provide a U.S. gateway to Italy for one region of the United States that does not now have one and that service through the Atlanta gateway would improve service to Italy for the most U.S. cities. We also noted that the selection of Delta would intensify intergateway competition in the U. S.-Italy market since Delta would serve Italy from its major hub in Atlanta and, thus, be able to serve Italy just as other carriers now serving can do so from one of their major hub cities.

American and Chicago have not refuted the public benefits that we found would result from inauguration of new U.S. gateway service. Rather, they raise two issues that they contend we decided incorrectly and that warrant the selection of American in this case.

First, American and Chicago argue that in selecting a carrier in this case we should have determined that the U.S.–Rome market would provide more benefits than the U.S.–Milan market, and then that the Chicago-Rome market is more deserving of service than is the Atlanta-Rome market. Much of their argument rests on the fact that until recently Chicago received nonstop service to Rome by Alitalia, but that Alitalia switched its Chicago service from Rome to the carrier's international hub at Milan. Thus, they contend, since a demonstrated market exists for Chicago-Rome service, American's Chicago proposal is the superior choice in this case.

Our analysis, however, produces a different conclusion as to which proposal will provide the greatest public benefits. As we have pointed out, Chicago and Philadelphia, the other two cities at issue, already enjoy nonstop service to Italy. Atlanta does not. Where U.S.-carrier rights are restricted, as they are here, our long-standing goal has been to insure gateway access to the foreign market to as many U.S. cities as possible. For this reason, the opening of a new U.S. gateway for international service has been a significant consideration in carrier selection cases.<sup>3</sup>

In the U.S.-Italy market, we note that the expansion of U.S. gateway services, including American's Chicago-Milan service, United's Washington, D.C.-Milan service, and US Airways' Philadelphia-Rome service, has resulted in significant increases in U.S.-Italy traffic, facilitating the development of the market and providing valuable gateway access to millions of U.S. travelers.

In this case, only Delta would offer new gateway service to Italy and, thus, only the selection of Delta would maximize the public benefits from these newly available route rights, as the selection of new gateway service did in these previous cases involving expanded route rights in the U.S.-Italy market. While American's proposed service would improve Chicago's service to Italy, we are not persuaded that the incremental benefits of expanded service at Chicago outweigh the benefits of service from a totally new gateway, particularly where, as here, the connecting services available from Delta's significant Atlanta network will, among all the applicants, afford the greatest number of cities their first service to Italy. In these circumstances, we remain convinced that adding Atlanta as a new gateway for U.S.-Italy service will provide the greatest public benefits from an award in this case.

Second, American and Chicago contend that we erred in concluding that Delta's proposal would benefit the most passengers in this case. In this regard, however, we note that even the forecasts of Delta's traffic prepared on rebuttal by both other applicants (in which they adjusted downward Delta's forecast traffic levels both for the local Atlanta-Rome market and for connecting markets) still showed that Delta's Atlanta-Rome proposal would attract more total passengers (local and connecting passengers) than either of the other applicants' proposals. Order 99-2-27 at 6, citing AA-R-111 and US-R-310. While American and Chicago have reiterated criticisms of Delta's forecasting methodology, they have provided no new information that was not considered in our tentative decision or that persuades us to modify our assessment of the superior service advantages of Delta's proposal over American's in this case.

Finally, we are not persuaded by the argument of American and Chicago that our findings in the *1996 U.S.-Italy Service Proceeding* are controlling in the current case. Nor do we see the results in that case in any way inconsistent with those we reach here. In the 1996 case, unlike this one, we had three possible new Italy gateways from which to choose. We proceeded to consider the relative benefits of the new gateway proposals and found in the circumstances presented that US Airways' Philadelphia-Rome proposal would provide the most benefits. We also took into consideration the fact that US Airways would be a wholly new entrant to the U.S.-Italy market

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<sup>3</sup> See, e.g., Order 99-3-26 at 5, *1998 U.S.-Brazil Combination Service Case*, and Order 93-7-38 at 8-9, *U.S.-Colombia Combination Service Case*.

and the service and competitive advantages that it would offer the traveling public. In the current case, all of the applicants currently serve Italy, and we are weighing the benefits of a proposal to establish new U.S. gateway service to Italy (Delta's Atlanta-Rome proposal) against two proposals that would simply expand service to Italy from established U.S. gateways (American's Chicago-Rome proposal and US Airways' Philadelphia-Milan proposal). Thus, the cases involve a different mix of applicants and proposals competing for selection in the context of significantly different circumstances. Our decision in the 1996 case is accordingly not determinative of the result here.

### **Backup Award**

American and Chicago also object to the proposed backup award to US Airways. They again reiterate their argument that Rome needs service more than Milan and that US Airways would benefit fewer passengers than American and, thus, US Airways should not receive the backup award.

As discussed earlier, a significant Department objective in the Italy market is to promote gateway competition and, thereby, facilitate development of the market. This factor strongly supported selection of Delta's proposal for the primary award, as Delta was the only applicant that would open a new gateway to Italy. Contrary to American and Chicago's joint objection, gateway competition considerations also favor the selection of US Airways as the backup carrier. Both US Airways and American currently serve Italy from their chosen gateway. Therefore, each could step in quickly if the backup was activated, each would improve Italy service from its gateway, and each would increase competition in the markets served. Thus, the selection between them is close. However, Chicago receives more service to Italy, as well as other transatlantic service, than does Philadelphia. Thus, the selection of US Airways as backup would have a greater impact on gateway competition than would the selection of American. In these circumstances, we believe that greater public benefits will result from a backup award to US Airways in this case, notwithstanding American's projected higher traffic levels.

### **ECONOMIC AUTHORITY**

As set forth in Order 99-2-27, we will issue Delta a new five-year experimental certificate authorizing its proposed service in the Atlanta-Rome market and allocate it seven weekly frequencies for that service.<sup>4</sup> The frequency allocation will be of indefinite duration, but subject to the continued effectiveness of the holder's underlying certificate authority as well as to our standard condition that we may amend, modify or revoke the allocation at any time and without hearing, at our discretion. In addition, the frequencies allocated are subject to our standard 90-day dormancy condition, wherein frequencies will be deemed dormant and will automatically revert to the Department for reallocation if they are not operated for 90 days, except where service in the market is seasonal. Finally, we will subject Delta's certificate to a 90-day startup condition, requiring the carrier to commence service within 90 days from the date of service of this final order.

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<sup>4</sup> Based on officially noticeable data under Rule 24(n), we find that Delta is fit, willing, and able to provide the authorized service. Delta has previously been found fit to provide scheduled foreign air transportation of persons, property, and mail. See, *e.g.*, Order 98-12-33.

Also, as set forth in Order 99-2-27, we issue US Airways a backup certificate authorizing its proposed service in the Philadelphia-Milan market.<sup>5</sup> The backup certificate will be effective for one year and will be activated if Delta does not institute or maintain service during that one-year period.

**ACCORDINGLY,**

1. We make final our tentative findings and conclusions in Order 99-2-27;
2. We select Delta Air Lines, Inc., for an award of primary authority to engage in scheduled foreign air transportation of persons, property, and mail between Atlanta, Georgia, and Rome, Italy, and issue it a certificate of public convenience and necessity, in the form attached;
3. We select US Airways, Inc., for backup authority to the Delta primary award and issue it a certificate of public convenience and necessity, in the form attached, authorizing US Airways to engage in scheduled foreign air transportation of persons, property, and mail between Philadelphia, Pennsylvania, and Milan, Italy;
4. We allocate Delta Air Lines, Inc., seven weekly frequencies to perform its authorized operations in the Atlanta-Rome market, and seven weekly frequencies to US Airways for Philadelphia-Milan service should its backup certificate be activated;
5. Subject to the provisions of ordering paragraph 4, above, the frequencies allocated here are effective immediately and shall remain in effect indefinitely, provided that the carrier continues to hold the necessary underlying economic authority awarded here, and are subject to our standard condition that we may amend, modify, or revoke the allocation at any time and without hearing, at our discretion;
6. The frequencies allocated here are subject to the condition that the frequencies will expire automatically and will revert to the Department for reallocation if they are not used for a period of 90 days;<sup>6</sup>
7. Unless disapproved by the President of the United States under 49 U.S.C. 41307, this order and the attached certificates shall become effective upon the 61st day after its submission for section 41307 review, or upon the date of receipt of advice from the President or his designee under Executive Order 12597 and implementing regulations that he or she does not intend to disapprove the Department's order under that section, whichever occurs earlier;<sup>7</sup> and

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<sup>5</sup> Based on officially noticeable data under Rule 24(n), we find that US Airways is fit, willing, and able to provide the authorized service. US Airways has previously been found fit to provide scheduled foreign air transportation of persons, property, and mail. See, *e.g.*, Order 95-1-41.

<sup>6</sup> Subject to the startup conditions imposed in the attached certificates, the dormancy period will begin upon inauguration of service by the carrier(s).

<sup>7</sup> This order was submitted for section 41307 review on April 27, 1999.

On April 30, 1999, we received notification that the President's designee, under Executive Order 12597 and implementing regulations, did not intend to disapprove the Department's order.

8. We may amend, modify, or revoke the authorities granted by this order at any time at our discretion without notice or hearing; and

9. We will serve this order on American Airlines, Inc.; Delta Air Lines, Inc.; US Airways, Inc.; the City of Chicago; the City of Philadelphia (Division of Aviation); the Georgia and Atlanta parties; the Ambassador of Italy in Washington, DC; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

**PATRICK V. MURPHY**  
Deputy Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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## **Experimental Certificate of Public Convenience and Necessity**

**For Route**

**783**

**This Certifies That**

**Delta Air Lines, Inc.**

**is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.**

**This Certificate is not transferable without the approval of the Department of Transportation.**

**By Direction of the Secretary**

**Issued by Order 99-4-21  
On April 27, 1999  
Effective on April 30, 1999**

**Patrick V. Murphy  
Deputy Assistant Secretary  
for Aviation and International Affairs**



## Terms, Conditions, and Limitations

### **Delta Air Lines, Inc., for Route 783**

is authorized to engage in foreign air transportation of persons, property, and mail:

Between the terminal point, Atlanta, Georgia, and the terminal point Rome, Italy

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the holder has been specifically designated to conduct such services and the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA).
- (5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (6) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

Issued by  
Order 99-4-21  
Route 783

(7) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(8) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(9) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results, will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative or low-priced air transportation it proposed in its application for this authority.

(10) The holder may combine services on this certificate with all services authorized by other Department of Transportation certificates or exemptions, provided, that such operations are consistent with the applicable bilateral aviation agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first notifies us of its intent to serve such 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 rights that are included in the holder's authority by virtue of the route integration authority granted here, but not being used, the holder of such authority by route integration will not be considered as proving any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

This certificate shall become effective April 30, 1999. It shall expire 90 days after the date of service of this order; provided however, that if the holder inaugurates service under this certificate on or before that date, the authorization will continue in effect until five years after its effective date unless the Department earlier suspends, modifies or deletes the authority.



## **Experimental Certificate of Public Convenience and Necessity**

**For Route 784  
(Backup Award)**

**This Certifies That**

**US Airways, Inc.**

**is authorized, subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in foreign air transportation of persons, property, and mail.**

**This Certificate is not transferable without the approval of the Department of Transportation.**

**By Direction of the Secretary**

**Issued by Order 99-4-21  
On April 27, 1999  
Effective on (See attached)**

**Patrick V. Murphy  
Deputy Assistant Secretary  
for Aviation and International Affairs**



## Terms, Conditions, and Limitations

### US AIRWAYS, INC.

is authorized to engage in foreign air transportation of persons, property, and mail:

Between the terminal point Philadelphia, Pennsylvania, and the terminal point Milan, Italy.

This authority is subject to the following provisions:

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (2) The holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate is subject to compliance with such treaties and agreements and with any orders of the Department of Transportation issued under them. To the extent that the holder has authority to serve more than one country or points in more than one country on the same route segment, that authority does not confer upon the holder any additional rights (including fifth-freedom intermediate and/or beyond rights) in limited-entry markets unless the holder has been specifically designated to conduct such services and the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights. In such cases, the fact that the carrier may hold authority to serve the countries (points) at issue on the same segment will not be considered as providing any preference to the holder in a carrier selection proceeding.
- (3) The exercise of the authority granted here is subject to the holder's first obtaining from the appropriate foreign governments such operating rights as may be necessary.
- (4) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.
- (5) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (6) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.

Issued by  
Order 99-4-21  
Route 784

(7) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(n)), it must first comply with the requirements of 14 CFR 204.5.

(8) In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may not recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

(9) The holder acknowledges that this certificate is granted to determine if the holder's projected services, efficiencies, methods, rates, fares, charges, and other projected results, will, in fact, materialize and remain for a sustained period of time, and to determine whether the holder will provide the innovative or low-priced air transportation it proposed in its application for this authority.

(10) The holder may combine services on this certificate with all services authorized by other Department of Transportation certificates or exemptions, provided, that such operations are consistent with the applicable bilateral aviation agreements; and provided further, that (a) nothing in the award of the route integration authority requested should be construed as conferring upon the holder additional rights (including fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless the holder first notifies us of its intent to serve such 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 rights that are included in the holder's authority by virtue of the route integration authority granted here, but not being used, the holder of such authority by route integration will not be considered as proving any preference for the holder in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

This certificate shall not become effective until the certificate authority of Delta Air Lines, Inc., to serve the Atlanta-Rome market has expired, or has been deleted or suspended, and it shall expire April 30, 2000; provided however, that if this authority becomes effective before that date, it shall not expire until April 30, 2004, unless the holder fails to inaugurate service within 90 days of that effective date, in which case, this certificate will expire on the 91st day.