



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

Issued by the Department of Transportation on May 27, 2004

**NOTICE OF ACTION TAKEN -- DOCKET OST 2004-17387**

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: POLYNESIAN LIMITED

Date Filed: March 22, 2004, as supplemented by letter dated April 23, 2004, and letter dated May 21, 2004.

Relief requested: Exemption from 49 U.S.C. section 40109(g) to permit the applicant to continue to carry persons and their accompanying baggage between Pago Pago, American Samoa, and the Manu'a Islands, American Samoa, beyond May 30, 2004, through June 25, 2004, using 18-seat Twin Otter aircraft.

Applicant representative: Charles F. Donley II, 202-626-6840 DOT analyst: Allen F. Brown, 202-366-2405

Polynesian Limited served its application in this Docket on those U.S. carriers having the potential to conduct these intra-American Samoa services. As noted in our NOAT issued on March 26, 2004, the applicant advised us that each carrier indicated that it did not have aircraft available to conduct the proposed operation and had no comment or did not oppose grant of the requested authority.

Previous awards: On March 26, 2004, we granted Polynesian Limited authority in this Docket to serve American Samoa for a 30-day period (that is April 1 through April 30, 2004), and deferred action on the balance of its request (to operate beyond April 30 through June 25, 2004). The initial authority included the carriage of property and mail. On April 30, 2004, we granted Polynesian Limited's request in this Docket to continue to serve American Samoa, carrying persons and their accompanying baggage, through May 30, 2004, and deferred action on the balance of its request, that is, to continue operations through June 25, 2004.

Supplemental Submission: By letter dated May 21, 2004, Polynesian Limited specifically requested that the Department extend its authority beyond May 30 through June 25, 2004, asserting that, although a U.S. carrier, Village Aviation, conducts intra-American Samoa cargo operations, Polynesian Limited remains the only carrier holding out intra-island passenger flights. Polynesian Limited states that there continues to be a need for passenger lift.

Statutory Standards: Under 49 U.S.C. section 40109(g), we may authorize a foreign air carrier to carry commercial traffic between U.S. points (*i.e.*, cabotage traffic) under limited circumstances. Specifically, we must find that the authority is required in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business the traffic cannot be accommodated by U.S. carriers holding certificates under 49 U.S.C. section 41102; that all possible efforts have been made to place the traffic on U.S. carriers; and that the transportation is necessary to avoid unreasonable hardship to the traffic involved (an additional required finding, concerning emergency transportation during labor disputes, was not relevant here).

**DISPOSITION**

Action: Approved.

Action date: May 27, 2004

Basis for approval: Taking into account the current record, including that the U.S. carrier Village Aviation initiated cargo charters in American Samoa, but that no U.S. air carrier conducts any intra-American Samoa passenger operations, we now are granting Polynesian Limited's request in this case to continue to operate its intra-American

Samoa passenger services, using its 18-seat Twin Otter aircraft, through June 25, 2004, or until five days after a U.S. carrier initiates intra-American Samoa passenger operations, whichever occurs first.

In acting favorably on this unopposed request for extension of emergency cabotage authority, we find that Polynesian Limited's request continues to meet all the relevant criteria of 49 U.S.C. section 40109(g) for the continued grant of an exemption of this type, and that such favorable action still is required in the public interest. In making our initial grant to Polynesian in this Docket, on March 26, 2004, and the 30-day extension of authority on April 30, 2004, we noted that the effects of the late March 2004 suspension in service by Inter Island Airways, which was the only carrier then serving the inter-island American Samoa markets, clearly constituted an emergency created by unusual circumstances not arising in the normal course of business. Also, the record in this case indicates that no U.S. carrier appears able at this time to provide passenger lift necessary to meet the needs of American Samoa, a community uniquely dependent on air transportation. Further, in our view, the continuation of Polynesian's passenger services is required to prevent undue hardship to the residents of American Samoa.

Given these circumstances, we find that the standards for grant of emergency cabotage authority continue to have been met, and that grant of the extension requested by Polynesian Limited, through June 25, 2004, as conditioned, is warranted.

Finally, we find that the applicant is qualified to perform its proposed operation.

Except to the extent exempted/waived, this authority is subject to our standard exemption conditions (attached).

**Action taken by:**     **Karan K. Bhatia**  
                          Assistant Secretary  
                          for Aviation and International Affairs

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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 Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that the 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 change 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.