157465

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

Issued by the Department of Transportation on February 21, 2002

-18 NOTICE OF ACTION TAKEN – -11
DOCKETS OST-95-791; OST-95-806; OST-96-1687; OST-98-3631 & OST-2001-9313 -5

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: February 4, 2002

Relief requested: Renew exemptions from 49 U.S.C. 41301 to conduct foreign air transportation of persons, property and mail between:
(1) Apia, Samoa, and Pago Pago, American Samoa, and beyond to Rarotonga, Cook Islands, and Papeete, Tahiti (OST-95-791);
(2) Apia and Honolulu, HI (OST 95-806);
(3) Apia and Los Angeles, CA (OST-96-1687);
(4) Maota, Samoa, and Pago Pago (OST-98-3631); and
(5) Honolulu and Auckland, New Zealand, via Apia (OST-2001-9313).

If renewal, date and citation of last action: Notices of Action Taken dated February 8 & June 21, 2001

Applicant representative: Charles Donley 202-626-6641

Responsive pleadings: None

DISPOSITION

Action: Approved Action date: February 21, 2002

Effective dates of authority granted: February 21, 2002 - February 21, 2003

Basis for approval (bilateral agreement/reciprocity): Reciprocity

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:
X Standard exemption conditions (attached) __ Foreign air carrier permit conditions (Order - -)

Remarks: We have advised Polynesian Limited that it cannot directly or indirectly hold out or provide online air transportation wholly between U.S. points. Furthermore, pursuant to advice from the Assistant General Counsel for Aviation and Enforcement Proceeding, Polynesian Limited, as was its predecessor, is subject to Consent Order 95-2-18.

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 ten (10) 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 AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder 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;

(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, comply (except as otherwise provided in the applicable bilateral agreement) 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 (formerly the Federal Aviation Act of 1958, as amended).