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Order 2002-9-25
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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 30th day of September, 2002

Joint Application of **ALOHA AIRLINES, INC.,** and **HAWAIIAN AIRLINES, INC.,** under Section 116 of the Aviation and Transportation Security Act of 2001 for Approval of and Antitrust Exemption for Agreement	**Docket OST-2002-13002**

ORDER APPROVING AGREEMENT AND GRANTING ANTITRUST IMMUNITY

Summary

By this order, we grant, as conditioned, the joint application of Aloha Airlines, Inc. (Aloha) and Hawaiian Airlines, Inc. (Hawaiian), for approval of, and antitrust immunity for, an agreement between them that would enable the carriers to jointly set the level of capacity that both carriers would offer collectively in the major Hawaiian inter-island markets. The authority is effective through October 1, 2003.

Background

Section 116 of the Aviation and Transportation Security Act of 2001 (Public Law 71, November 19, 2001) provides that the Department may approve and grant antitrust immunity to agreements between air carriers operating air services within a single state, if the Governor of the state has issued a declaration that the agreement is necessary to ensure the continuing availability of such air transportation. The Department may grant the antitrust immunity upon a determination that (i) the state involved has extraordinary air transportation needs or concerns, and (ii) approval is in the public interest. Under the statute, the Department may grant antitrust immunity through October 1, 2002, but may extend that approval through October 1, 2003, upon a determination that such action is in the public interest.

Application

On July 31, 2002, Aloha and Hawaiian filed a joint application under the provisions of Section 116 of the Aviation and Transportation Security Act of 2001, seeking approval of and antitrust immunity for an agreement between them to coordinate capacity on inter-island services among five Hawaiian points--Honolulu, Kahului, Lihue, Kona, and Hilo. Under the terms of the agreement, the carriers would agree on the level of capacity (on an aggregate available seat mile (ASM) basis) to be offered collectively by the two carriers for each month for services among the five inter-island points, with each carrier providing half of the agreed aggregate ASMs. The agreement also includes a revenue-passenger-mile (RPM) balancing provision designed to facilitate compliance with the capacity agreement. If one airline captures more than half of the total RPMs operated by both carriers, it must compensate the other airline on a sliding scale that requires the airline with the "excess" RPMs to compensate the other at a rate that increases as its total RPMs rise above its agreed 50 percent share. The carriers state that the agreement does not enable them to coordinate individual route schedules or fares in inter-island city pairs. The carriers have also agreed that no existing city pair in the state will be left without service by at least one of them if the Cooperation Agreement is implemented.

The carriers argue that the relief is necessary to ensure a well-balanced pattern of scheduled service within the state and to preserve the two-carrier inter-island route network. They claim that both carriers have been operating at below break-even load factors; that absent the compensation payments under the Stabilization Act, both have suffered substantial losses; and that the decline in Japanese tourism and the increasing number of flights operated directly from U.S. mainland points to points in the outer islands, such as Kona, have reduced the demand for inter-island service, justifying their proposal to coordinate on capacity to more closely match supply with demand. The carriers further state that since September 11, traffic levels have declined even further, and that, even with the carriers' implementation of unilateral capacity reductions, their inter-island financial losses have continued. Aloha and Hawaiian argue that the proposed capacity coordination would produce significant cost savings and efficiencies that will benefit the long-term continuation of a strong inter-island network.

The carriers maintain that it was with this very situation in mind that Congress enacted Section 116, and that their application fully meets the standards for approval under the statute. Specifically, they state that the State of Hawaii clearly has extraordinary air transportation needs and concerns since the islands are totally dependent on air service to meet their needs. They further argue that approval of the application is in the public interest. In support, they argue that the availability of inter-island transportation is currently in jeopardy since both carriers' services are currently unprofitable and that approval of the agreement will facilitate cost savings and reduce losses, making it possible to preserve viable inter-island service. The carriers also state that approval of the agreement will benefit consumers by ensuring the continuation of inter-island service and providing the carriers needed flexibility to respond to changing traffic levels in individual markets.

Finally, the carriers state that they will not implement the agreement in the absence of approval and antitrust immunity. Aloha and Hawaiian argue that the efficiencies and cost savings resulting from capacity coordination will not be achieved unless the Cooperation Agreement is approved and granted antitrust immunity.

The Governor's Declaration

On July 22, 2002, Governor Benjamin J. Cayetano of Hawaii sent the Department a declaration stating that the proposed Cooperation Agreement between the carriers is necessary to ensure the continuing availability of air transportation within Hawaii. The declaration states that air transportation is the essential form of transportation for the State of Hawaii and critical for residents, visitors, and the economy of the State. It further states that there is no ferry or other water transportation system providing regular, daily passenger scheduled service, and only limited cargo water transportation. The Governor also notes that Aloha and Hawaiian are the largest carriers providing inter-island service and states that the inter-island services provided by these carriers are essential to the transportation of passengers and cargo among the islands. The Governor's declaration also states that the carriers expect that implementation of their proposed agreement will substantially reduce persistent losses experienced by the carriers, eliminate the short-term threat to inter-island service, and establish a stable base for continued service to the islands.

His declaration states that each airline will give him notice each month of any schedule changes and will discuss his objections to any such changes. In addition, the declaration provides that the Governor may withdraw it if the airlines do not satisfy his objections, or if he determines that the agreement is no longer in the interests of Hawaii.

Responsive Pleadings[1]

The Department of Justice (DOJ), Pacific Wings, LLC, and American Airlines, Inc., filed comments.[2] Aloha and Hawaiian filed a consolidated reply and Pacific Wings filed an additional response.[3]

DOJ opposes approval of the requested immunity and urges the Department to deny the carriers' application. DOJ raises three major arguments. First, DOJ argues that we may not grant an application under Section 116 for approval and antitrust immunity for an agreement unless the agreement is necessary to preserve the State's air service. DOJ contends that the statute does not authorize us to approve and immunize an agreement on the ground that it is necessary to maintain the services of both parties to the agreement.

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[1] By notice dated August 13, 2002, the Department set August 28 as the deadline for answers to the application. The Department extended the period for filing answers to 10 a.m. EDT on September 3 by Order 2002-8-26.

[2] American's answer was not timely filed and was accompanied by a motion for leave to file late. We will grant the motion.

[3] The Joint Reply of Aloha and Hawaiian and further response of Pacific Wings were accompanied by motions for leave to file otherwise unauthorized documents. We will grant the motions. Aloha and Hawaiian filed a letter stating that they would not file a reply to Pacific Wings' response.

Second, DOJ argues that the carriers have not met the statutory requirement that approval and antitrust immunity for their agreement are necessary to ensure the continued availability of service in the state. DOJ contends that both carriers have already unilaterally cut capacity in greater proportion than the decline in traffic with resulting increases in load factors, and that their inter-island yields and overall financial conditions are improving, discrediting the carriers' contention that, absent this agreement, they ultimately may have to discontinue their inter-island service altogether.[4]

Third, DOJ argues that the proposed capacity/revenue balancing agreement between the carriers is not in the public interest, as it will result in serious harm to consumers through higher fares and poorer service in some of the most heavily traveled city pairs in the United States. In this regard, DOJ contends that the agreement between the carriers is highly anticompetitive, as the revenue balancing provision will discourage price and service competition, and produces a "powerful disincentive for the carriers to reduce fares or improve service in order to attract additional passengers," because doing so will most likely trigger the penalty payment provisions. Consequently, DOJ argues that the agreement actually encourages the carriers to increase fares and discourage traffic in order to avoid the penalty payment provisions, both of which they maintain would be contrary to the public interest. DOJ further contends that the Department cannot rely on the Governor's declaration to support a finding that the agreement is in the public interest, because the Governor relied solely on the representations of the carriers.

Pacific Wings also opposes the application. The carrier raises similar arguments to the DOJ, stating that the applicants have provided no evidence that Hawaii's air transportation system will suffer or that Hawaii residents will lose service in the absence of the proposed capacity cooperation agreement, and, thus, have not met the statutory requirements under Section 116. To the extent that further capacity reductions are necessary, Pacific Wings argues that the carriers are free to do so unilaterally. It further argues that the inter-island market has vigorous competition and that this agreement is not necessary to ensure adequate service to the islands. The carrier states that it operates 50 daily departures to business and leisure destinations throughout Hawaii, and serves more inter-island points than any other single carrier.

American takes no position on the merits of the application. However, because American relies on the inter-island services for connecting traffic from the mainland, it urges the Department to condition any approval of the application to preclude the carriers from reducing current capacity and seat availability on either carrier's services for connecting interstate traffic.

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[4] DOJ notes that in the first quarter of 2002, Aloha's load factors on inter-island routes were 71% and Hawaiian's were 81%. In addition, DOJ notes that both carriers' inter-island yields for calendar year 2001 increased over the previous year, whereas major airline yields for 2001 were below 2000 levels. DOJ Comments at 15.

Aloha and Hawaiian filed a joint consolidated response. They contend that DOJ has applied a higher standard for approval of this application than is normally applied in antitrust cases and that such standards are contrary to the intent of Congress and the legislative history of the provision. The carriers state that because of the limited duration and eligibility of the available exemption, Congress made a fundamental policy determination that, in unusual circumstances, the normal policy concerns regarding antitrust immunity should be set aside and action in the public interest should be taken promptly. The carriers contend, therefore, that Section 116 imposes only two statutory criteria for approval--a finding that the state has extraordinary transportation needs and concerns and that approval is in the public interest. They further argue that DOJ tries to usurp the role of the Governor by deciding for itself whether the proposed agreement is "necessary to ensure the continued availability" of intrastate air transportation. Aloha and Hawaiian contend that the requirement for a declaration of need by the Governor was intended to support a public interest finding by the Department for the requested immunity and that the Governor has extensive information at his disposal, other than the carriers' representations, on which to base his assessment of the need for approval of the agreement.

Second, the carriers argue that DOJ has incorrectly concluded that the proposed agreement is unnecessary, and incorrectly assessed the public interest impact of their agreement. The carriers maintain that inter-island traffic has not rebounded to pre-September 11 levels or to levels that could sustain economically viable service, that because of the fare structure for inter-island service and high fixed costs for service due to Hawaii's geographic isolation, break-even load factors are high and range in the 80s, and that actual load factors have averaged 65% since September 1, 2001, making their services unprofitable.[5] They further argue that they have already made the level of unilateral capacity cuts that they are prepared to make to preserve their market positions and will not cut capacity further, absent the cooperation agreement. Therefore, they contend that the requested "limited" cooperation is necessary to ensure that the islands continue to have a well-balanced pattern of reliable competitive service.

Finally, Aloha and Hawaiian contend that, contrary to DOJ's arguments, their agreement is not anticompetitive or anti-consumer. They argue that three factors--the highly discretionary nature of the traffic which will demand reasonable fares, pressure from tourism groups for sufficient service at reasonable fares, and the Governor's power to rescind the declaration should he be dissatisfied with the service or fare levels--will provide the necessary discipline to ensure that the carriers do not act to harm consumer interests.

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[5] The carriers state that while their load factors have increased to 68% for Hawaiian and 72% for Aloha for the first seven months of 2002, these load factors are still 10 percentage points lower than break-even. Joint Reply at 15. They further state that contrary to DOJ's assessment of their financial condition, both have incurred losses in the fourth quarter of 2001, and in Aloha's case for CY 2001, and both have suffered losses for the first two quarters of 2002. Joint Reply at 6.

The carriers also included in their reply a copy of a letter from the entire Hawaii congressional delegation, supporting the application and the need to preserve inter-island air services in a state so dependent on air service.

Decision

We have decided to approve the Inter-Island Cooperation Agreement filed by Aloha and Hawaiian and to exempt the carriers from the provisions of 49 U.S.C. §41308 and 41309, to the extent necessary to effectuate that agreement, subject to a reporting condition with respect to the applicants' service and fares in the affected inter-island markets. We are adopting this reporting requirement because of our concern with the potential impact of this agreement on consumers, and we intend to monitor closely the schedules and fares being offered by each of the carriers in those markets. The authority will be effective immediately through October 1, 2003, unless earlier suspended, modified, or revoked, as set forth in this order.

The Aviation and Transportation Security Act of 2001 was one of several Federal actions taken in response to the terrorist events of September 11. Congress added Section 116 to this statute specifically to address the impact of September 11 on States with special transportation needs and considerations. It is the only provision authorizing the Department to grant antitrust immunity to an airline agreement affecting domestic air transportation. The provisions of Section 116 provide short-term relief from the antitrust laws to facilitate the recovery of the air transportation services in States facing unique transportation issues and where it is demonstrated that such action is needed.

We find that approval of the proposed Aloha/Hawaiian agreement, subject to our conditions, meets the standards of the statute and that approval of the agreement for the short-term period available under the statute will facilitate the recovery of inter-island services in the aftermath of September 11 and promote the viability of an effective inter-island network in Hawaii.

Statutory Eligibility Criteria

Section 116 provides that the Secretary may approve an agreement between air carriers providing intrastate air transportation "upon a declaration by the Governor of the State that such agreement ... is necessary to ensure the continuing availability of such air transportation within that State." On July 22, 2002, Governor Benjamin J. Cayetano of Hawaii issued such a declaration stating that "based on [the] critical importance of air transportation within the State of Hawaii and the carriers' stated need for and benefits of the proposed Cooperation Agreement, the proposed Cooperation Agreement is necessary to ensure the continuing availability of air transportation ... within the State of Hawaii." Following the Governor's declaration, on July 31, the carriers filed their application under Section 116 seeking approval of, and antitrust immunity for, their proposed Inter-Island Cooperation Agreement.

DOJ takes the position that the carriers have not met the statutory criteria for the Department to consider their application. DOJ maintains that the statute requires the carriers to demonstrate that both would exit the markets entirely and that the markets would thereby lose all service, absent approval by the Department of their cooperation agreement. DOJ contends that neither carrier is at risk of failing and the carriers have not demonstrated that either, much less both, would exit the market if the agreement were not approved. Consequently, DOJ argues that the carriers' agreement has not met the standards for consideration by the Department under the provisions of Section 116. Aloha and Hawaiian maintain that the legislative history of the provision demonstrates that it should be considered more broadly, and the applicants need only demonstrate that the agreement is necessary to preserve service. They argue that DOJ's standards for consideration are unreasonably high and inconsistent with both the intent and the spirit of the legislation.

We agree with DOJ that the Department should exercise its discretion under Section 116 only in very limited circumstances. As DOJ notes, the Conference Report makes clear that Congress was concerned about States with unique issues, and in the aftermath of September 11 wanted to provide, on a short-term basis, a form of relief that would ensure the continued "viability" of air services within the State.[6] We are not persuaded, however, that the statute should be interpreted as narrowly as DOJ suggests. The wording of the statute refers to the "continuing availability" of "such air transportation" in the affected State. We do not view this provision as requiring the carriers to demonstrate that both will exit the market if the agreement is not approved. Rather, given the legislative underpinning of the provision following September 11 and the focus of the statute on States with special transportation needs, we view the goal of the statute as intending to "preserve" the air transportation services provided by both parties to the agreement. The phrase "such transportation" should be read as referring to the services of both airlines. Thus, we find that our action here to preserve the services of both airlines in the State will maintain a reliable inter-island network and is fully consistent with the intent and spirit of the statutory provisions under which the carriers have sought relief.

Nor do we find persuasive DOJ's arguments against the Governor's declaration. This statute is unique in that it "requires" a declaration of a need for the requested relief by the Governor of the affected State in order for the Department to consider approval of the agreement and exemption from the antitrust laws. The Governor of Hawaii has made the required declaration, reflecting his assessment of, and concern for, the continued availability of effective inter-island service, and his familiarity with the needs and transportation requirements of the State. The statute clearly indicates the importance of the Governor's declaration, but does not authorize a factual inquiry into the matters related in the declaration. In this case, the Governor's declaration addresses and satisfies both the spirit and the letter of the statute, and we therefore are required to, and do, accept it as a critical factor in our decision in this case.

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[6] H.R. Conf. Rep. No. 107-296 (2001)

Public Interest Requirement

Based on our evaluation of the record of this case, we find that it is consistent with the public interest to approve this request. However, as detailed below, we will require that Aloha and Hawaiian file monthly service and fare information with the Department, so that we can be assured that the airlines' implementation of their agreement does not lead to consumer harm.

In determining whether an agreement warrants approval, the statute requires the Department to make two findings. First, the Department must conclude that the State has extraordinary transportation needs and concerns. Second, the Department must find that approval of the agreement is in the public interest.

It is undisputed that the State of Hawaii has extraordinary transportation needs and concerns. Hawaii is highly dependent on air transportation. All parties agree that there are no other regular modes of transportation between the islands. Because the islands are separated by water, there is no inter-island surface network. Moreover, there is no regular, daily ferry service. Consequently, the people of Hawaii depend heavily on air transportation for travel and commerce among the islands and between the islands and the mainland. The Governor, in his declaration, has stated that the island populations alone constitute over 1.2 million, based on calendar year 2000 census figures.[7] Furthermore, the islands are dependent on air services for transport of time-sensitive cargo, including mail, medical supplies and emergency medical services. Thus, as required by the statute, we find that Hawaii has extraordinary transportation needs and concerns.

The controversy in this case is whether approval of the agreement is in the public interest. DOJ and Pacific Wings argue that it is not. The applicants, the Governor, and the Hawaii congressional delegation argue that it is. The statutory requirement that we determine whether the agreement is consistent with the public interest requires that we consider numerous factors. We find that the agreement's approval is consistent with the public interest, because approval will give the applicants the opportunity to adjust their inter-island services in ways that will increase efficiency and reduce costs. At this point, we do not have a factual basis to find that their implementation of the agreement would inevitably result in consumer harm. The applicants have represented that the agreement's purpose is to obtain cost savings, not fare increases, and that the applicants will not jointly set fares. Furthermore, the nature of the inter-island markets should limit their ability to impose fare increases. To ensure that the agreement does not adversely affect travelers in the inter-island markets, however, we intend to review the impact on fares and service levels in the inter-island markets. To assist us in that process, we are requiring the applicants to provide monthly service and fare data by city-pair market.

The applicants state that each of them incurred losses on its inter-island services in 1999 and 2000, a period when the airline industry overall was earning record profits. The applicants' continuing inability to operate the inter-island services profitably stems in

[7] July 22, 2002, Declaration of Benjamin J. Cayetano at 1.

large part from on-going structural changes in the market, both the decline in Japanese tourism and the increasing number of flights offered by other U.S. airlines between mainland points and points in the outer islands. The impact of these developments has strengthened since September 11.* The record indicates that inter-island markets have been severely impacted by September 11. While traffic is beginning to recover, it is doing so slowly and the carriers have suffered losses in these markets for a sustained period. As the Governor has emphasized, tourism is very important to the economy of Hawaii and support of the inter-island services. While tourism is beginning to improve, tourist traffic in Hawaii declined significantly after September 11,[8] a decline that added to the longer-term depression of Asian tourist traffic, and has severely affected Hawaii's economy.

The unprofitability of the inter-island services has worsened since September 11. Aloha and Hawaiian have both cited continuing poor financial results since September 11, despite compensation payments by the Federal Government under the Air Transportation Safety and Stabilization Act.[9]

Aloha and Hawaiian have taken steps to reduce their losses and operate more efficiently. They have been cutting capacity in the markets, as DOJ points out, and Hawaiian has begun using more efficient aircraft for its inter-island services. Each has been restructuring its operations in other ways to improve its overall efficiency and its ability to return to profitability.[10] The carriers state, however, that they have taken as many unilateral actions as they can to address the current overcapacity in the inter-island markets without affecting their respective competitive positions. They seek approval of the proposed capacity cooperation agreement to control costs, including significantly increased security costs, associated with the provision of inter-island services and, thus, to ensure the continued provision of a stable, competitive, and reliable network of inter-island service.

Approval of the agreement will provide the applicants a one-time opportunity, limited to a twelve-month period, to improve the efficiency of their services without causing significant consumer harm, and to help ensure, in the long term, the continuation of competitive service. The record demonstrates the vital importance of the inter-island route network because of Hawaii's unique dependence on air services, and the public interest benefits of ensuring, in the short term that the network remains dependable and viable, and for the longer term, that competition is maintained. The carriers have already taken considerable unilateral actions to address the capacity in the market and to cut costs. Absent further action, which the carriers are not prepared to take unilaterally, there is the potential that inter-island services would be disrupted, threatening the continued availability of a network of services to the island communities. We find that this threat provides a sufficient public interest basis for approval of the agreement and an award of antitrust immunity under Section 116 for the short-term period at issue.

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[8] DOJ states that from March 2000 to March 2002, inter-island passengers declined by 13.5%, and in the wake of September 11, inter-island traffic declined by nearly 30%. DOJ Comments at 15.

[9] Joint Reply of Aloha and Hawaiian at 6 and 12.

[10] Joint Reply at 16.

However, the DOJ has raised a number of competitive and public interest considerations that we do not take lightly. DOJ has expressed considerable concern that the ability of the carriers to control the capacity offered in the major inter-island markets, particularly coupled with the revenue-sharing provisions of the agreement, will constrain both price and service competition, contrary to the public interest.

The applicants have argued the agreement will not result in significant fare increases. They have explicitly represented that their agreement "will not increase costs or fares"[11] and "will also not lead to capacity constraints that will harm consumers."[12] We agree with the applicants that there are factors that may discipline their actions under the agreement to ensure that the public will not be harmed. Specifically, the majority of traffic in inter-island markets is discretionary and, characteristically, is very price elastic, demanding reasonable fares;[13] and, furthermore, tourism is a critical linchpin of the inter-island economy and wholesalers and tour operators can exert considerable pressure on the carriers to provide sufficient levels of service at reasonable fares. Finally, as Aloha and Hawaiian point out, their agreement "is very limited in scope and duration," since "it can extend only until October 1, 2003."[14]

Notwithstanding the support for the argument that the agreement should not lead to fare increases; the compelling considerations affecting the inter-island services, including the nature of inter-island services; the dependence of the islands on a reliable network of services; the legislative history of the statute as it relates to September 11; and the short-term nature of the relief at issue; we do have continuing concerns about the effects of the agreement on fares and service. We share some of DOJ's concerns about the agreement's potential impact, particularly insofar as it includes the RPM-balancing provision.

As a result, we will require Aloha and Hawaiian each to submit a monthly report stating the carrier's traffic, average fares, load factors, and yields by city-pair market for each of the inter-island markets covered by the agreement. In addition, we are requiring each applicant to submit to us its proposed schedule changes. Like the Governor, we intend to monitor the carriers' schedules to see whether consumers may be harmed by any capacity reductions (or failures to increase capacity if traffic levels rebound) or price increases. To provide a base for comparisons, we are requiring the two airlines to submit monthly schedule, revenue passenger, load factor, yield, and average fare information by city pair for July, August, and September 2002.

In addition, we remind the carriers that the Department at any time has the discretion to amend, modify, or revoke its approval of all, or any portion, of the Inter-Island Cooperation Agreement if we determine that the carriers have acted in a manner that no

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[11] Joint Reply at 6 (emphasis in original).
[12] Reply at 7 (emphasis in original).
[13] The joint applicants state that 57% of the overall traffic in the market is tourist traffic and that, of the remaining 43%, which is local traffic, very little involves business travel. Joint application at 14.
[14] Joint Reply at 4.

longer is in the public interest. Furthermore, should we have reason to require the information, we can exercise our authority under Section 116 and 49 USC §§ 41708 to require the carriers to file additional data and reports to determine whether continued approval of the agreement is warranted.[15]

We also note, as have the applicants, that the Governor has reserved the right to withdraw the declaration if he no longer determines that the service levels in the markets are in the best interests of the people of Hawaii. Should the Governor decide to withdraw his declaration, he should immediately inform the Department of his concerns. If appropriate, we will reconsider whether our actions in this matter continue to be in the public interest.

Finally, we are not imposing the condition regarding interline passengers requested by American. As noted above, the applicants have represented that the agreement will not result in a substantial reduction in capacity. Thus, we do not believe that connecting passengers will be disadvantaged. American, however, has raised a legitimate concern about the agreement's potential impact, and we expect American and others to submit information to us if the agreement's implementation leads to high fares or insufficient capacity for connecting passengers.

ACCORDINGLY,

1. We approve, as conditioned, the Inter-Island Cooperation Agreement dated June 3, 2002, between Hawaiian Airlines, Inc. and Aloha Airlines, Inc., under Section 116 of the Aviation and Transportation Security Act of 2001;

2. We exempt Hawaiian Airlines and Aloha Airlines, Inc., from the provisions of 49 U.S.C. §41308 and 41309, to the extent necessary to implement the Inter-Island Cooperation Agreement approved by this order;

3. The approval and exemptions granted in ordering paragraphs 1 and 2 are effective immediately through October 1, 2002; and are further extended through October 1, 2003, pursuant to the provisions of Section 116(e);

4. We require Hawaiian Airlines and Aloha Airlines, Inc. each (a) to file with the Department, no later than twenty-five days after the end of each calendar month, data showing the carrier's revenue passenger counts, load factors, yields, and average fares by origin and destination city-pair in each inter-island market covered by the Inter-Island Cooperation Agreement, (b) to file with the Department, no later than thirty days after the issuance of this order, data showing its revenue passenger counts, load factors, yields, and average fares by origin and destination city-pair in each such inter-island market for

[15] Section 116 requires the Secretary, if an agreement is approved, to submit a report to Congress within 6 months describing what actions the air carriers to which the exemption was granted have taken. The Secretary shall also notify Congress if the Secretary extends the termination date of the exemption beyond October 1, 2002. Our compliance with this requirement may make it necessary for us to obtain additional information from Aloha and Hawaiian.

the months of July, August, and September 2002, (c) a description of any payment made for the month under section 2.2 of the Inter-Island Cooperation Agreement, (d) to submit to the Department any notification or other information regarding proposed operational or schedule changes, or any other action taken in implementation of this agreement which is provided to the Governor of Hawaii pursuant to the Inter-Island Cooperation Agreement, and (e) to provide the Department with any additional data or information as may be deemed necessary for the Department to comply with the reporting requirement of Section 116;

5. We direct Hawaiian Airlines and Aloha Airlines, Inc. to file the data identified in ordering paragraph 4 with Randall Bennett, Director, Office of Aviation Analysis;

6. We direct Hawaiian Airlines and Aloha Airlines, Inc. to submit any subsequent amended provisions to their Inter-Island Cooperation Agreement for prior approval;

7. We grant all motions for leave to file otherwise unauthorized documents;

8. This order is effective immediately;

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

10. We shall serve this order on Aloha Airlines, Inc.; Hawaiian Airlines, Inc.; Pacific Wings Airlines, LLC.; American Airlines, Inc.; the U.S. Department of Justice; and the Governor of Hawaii.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this order is available on the World Wide Web at http://dms.dot.gov