



Order 2000-11-17

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

116372

**Issued by the Department of Transportation
on the 15th day of November, 2000**

Served: November 20, 2000

Essential Air Service at
PRESQUE ISLE, MAINE
under 49 U.S.C. 41731 *et seq.*

Docket OST-2000-8012 - 2

ORDER

Summary

By this order, the Department (a) permits Business Express, Inc., d/b/a American Eagle to terminate its unsubsidized scheduled air service at Presque Isle, Maine, and grants the carrier's request for an exemption of the requirements of 49 U.S.C. 41734(a) to permit it to terminate service on less than 90-days notice, (b) prohibits CommutAir, Inc., d/b/a USAir Express (CommutAir)¹ from terminating its unsubsidized scheduled air service at Presque Isle and requires the carrier to maintain its service at the community for an initial 30-day period following the end of the notice period, and (c) requests proposals from carriers interested in providing replacement service.

Background

Presque Isle is currently served by both Business Express and CommutAir. On September 19, 2000, Business Express Airlines, Inc., filed a 90-day notice of its intent to terminate all scheduled service at Presque Isle, Maine. Business Express also requests an exemption from the requirements of 49 U.S.C. 41734(a) to the extent necessary to permit it to terminate service on less than 90-days notice, on December 1, 2000. Business Express currently provides Presque Isle with twenty-six nonstop round trips to Boston



¹ CommutAir currently operates as a US Airways Express code share partner. Effective December 3, however, the carrier will operate as a Continental Express code share partner.

On September 25, 2000, CommutAir filed a 90-day notice of its intent to terminate all scheduled air service at Presque Isle, effective December 26, 2000. CommutAir currently provides Presque Isle with one one-stop and two nonstop round trips a day to Boston with 19-seat Beech 1900D aircraft.

Essential Air Service at Presque Isle

The essential air service determination for Presque Isle, Maine, requires at least two nonstop or one-stop round trips each day to Boston, with sufficient capacity to accommodate 40 passengers in each direction each day.² In accordance with our essential air service guidelines, service must be provided with 15-seat or larger aircraft. In calendar year 1999, Presque Isle generated a total of 28,911 enplanements, or 79 per day based on a 365-day service year, up from 24,401 enplanements, 67 a day, in 1998.

Community Response

The City of Presque Isle originally objected to the request of Business Express for an early departure on less than 90-days notice, but subsequently agreed to it after successfully negotiating certain concessions with the carrier.

Decision

Based on the above information, we have decided to permit Business Express to terminate its service at Presque Isle at the end of its 90-day notice period, December 18, 2000, and to permit it to suspend early, after December 3. We base that decision on the community's acquiescence which in turn is based on Business Express's agreeing to certain commitments including, but not limited to, providing full service through December 3, reaccommodating all passengers on CommutAir's service at no extra charge to the customer, maintaining staffing at the ticket counter through December 17, etc.

Second, we will prohibit CommutAir from terminating service at Presque Isle on December 26, 2000, and will require it to maintain service at the community for an initial 30-day period, through January 25, 2001. Further, we will continue to require that CommutAir maintain its service at Presque Isle for successive 30-day periods until we have completed the carrier selection case and a suitable replacement carrier has actually commenced service. Finally, we will request proposals from all carriers interested in providing replacement essential air service at Presque Isle.

Because the notice of Business Express was filed prior to that of CommutAir, and because the service level of four daily round trips to Boston to be provided by CommutAir after Business Express terminates service after December 3 meets the essential air service requirements of the Presque Isle community,³ we will permit Business Express to terminate service at the community and will rely on CommutAir to meet Presque Isle's essential air service needs. In accordance with section 323.3(d) of the Department's Regulations, once

² Civil Aeronautics Board Order 84-7-76, issued July 26, 1984.

³ CommutAir has advised the Department that, when Business Express departs, it will increase service in the Presque Isle-Boston market to four round trips a day.

Business Express filed its notice on September 19, for purposes of CommutAir's notice obligations, the service that Business Express was providing was considered not in operation for the duration of the notice period. Thus, when CommutAir filed its notice on September 25, it was deemed to be the only carrier providing air service at the point and subject to the normal "hold-in" requirements.

With the departure of Business Express, CommutAir will be the only carrier providing scheduled air service at Presque Isle, and 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 January 25, 2001. As noted above, when Business Express terminates service at Presque Isle after December 3, CommutAir will increase frequency in the Presque Isle-Boston market to four round trips a day. Even this level of service will barely accommodate Presque Isle's 1999 traffic levels.

Request for Proposals

We request that any carriers interested in providing essential air service at Presque Isle file their proposals within 20 days of the service date of this order. We ask that carriers submit proposals for four nonstop or one-stop round trips per day to Boston 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.

At this point we would like to discuss the specifics of the Presque Isle air service situation in a little more detail. This is a very atypical case under the Essential Air Service Program. As can be seen in Appendix A, Presque Isle generates very large passenger numbers. During 1999, 28,911 passengers boarded at the Northern Maine Regional Airport (NMRA), an average of 79 a day, or 26 per flight assuming a three-round-trip-a-day schedule. And the community has generated these and even higher traffic levels over the years. Historically, the community supported B-727 jet service from Delta Air Lines during the 1970's, and has consistently supported two or more carriers since then, all without the need for essential air service subsidies. In the area of economic development, a number of multi-million dollar commercial expansion and business development projects are underway in the Northern Maine Region. We also note that the nearest air service, other than Presque Isle, is available at Bangor, about 165 miles and a full three-hour drive to the south. Thus, we would not expect there to be much leakage, *i.e.*, passengers not using the local airport but rather driving to another airport that may offer either more service in terms of jets, larger turbo-props, more frequencies, low-fare service, etc.

From an operational standpoint, we want to assure potential applicants that the NMRA is operator friendly despite the very cold temperatures in northern Maine winters. We have had informal discussions with officials from Business Express and they have told us that they

operated better than 98 percent of all their scheduled flights into and out of Presque Isle, including a daily 6:00 am departure, a very high completion rate. They said that they experience much more difficult de-icing problems at other airports in the northeast than at Presque Isle, due in part to the fact that while the community receives substantial snowfall, ice is not generally a problem. The NMRA is very active and provides a number of services with the City of Presque Isle providing for dedicated snow removal, aircraft de-icing, aircraft refueling and hangar space.

Based on all of the above, we expect that a potential replacement carrier could serve the Presque Isle-Boston market on a subsidy-free basis. Carrying 1999 passengers levels on three-round trips a day with 34-seat SAAB's would average 76 percent load factors, well above breakeven load factors for that size aircraft that usually average in the area of 50 percent. We expect that any subsidy would be minimal, and short-term in nature. In that context, we encourage carriers to submit a wide array of proposals, including a mix of aircraft types between 19-seaters and larger turbo props, and including a stop at either Bangor or Portland enroute to Boston. A recent study indicates that the Presque Isle-Portland market could produce another 4,000 enplanements annually.

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.⁴

Community and State Comments

The community and the State are welcome to submit comments on the proposals at any time.⁵ 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

⁴ Copies of these documents can be obtained from: EAS & 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.

⁵ Civic parties should file an original and five copies of their comments in Docket OST-00-8025. 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.⁶

Other Carrier Requirements

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.⁷ 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.

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 Presque Isle, Maine, 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 7th Street, S.W., Washington, D.C. 20590, with the title: "Proposal to Provide Essential Air Service at Presque Isle, Maine, Docket OST-00-8012;"⁸
2. The Department takes no action to prohibit Business Express, Inc., d/b/a American Eagle, from terminating all scheduled air service at Presque Isle, Maine, and further grants the request of Business Express for an exemption from the requirements of

⁶ 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.

⁷ 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 Civic 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.

⁸ After serving a copy of its proposal on the civic officials of Saranac Lake and Lake Placid, 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.

49 U.S.C. 41734(a), to the extent necessary to allow it to terminate scheduled air service at Presque Isle on less than 90-days' notice, after December 3, 2000;

3. The Department prohibits CommutAir, Inc., d/b/a USAir Express, from terminating service at Presque Isle, Maine, at the end of its 90-day notice period, and requires it to maintain at least four nonstop or one-stop round trips a day between Presque Isle and Boston, through January 25, 2001, or until a carrier capable of providing reliable essential air service actually begins service, whichever comes first;

4. 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;

5. This docket will remain open until further Department order; and

6. We will serve a copy of this order on the mayor and airport manager of Presque Isle, the Governor of Maine, the Maine 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>*

HISTORICAL TRAFFIC AT PRESQUE ISLE, MAINE

		<u>Enplanements</u>	<u>Deplanements</u>	Enpl. per day
1979		43,327		118.7
1980		33,773		92.3
1985		28,494		78.1
1990		35,252		96.6
1991		35,903		98.4
1992		31,397		85.8
1993		28,214		77.3
1994		26,807		73.4
1995		25,999		71.2
1996		25,152		68.7
1997		24,380		66.8
1998	1Q	5,458	4,970	
	2Q	5,937	6,446	
	3Q	6,686	6,649	
	4Q	<u>6,320</u>	<u>6,251</u>	
		24,401	24,316	66.9
1999	1Q	6,365	5,938	
	2Q	6,892	7,649	
	3Q	8,770	8,841	
	4Q	<u>6,884</u>	<u>7,000</u>	
		28,911	29,428	79.2
2000	1Q	6,321	5,941	
	2Q	6,261	7,192	
	3Q	7,778	8,062	
	4Q			
Last 4Q		27,244	28,195	74.4

Source: Northern Maine Regional Airport. Enplanements based on 365-day year.

SERVICE LIST FOR THE STATE OF MAINE

Acadia Air, Inc.
Amerijet International, Inc.
Aroostook Aviation, Inc.
Colgan Air
Corporate Air, Inc.
Delta Connection
Florida Air, Inc.
Lands Ending Corporation
Maine Instrument Flight School
Metroflight, Inc.
Midway Airlines, Inc.
Midwest Express Airlines, inc.
Northeast Express Regional Airlines, inc.
Northwest Airlink
Spectrum Airlines, Inc.
Valley Air Services, Inc.

Chester Anderson
Ken Bannon
Grecorio Salas Calvo, Jr.
Sabrina Cranor
Joel DeGrandis
E.B. Freeman
Robert Hart
A. Edward Jenner
John McFarlane
Eric Nordling