

62350

Order 99-8-25

Served August 27, 1999



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

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

Essential air service provided by

**GREAT LAKES AVIATION, LTD.,  
d/b/a United Express**

under 49 U.S.C. 41731 *et seq.*

Docket OST-1999-6184 - /

**ORDER REQUIRING PROVISION OF  
THE STATUTORY MINIMUM LEVEL OF AIR SERVICE**

By this order the Department is directing Great Lakes Aviation, Ltd., d/b/a United Express, to reinstate scheduled air service at five communities in accordance with its statutory obligations under the Essential Air Service provisions of sections 41731-42 of Title 49 of the United States Code (Transportation) and implementing regulations of the Department in 14 CFR Part 323.

The Essential Air Service (EAS) program, established as part of the Airline Deregulation Act of 1978, guarantees that all communities that were receiving scheduled air service from a carrier certificated by the Civil Aeronautics Board prior to October 24, 1978, will continue to receive at least a minimum level of air service. The Department of Transportation administers the EAS program in accordance with the statute through its regulations, including, as relevant here, 14 CFR Part 323. Pursuant to 49 U.S.C. 41734 and Part 323 of the Department's regulations, an air carrier is prohibited from suspending or reducing service below the level determined to be the minimum EAS level unless it first provides the Department and affected communities and state authorities 90 days' notice of its intent to do so. (A carrier must also provide a 90-day notice if it proposes to reduce the total capacity being provided to a community by more than one-third. 14 CFR 323.3.) During the 90-day notice period, the statute requires that the carrier maintain service that meets the minimum EAS level. Only after the 90-day notice period has expired, and only if the Department has not acted to prohibit the suspension or reduction of service, may the carrier suspend or reduce its service below the minimum EAS level.<sup>1</sup> Further, 49 U.S.C. 41732

---

<sup>1</sup> If, after the 90-day notice period expires, the Department issues an order prohibiting the suspension, the carrier must maintain the level specified by the Department and the Department is then obligated to compensate the carrier for

requires that each eligible community must receive a level of air service consisting of at least “two daily round trips six days a week... .”

—  
On August 26, 1999, Great Lakes, a United Express carrier, suspended all air service at five communities covered by the EAS program, leaving them without any air service: Devils Lake and Jamestown, North Dakota, Fairmont, Minnesota, Brookings, South Dakota, and Mount Vernon, Illinois. Each of those communities is guaranteed uninterrupted air service under the EAS program. The Department pays subsidies to Great Lakes, pursuant to 49 U.S.C. 41733(c), to provide those services to each of the five communities.

Prior to the actual suspension, we orally advised Great Lakes that termination of these Essential Air Services would violate the Federal statutes and regulations summarized above. In addition, on August 26, 1999, we had a conference call with Great Lakes in which we reiterated Great Lakes’ legal obligation to maintain uninterrupted air service at all five communities. Nevertheless, later that day Great Lakes issued a press release stating that it did not intend to resume even limited service until September 12. Great Lakes’ continuing failure to provide EAS to these five communities violates Federal law and Great Lakes’ legal obligations under the EAS program.

Based on the foregoing, we are directing Great Lakes to reinstate immediately at least two round trips a day, six days a week at all five communities, as prescribed by statute and by the Department’s regulations.<sup>2</sup>

This order is issued under authority delegated in 49 CFR 1.56a(f).

**ACCORDINGLY,**

1. The Department directs Great Lakes Aviation, Ltd., d/b/a United Express, immediately to reinstate at least two round trips a day, six days a week at Mount Vernon, Illinois, Fairmont, Minnesota, Devils Lake and Jamestown, North Dakota, and Brookings, South Dakota, as prescribed by statute and by the Department’s regulations;

---

losses incurred in complying with the order. 49 U.S.C. 41734(e). For flight operations performed during the 90-day notice period, the Act does not provide for any compensation for losses for the subject services.

<sup>2</sup> We note that under 49 U.S.C. 41739, “if at least two air carriers make an agreement to operate under or use a single carrier designator code to provide air transportation, the carrier whose code is being used shares responsibility with the other carriers for the quality of transportation provided the public under the code by the other carriers.”

2. We will serve copies of this order on the mayors and airport managers of Mount Vernon, Illinois, Fairmont, Minnesota, Devils Lake and Jamestown, North Dakota, and Brookings, South Dakota; the Governors of Illinois, Minnesota, North Dakota, and South Dakota; the Departments of Transportation of Illinois, Minnesota, North Dakota, and South Dakota; Great Lakes Aviation, Ltd., d/b/a United Express; and United Air Lines, Inc; and

3. This order shall be effective immediately and petitions for reconsideration shall not stay its effectiveness.

By:

**A. BRADLEY MIMS**  
**Acting 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>*