

Served: September 13, 2000

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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 8th day of September, 2000

Essential Air Service at  
**UTICA, NEW YORK**  
under 49 U.S.C. 41731 *et seq.*

Docket OST-00-7556-3

**ORDER PROHIBITING TERMINATION OF SERVICE  
AND REQUESTING PROPOSALS**

**Summary**

By this order, the Department is (a) prohibiting CommutAir, Inc., d/b/a USAir Express (CommutAir) from terminating its unsubsidized scheduled air service at Utica, New York, (b) requiring the carrier to maintain its current service at the community for an initial 30-day period following the end of the notice period, and (c) requesting proposals from carriers interested in providing replacement service.

**Background**

On June 21, 2000, CommutAir filed a 90-day notice of its intent to terminate all scheduled air service at Utica, New York, effective September 20, 2000. CommutAir currently provides Utica with four one-stop (at Syracuse) round trips each weekday and two and a half one-stop round trips each weekend period to Newark with 19-seat Beech 1900D aircraft. CommutAir is the only air carrier providing scheduled service at Utica.



**Essential Air Service at Utica**

The essential air service determination for Utica, New York, requires at least two nonstop or one-stop round trips each day to New York City, with sufficient capacity to accommodate 40 passengers in each direction each day.<sup>1</sup> In accordance with our essential air service guidelines, service must be provided with 15-seat or larger aircraft.

<sup>1</sup> Civil Aeronautics Board Order 84-3-68, issued March 16, 1984.

In calendar year 1999, Utica generated a total of 8,200 enplanements, or 22.5 enplanements per day based on a 365-day service year. In calendar years 1997 and 1998, the community generated 13,272 (36.4 a day) and 12,016 (32.9 a day) enplanements, respectively.

### **Request for Proposals**

We request that any carriers interested in providing essential air service at Utica file their proposals within 20 days of the service date of this order. We ask that carriers submit proposals for two or three nonstop or one-stop round trips per day to New York City with 15-seat, or larger, pressurized aircraft. We will also entertain proposals to other hubs that provide access to the national air transportation system in order to give the Department and community as broad an array of proposals as possible from which to choose. Of course, as always, we will formally solicit the community's views on any service options we receive before making a long-term carrier selection decision. In order to assist carriers in making their traffic and revenue forecasts, we have included historical traffic data in Appendix A.

### **Procedures For Filing Proposals**

For interested air carriers that are not familiar with our procedures and recommended form for supplying the necessary information, we have prepared two explanatory documents that we will make available upon request. The first describes the process for handling carrier replacement cases under 49 U.S.C. 41734(f) and discusses in detail the process of seeking proposals, conducting financial and operational audits of the applicant carriers and selecting a replacement carrier. The second is an evidence request containing an explanatory statement, and a copy of section 14 CFR 204.4 of the Department's regulations which deals with the information required of all applicants for authority to provide basic essential air service, and provides schedules giving our recommended form for submitting data required for determining the financial and operational ability of applicants to provide dependable air service.<sup>2</sup>

### **Community and State Comments**

The community and the State are welcome to submit comments on the proposals at any time.<sup>3</sup> Early in the proceeding, comments on the perceived strengths and weaknesses of the proposals would be particularly helpful to the Department. The civic parties may also express a preference for a particular carrier or proposal option at that time, if they choose. In any event, after we conclude rate conferences with all applicants, we will provide a

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<sup>2</sup> Copies of these documents can be obtained from: FAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street, S.W., Washington, DC 20590. Telephone requests for these documents are accepted at (202) 366-1053.

<sup>3</sup> Civic parties should file an original and five copies of their comments in Docket OST-00-7556. This filing should be addressed to: Docket Operations and Media Management Division, SVC-124, Office of the Secretary, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, S.W., Washington D.C. 20590.

summary of the conference results to the civic parties and ask them to file their final comments.<sup>4</sup>

### **Other Carrier Requirements**

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.<sup>5</sup> Consequently, all carriers receiving Federal subsidy to support essential air service must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with regulations governing lobbying activities. All carriers that plan to submit proposals involving subsidy should submit the required certifications along with their proposals. Interested carriers requiring more detailed information regarding these requirements as well as copies of the certifications should contact the Office of Aviation Analysis at (202) 366-1053. The Department is prohibited from paying subsidy to carriers that do not submit these documents.

### **Requirement to Maintain Service**

CommutAir is the only carrier providing scheduled air service at Utica, and is the community's only link to the nation's air transportation system. In accordance with 49 U.S.C. 41734, we must prohibit CommutAir from terminating service for a 30-day period beyond the end of its 90-day notice period, through October 19, 2000.

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

### **ACCORDINGLY,**

1. We request that carriers interested in providing essential air service at Utica, New York, submit their proposals, with or without requests for subsidy, within 20 days of the service date of this order. An original and five copies of the proposal should be sent to the EAS and Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7<sup>th</sup> Street, S.W., Washington, D.C. 20590, with

<sup>4</sup> In cases where a carrier proposes to provide essential air service without subsidy and we determine that service can be reliably provided without such compensation, we do not normally hold rate conferences. Instead, we rely on the carrier's subsidy-free service.

<sup>5</sup> The regulations applicable to each of these areas are (1) 49 CFR Part 20, New Restrictions on Lobbying, Implementing title 31, United States Code, section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions"; (2) 49 CFR Part 29, Subpart F, Drug-Free Workplace Requirements (Grants) implementing the Drug-Free Workplace Act of 1988; (3) 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs for the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964; 49 CFR Part 27, Nondiscrimination on the basis for Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and 14 CFR Part 382, Nondiscrimination on the Basis of Handicap in Air Travel.

the title: "Proposal to Provide Essential Air Service at Utica, New York, Docket OST-00-7556;<sup>6</sup>

2. The Department prohibits CommutAir, Inc., d/b/a USAir Express, from terminating service at Utica, New York, at the end of its 90-day notice period, and requires it to maintain at least two nonstop or one-stop round trips a day between Utica and Newark, through October 19, 2000, or until a carrier capable of providing reliable essential air service actually begins service, whichever comes first;
3. The Department directs CommutAir, Inc., d/b/a USAir Express, to retain all books, records, and other source and summary documents to support subsidy claims for payment, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. Such documentation shall be retained for seven years or until the Department indicates that the records may be destroyed. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order;
4. This docket will remain open until further Department order; and
5. We will serve a copy of this order on the Mayor of Utica, the Airport Manager of Oneida County Airport, the Governor of New York, the New York Department of Transportation, CommutAir, and the carriers listed in Appendix B.

By:

**FRANCISCO J. SANCHEZ**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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

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<sup>6</sup> After serving a copy of its proposal on the civic officials of Utica, the State of New York, and each of the other applicants, each applicant must then file a certification of service with the Department's Docket Operations and Media Management Division, SVC-124. Questions regarding filings in response to this order may be directed to John McCamant at (202) 366-1060.

## HISTORICAL TRAFFIC AT UTICA, NEW YORK

		<u>Total Enplanements</u>	<u>Enpl. Per day</u>	<u>UCA-PHL</u>	<u>PHL-UCA</u>
1997	1Q	3,305		2,268	2,080
	2Q	3,433		2,385	2,400
	3Q	3,549		2,688	2,494
	4Q	<u>2,985</u>		<u>2,169</u>	<u>2,150</u>
		13,272	36.4	9,510	9,124
1998	1Q	2,712		1,942	1,962
	2Q	3,022		2,264	2,402
	3Q	3,337		2,550	2,670
	4Q	<u>2,945</u>		<u>2,273</u>	<u>2,348</u>
		12,016	32.9	9,029	9,382
1999	1Q	2,208		1,798	1,926
	2Q	2,183		2,160	2,284
	3Q	2,106		2,103	2,061
	4Q	<u>1,703</u>		<u>1,638</u>	<u>1,469</u>
		8,200	22.5	6,699	7,740
2000	1Q	881			
	2Q	773			

Source: CommutAir Form 298-C, Schedule T-1

**SERVICE LIST FOR THE STATE OF NEW YORK**

Acadia Air, Inc.	Northwest AirlinK
Amerijet International, Inc.	Omniflight Helicopter Service, Inc.
Business Express, Inc.	Pennsylvania Aviation, Inc.
Chautauqua Airlines, Inc.	Pennsylvania Commuter Airlines, Inc.
Chester County Aviation, Inc.	Southern Jersey Airways, Inc.
Colgan Air	Spectrum airlines, Inc.
Columbia Aviation, Inc.	Travelair, Inc.
Corporate Air, Inc.	Valley Air Service, Inc.
Delta Connection	
Executive Airlines, Inc.	
Gull Aviation, Inc.	Chester Anderson
Henson Aviation, Inc.	Ken Bannon
Horizon Air, Inc.	Sabrina Cranor
HubExpress, Inc.	Virgil de la Cruz
Hyannis Air Service, Inc.	E. B. Freeman
Jetstream International Airlines, Inc.	Edward Harahusk
Long Island Airlines	Robert Hart
Metroflight, Inc.	A. Edward Jenner
Midway Airlines, Inc.	John McFarlane
Midwest Express Airlines, Inc.	Eric Nordling
New England Airlines, Inc.	Mark Prange
New York Helicopter Corporation	John Sinisi
Northeast Express Regional Airlines, Inc.	Kevin Thomas