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ORDER 2002-4-24
SERVED: May 2, 2002



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

Issued by the Department of Transportation
on the 29th day of April, 2002

Essential Air Service at
LANCASTER, PENNSYLVANIA
under 49 U.S.C. 41731 *et seq.*

Docket OST-2002-11450 - 9

FINAL ORDER

Summary

By this order, the Department is finalizing Show Cause Order 2002-3-7 terminating the subsidy eligibility of Lancaster, Pennsylvania, on May 1, 2002, because of its proximity to Philadelphia International Airport.

Background

On January 31, 2002, Chautauqua Airlines, Inc., d/b/a US Airways Express (Chautauqua) filed a 90-day notice of its intention to suspend service at Lancaster on May 1, 2002. By Show Cause Order 2002-3-7, issued March 8, 2002, the Department tentatively concluded that Lancaster was within 70 driving miles of the Philadelphia airport and tentatively granted Chautauqua's request to suspend its service at the community on May 1, 2002.¹ The order also provided interested persons a 20-day period to show cause why we should not make final our tentative findings and conclusions.

¹ Public Law 106-69, the Department of Transportation and Related Agencies Appropriations Act of 2000, prohibits the Department from paying subsidies under the Essential Air Service program at communities within 70 highway miles of large or medium hub airports.

Community Objection

On March 22, 2002, the Lancaster Airport Authority (the Authority) filed an objection to our order to show cause. Among other things, the community questions whether the 70-mile eligibility standard applies to FY 2002 since it was last included in the Department's FY 2000 appropriation. The Authority also questions the applicability of the 70-mile standard here, arguing that it applies only in fiscal years where there is insufficient funding to maintain subsidy supported essential air service (EAS), and further objects to our use of the phrase "driving miles" in the show cause order. Its complaint notes that the relevant statute, P.L. 106-69, states that communities' eligibility is based on their being beyond 70 "highway miles" of the nearest large or medium hub airport, as opposed to 70 driving miles as we stated in the show cause order. In addition, the Authority points out that the prohibition is not absolute. That is, subsequent to Congress's passing P.L. 106-69, Congress passed the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, commonly referred to as AIR-21, that, among other things, granted the Department discretionary authority "to provide assistance with respect to a place that is located within 70 highway miles of a hub airport if the most commonly used highway route between the place and the hub airport exceeds 70 miles." In that regard, the Authority states that the route selected by the DOT "is a tortuous route no Lancastrian would travel" and that any reasonable route to the Philadelphia International Airport would exceed 70 miles. Therefore, they argue that the Department should use its discretion to authorize subsidy in this case. The Authority also questions the Department's selection of the starting and ending points in its calculation of distance from the community to the hub airport. Finally, the Authority relies on an email sent from the Chief of the EAS program to the Airport Director of the Lancaster Airport in July 2000 confirming that Lancaster was in fact an EAS community.

Decision

We disagree with the Authority's assertions that the 70-mile standard does not apply to FY 2002, and to its assertion that it applies only in years when there is insufficient funding to maintain subsidy supported EAS. First, section 332 of Public Law 106-69 clearly extends the 70-mile standard to FY 2002 and to all subsequent fiscal years. The section states that "Hereafter, (emphasis supplied) notwithstanding 49 U.S.C. 41742, no essential air service subsidies shall be provided to communities in the 48 contiguous States that are located fewer than 70 highway miles from the nearest large or medium hub airport, or that require a rate of subsidy per passenger in excess of \$200 unless such point is greater than 210 miles from the nearest large or medium hub airport." Second, the "insufficient funding" provision, cited by the Authority, is contained in 14 CFR 398.11. By implication, the Authority claims that in fiscal years where there *is* sufficient funding, section 398.11 does not prohibit funding to communities within the 70-mile limit.

However, this provision has been superseded by federal statute. Congress first imposed the 70-mile standard in FY 1992 and renewed it every fiscal year until FY 2000 when it made it a permanent restriction as discussed above. Nowhere in the ten-year history of the restriction has there been any linkage to budget shortfalls.

The Authority then relies on Section 205 of Public Law 106-181 that states “The Secretary may (emphasis supplied) provide assistance under subchapter II of chapter 417 of title 49, United States Code, with respect to a place that is located within 70 highway miles of a hub airport (as defined by section 41731 of such title) if the most commonly used highway route between the place and the hub airport exceeds 70 miles.” Under this statute, the Secretary is given the discretion whether to pay subsidies to communities within the 70-mile limit. As we mentioned earlier, the community argues that the most commonly traveled route exceeds 70 miles and, because only a “tortuous routing” will measure less than 70 miles, this is the kind of situation where the Department should exercise its discretion.

Even if we were to accept that the most commonly traveled route exceeds 70 miles, that fact would not automatically result in our authorizing subsidy for air service at Lancaster. In determining whether to exercise our discretion, we examine what alternative air service is available to a community. In that regard, Lancaster is not isolated, and is well served through three, relatively close-by airports. Not only is the Philadelphia airport nearby, but one of the largest in the nation, Baltimore-Washington International Airport (BWI), is only 75 miles away. BWI is also one of the largest airports in the country, and the nation’s largest low-fare carrier, Southwest Airlines, has a major base of operations there. Finally, the Harrisburg airport is only about 30 miles away from Lancaster. Harrisburg is a small hub that has service to a significant number of destinations, including nonstop service to Atlanta, Charlotte, Chicago, Boston, Philadelphia, Pittsburgh, Toronto, Detroit, New York and Washington.

The Authority states that there are a number of starting and ending points that could be used to measure the driving distance, such as to the Philadelphia airport’s international terminal or to various parking lots, and not just to the entrance of the airport property. However, the fact that there are so many different starting and ending points has led the Department to consistently use the “city center” of the EAS community and the entrance of the nearest large or medium hub airport as the logical measuring points. The point of a mileage standard is clear: how far would people have to drive if there were no air service at their local airport? In this case, we have turned to the Department’s Federal Highway Administration (FHWA) for a precise measurement. The FHWA uses a Geographic Information System (GIS) system that is the most accurate measurement available. At distances in the 70-mile range such as here, it is accurate to within plus or minus 80

meters, or 262.5 feet. In order to be as accurate as possible, we therefore asked the FHWA to measure the shortest highway or driving distance from Lancaster to the Philadelphia airport. The FHWA's GIS system reports the Lancaster-Philadelphia airport distance as 65.3 miles,² confirming our earlier, tentative findings.

Regarding the Authority's objection to our use of the phrase "driving miles," we did not intend to describe something different from the phrase "highway miles." Rather, when talking about miles in the context of the EAS program, there frequently is confusion as to whether the reference is to "air miles" or "surface miles." We were simply differentiating surface miles from air miles.

The Authority's final point is that the Chief of the EAS program sent an email in July 2000 confirming that Lancaster was an EAS community. From that, the Authority concludes that it is eligible to receive subsidy. Lancaster indeed qualifies as an "eligible place" under the Essential Air Service program by virtue of the fact that, on the date of enactment of the Airline Deregulation Act of 1978 (October 24, 1978), it was receiving scheduled service from an air carrier holding a certificate issued by the Civil Aeronautics Board under Section 401 of the Federal Aviation Act. In fact, it is precisely because Lancaster is an eligible place that the governing statutes (49 U.S.C. §41734) required Chautauqua Airlines to file a 90-day notice of its intent to terminate service at the community. Notwithstanding that Lancaster is an EAS community, Congress has placed various funding restrictions on the program over the years in an attempt to concentrate funds on the core objective of the program.³

In view of the above, we affirm our tentative decisions in Order 2002-3-7 not to authorize subsidy for Lancaster under the Essential Air Service program, and to allow Chautauqua Airlines to suspend its scheduled service at the community on May 1, 2002.

As we previously stated in Order 2002-3-7, in an effort to provide an orderly and smooth shutdown in service, before Chautauqua terminates service we expect it to contact all passengers holding reservations for travel, to notify them of the suspension of service and the availability of nearby air services, and to assist them in making alternate travel arrangements.

² A map showing the distance provided by the FHWA is attached as Appendix A.

³ See, for example, Order 93-11-44, issued November 30, 1993, that terminated subsidy for 11 communities because of the 70-mile standard.

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

Accordingly,

1. We finalize our tentative findings and conclusions as set forth in Order 2002-3-7, March 8, 2002, and allow Chautauqua Airlines, Inc., d/b/a US Airways Express to suspend all service at Lancaster, Pennsylvania, on or after May 1, 2002; and
2. We will serve a copy of this order on the Mayor and airport manager of Lancaster, Pennsylvania, the Lancaster Airport Authority, the Governor of Pennsylvania, the Bureau of Aviation of the Pennsylvania Department of Transportation, Chautauqua Airlines, and US Airways.

By:

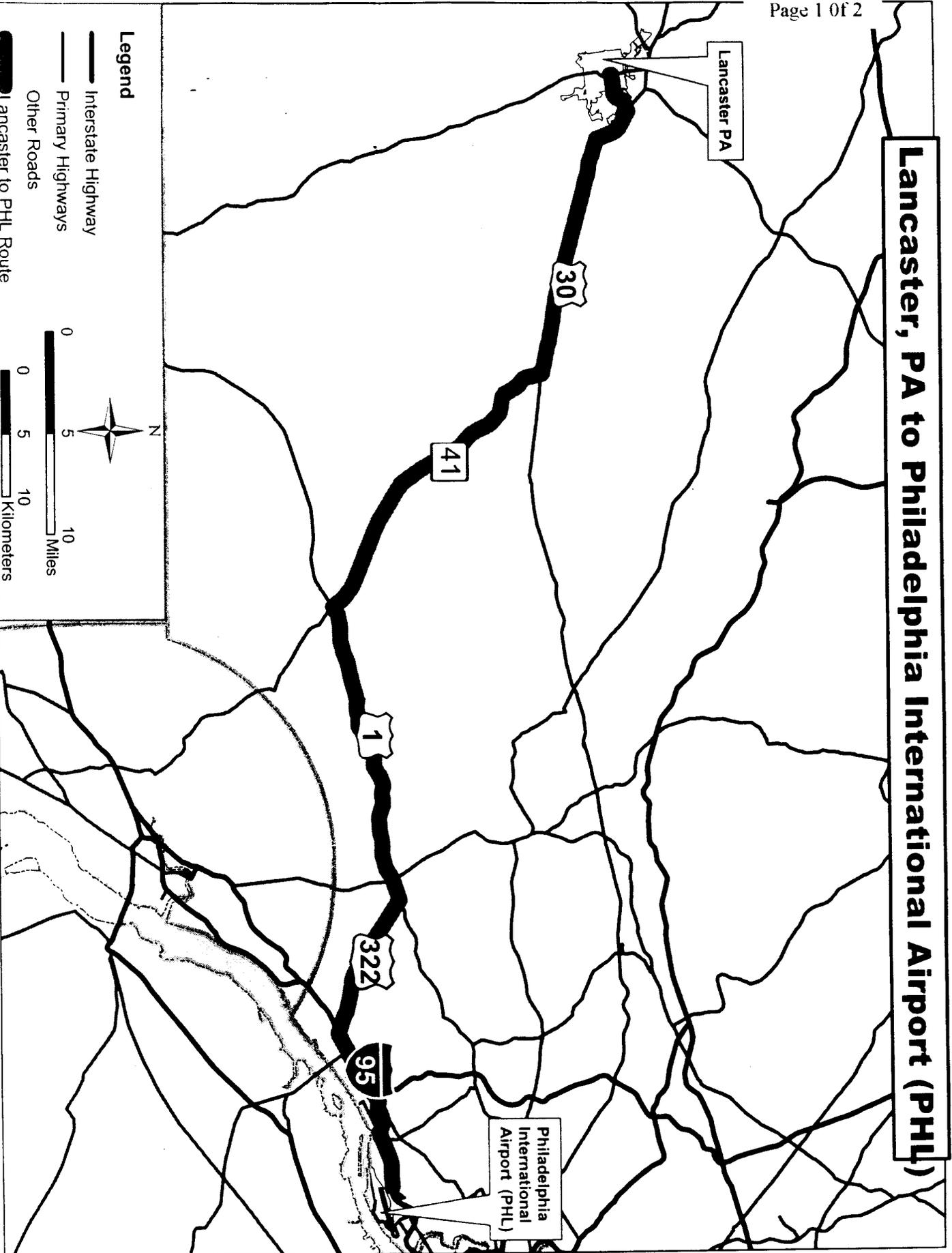
READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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Lancaster, PA to Philadelphia International Airport (PHL)



Starting from Lancaster PA at the corner of Lime and Chestnut Street,

Travel on PA-23, Chestnut St / Walnut St for 2.18 mi

Turn right onto ramp to U.S. 30 East

Travel on U.S. 30 East for 14.34 mi

Turn right onto PA-41

Travel on PA-41 for 16.41 mi

Turn left onto ramp to U.S. 1 North

Travel on U.S. 1 North for 15.41 mi

Turn right onto U.S. 322 East

Travel on U.S. 322 East for 7.36 mi

Continue straight onto I-95 North

Travel on I-95 North for 8.40 mi

Bear right onto ramp to PA-291 East at Exit 10

Travel on PA-291 East for 1.20 mi

Bear right onto ramp to entrance of Philadelphia International Airport

Total distance traveled is 65.30 mi

Source: Office of Intermodal & Statewide Programs
Federal Highway Administration