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Order 2000-2-11



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

Served: February 10, 2000

Issued by the Department of Transportation  
on the 7th day of February, 2000

Essential air service at

**KALAUPAPA, HAWAII**

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

Docket OST-00-6773 - 4

**ORDER PERMITTING SUSPENSION OF SERVICE**

**Summary**

By this order the Department is granting Pacific Wings, d/b/a Air Nevada, Inc., permission to terminate its air service at Kalaupapa at the end of its 30-days notice.

**Background**

On November 28, 1988, the community of Kalaupapa and the State of Hawaii petitioned the Department to include Kalaupapa in the EAS program under the subsidy-sharing provisions delineated in 49 U.S.C 41736(a).<sup>1</sup> Since Kalaupapa neither received scheduled air service from a certificated carrier on the date of enactment of the Airline Deregulation Act (October 24, 1978), nor was an eligible community under the section 419(b) provisions of the Airline Deregulation Act,<sup>2</sup> the Department had no basis to guarantee air service for the community. We did, however, grant Kalaupapa's request for inclusion under section 41736(a)--air transportation to ineligible places. Aloha Island Air (Island Air) was already providing the air service with no subsidy. We issued Order 91-4-6 which set a service level for Kalaupapa consisting of two round trips a day to either Hoolehua (nonstop) or Honolulu (one-stop) with a total of 28 seats arriving and 28 seats departing each day, and relied on Island Air to provide the service without subsidy. In that same order, we stated that we could not hold Island Air in if it subsequently decided to suspend service, although Island Air would be subject to a 30-day notice obligation before suspending service.

<sup>1</sup> Section 41736(a) permits communities that are not covered by the basic provisions of the EAS program to apply to receive air service by sharing any subsidy requirement on a 50-50% basis with the Federal Government. Under that section the Department may (emphasis added) subsidize service subject to the cost-sharing requirement, but if the subsidized carrier subsequently files notice to suspend the service the Department is not empowered to prevent it from doing so.

<sup>2</sup> P.L. 103-272, July 5, 1994, codified the Federal Aviation Administration within Subtitle VII of Title 49, United States Code (Transportation) 41731-41742. Section 419 has been reclassified as 49 U.S.C 41731-41742.

On September 9, 1999, Island Air filed a 30-day notice to suspend service at Kalaupapa and requested an exemption to suspend service on less than 30-days notice, indicating that we could rely on the service being provided by Pacific Wings. By Order 99-9-25, September 30, 1999, the Department allowed Island Air to suspend service and noted that Pacific Wings was also serving Kalaupapa.

At the time that Island Air filed its suspension notice, Pacific Wings was providing Kalaupapa with three nonstop round trips a day to Hoolehua, that continued on to either Kahului or Honolulu,<sup>3</sup> all with eight-seat Cessna 402 aircraft, and stated that it would add an additional daily round trip once Island Air suspended its service.

Pacific Wings replaced Island Air on October 1, 1999, and has provided reliable scheduled air service since that time. On January 7, 2000, Pacific Wings filed a 30-day notice to suspend its essential air service at Kalaupapa. In its notice the carrier stated that it was not economically feasible to continue its service to Kalaupapa because of the inadequate passenger loads it had generated.

#### **Community Objection**

On January 28, 2000, the State of Hawaii answered Pacific Wing's notice of intent to suspend service. The state opposed the termination of Pacific Wings' "excellent and reliable service at Kalaupapa." They state said that Kalaupapa is an extremely isolated community wholly dependent on reliable scheduled air service for its economic survival, and for the health and welfare of its population. The Department in Order 91-4-6 established a mandatory minimum level of essential air service to be maintained at Kalaupapa, i.e., two round trips a day with small aircraft to either Honolulu or Molokai. Order 91-4-6 further said that carriers may not suspend service without filing a 30-day notice. The state "...reserves the right to participate in the Department's subsidy determination process. In the event the payment of subsidy to Pacific Wings is found to be required, and on the assumption that 50 percent of any such subsidy is required by law to be borne by the State and/or the community, Hawaii will confer with the community of Kalaupapa regarding the appropriate distribution of that share of the subsidy cost between them."

#### **Decision**

We will permit Pacific Wings to suspend service on February 6. As discussed earlier, the Department has no authority to hold in carriers at Kalaupapa beyond the 30-day notice period because Kalaupapa is not an essential air service community, and thus is not guaranteed continuous air service. We recognize the isolation and need of the community of Kalaupapa for air service. In that regard, we note that two on-demand air taxis serve Kalaupapa on a charter basis, giving the community access to the national air transportation system. While the community could submit a proposal for the Department to subsidize a carrier at Kalaupapa on a 50-50% sharing basis with the Department, given

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<sup>3</sup> September 1999, Official Airline Guide.

our current EAS budget constraints we would not be in a position to approve it this fiscal year.

As a final matter, before Pacific Wings suspends service, we expect it to make every effort to ensure an orderly transfer of service at Kalaupapa, including notifying all passengers holding reservations on its flights that the service will be suspended, informing them of the availability of charter service by Air Molokai and Paragon Air, and assisting them in arranging alternative transportation.

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

**ACCORDINGLY,**

1. We will permit Air Nevada, Inc., d/b/a Pacific Wings, to suspend its service at Kalaupapa, Hawaii, effective February 6, 2000;
2. This docket will remain open until further order of the Department; and
3. We will serve copies of this order on the Mayor and airport manager of Kalaupapa Hawaii, the Governor of Hawaii; the Hawaii Department of Transportation; Pacific Wings, and Air Molokai and Paragon Air.

By:

**A. Bradley Mims**  
Acting Assistant Secretary for Aviation  
and International Affairs

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