

Order 2001-12-2

Served: December 6, 2001



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

Issued by the Department of Transportation  
on the 3rd day of December, 2001

Essential Air Service at

Newport News, VA

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

Docket OST-2001-10749-5

**ORDER ALLOWING SUSPENSION OF SERVICE**

**Summary**

By this order, the Department is allowing Atlantic Coast Airlines d/b/a United Express (Atlantic Coast or ACA), to suspend service between Newport News and Washington Dulles International Airport as of December 31, 2001.

**Background**

On October 1, 2001, Atlantic Coast filed a 90-day notice of its intent to suspend its unsubsidized scheduled air service between Newport News and Washington, D.C., served through Washington Dulles International Airport, the community's designated essential air service (EAS) hub. The carrier currently provides two daily nonstop round trips to Washington Dulles in 29-seat Jetstream 41 equipment.<sup>1</sup>

<sup>1</sup>United Air Lines Internet site. Prior to September 11, ACA operated four nonstop round trips a day.

The community's EAS determination was last reviewed in 1984 in Civil Aeronautics Board Order 84-10-138 when Washington, D.C. was established as the community's EAS hub with service through any one of the three Washington D.C. area airports satisfying that EAS hub requirement.

In addition to Atlantic Coast's current service to Washington, Newport News receives service to three other large hub airports, Atlanta, Charlotte, and Philadelphia. The US Airways Express carrier, Piedmont Airlines (Piedmont) provides five and one-half daily round trip flights to the US Airways' hub at Charlotte and another four daily round trips to its hub at Philadelphia. Service in both markets is provided in 32-seat and 54-seat de Havilland Dash-8 aircraft. Four additional daily round trips are provided to the large hub airport at Atlanta by AirTran Airways using 106-seat DC-9 jets. Finally, Delta Air Lines recently announced that the Delta Connection carrier, Atlantic Southeast Airlines (ASA) would begin serving the Newport News – Atlanta market with Embraer regional jet aircraft in early 2002.

The Newport News-Williamsburg International Airport is relatively close to two much larger and better-served facilities. Norfolk International Airport is only 29 highway miles to the southeast and Richmond International Airport is 60 miles to the northwest. The principal communities served by Newport News-Williamsburg International Airport are the Cities of Hampton, Newport News, and Poquoson. Other communities included in the airport's primary service area include the City of Williamsburg and the Counties of James River, York, and Gloucester. In terms of highway distance, the center of the Cities of Hampton and Newport News are approximately 16 miles and 29 miles respectively from Norfolk International. Also, the City of Williamsburg is approximately 17.5 highway miles from the Newport News-Williamsburg International Airport, and almost equidistant from Richmond International Airport (46 miles) and Norfolk International Airport (44 miles). From 2000 Census data, Norfolk International serves a much larger population base – over 1 million compared with Newport News International – 510,000.

Newport News is served by Atlantic Coast Airlines under a contractual arrangement with United Air Lines (United), whereby United pays ACA an agreed-to fee per flight to provide service in the Newport News – Washington market and United receives the revenue generated from the service. According to the carrier's filing, United lost \$844,000 serving the Newport News – Washington market in the eight-month period that ended on August 31, 2001. Also, the events of September 11, 2001, only exacerbated the situation in the Newport News – Washington market. In addition, Southwest Airlines began serving Norfolk International Airport on October 7, 2001, placing even more downward pressure on United's passenger and fare levels.

Atlantic Coast has also requested an exemption to allow it to suspend service before the end of the full 90-day notice, stating in part that it cannot continue to absorb economic losses for the entire 90-day period and that the community has access to other service options.

#### **Community Response**

On October 18, 2001, the Newport News-Williamsburg International Airport filed an answer expressing its strong opposition to Atlantic Coasts' notice to suspend service and particularly its request to terminate service on less than 90 day's notice. In addition, the airport asked the Department to invoke the provisions of Section 105 of the Air Transportation Safety and System Stabilization Act, P.L. 107-42 in order to require ACA to continue to serve Washington Dulles. Section 105 gives the Department authority to "take appropriate action to ensure that all communities...continue to receive adequate air transportation service."

#### **Carrier Reply**

On October 29, 2001, United Air Lines and ACA filed a joint answer to the objection filed by the airport. In their answer, the carriers argue that the community will continue to receive a level of service greater than the minimum level required under the EAS program and that the provisions of section 105 cannot be invoked because the Department is unable to compensate the carriers for any losses they may incur.

#### **Decision**

After careful consideration, we will allow ACA to suspend its service at Newport News as of December 31, 2001, the end of the 90-day notice period, at which time we will rely on the services by US Airways Express and AirTran Airways (AirTran) to satisfy the community's essential air service needs. However, we will deny ACA's request to suspend service prior to the end of the 90-day period.

The community notes that ACA and United have received payments under sections 101 and 103 of P.L. 107-42, and believes that the acceptance of those payments obligates ACA to continue service at Newport News. First, we must make clear that by its own words, section 105 is precatory, not mandatory. Second, any payments received under sections 101 and 103 are specifically intended to compensate carriers for (a) losses associated with government-ordered stoppages of service, such as occurred immediately after the September 11 attacks, and (b) incremental losses incurred through December 31, 2001, as a direct result of those attacks.

Our experience in implementing the compensation sections of the statute indicates that carriers are generally sustaining losses in excess of the compensation provided for

them, sometimes by substantial amounts. This experience has been substantiated by the Comptroller General who, in a letter report to Congressional requesters dated October 5, estimated industry losses through the end of the year at \$1.5 to \$5.5 billion *beyond* the \$5 billion in compensation that Congress appropriated. Under the circumstances, carriers have necessarily taken measures to restrain their system costs, including reductions on underperforming routes. The Airline Deregulation Act of 1978 granted carriers the ability to make adjustments to their domestic route networks, except in the case of essential air service, as discussed below. Impairing their ability to do so under the present circumstances, without just compensation for their losses, would raise very significant legal issues.

We recognize that the remaining service is not operated to Washington, which is designated as Newport News' hub in its essential air service determination. However, hub designations assume that service would not be offered from the community to any other hubs. If other service is in fact available when a carrier files notice to suspend its service, we consider whether the other service can meet the community's needs. In this case, we conclude that US Airways Express's service to Philadelphia and Charlotte, and AirTran's jet service to Atlanta, which may shortly be augmented by ASA's jet service, fully meet the Peninsula region of the Commonwealth's continuing need for a link to the national air transportation system. Even without ACA's service, the Newport News-Williamsburg International Airport will continue to receive substantial service to Charlotte, Philadelphia, and Atlanta, thus ensuring continued access to the national air transportation system.

Although we have decided to allow ACA to suspend service at Newport News, we will deny ACA's request for an exemption from the 90-day notice provision contained in 49 U.S.C. 41734(a) to suspend service prior to October 31. The 90-day notice provision is intended to protect communities from abrupt losses of service, and we generally only grant exemptions from it with the consent of the affected communities. In this case, the Newport News community opposes such an exemption, and we will therefore uphold the community's statutory entitlement to the full 90-day notice period.

As a final matter, before Atlantic Coast suspends service at Newport News, we expect it to contact all passengers who hold reservations for flights scheduled after December 31, 2001, to inform them of the suspension and the availability of other service at Newport News, and to assist them in arranging alternate transportation.

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

**ACCORDINGLY,**

1. We allow Atlantic Coast Airlines, d/b/a United Express to suspend its scheduled air service at Newport News, Virginia, after December 31, 2001;
2. We deny the request for an exemption from the 90-day notice period required by 49 U.S.C. 41734(a) that would have allowed Atlantic Coast Airlines, d/b/a United Express to suspend service at Newport News, Virginia, as of October 31, 2001;
3. We will rely on the services of Piedmont Airlines, AirTran Airways, and Atlantic Southeast Airlines to provide essential air service at Newport News, Virginia; and
4. We will serve copies of this order on the Mayor of Newport News, the executive director of the Newport News-Williamsburg (Virginia) International Airport, the Governor of Virginia, the Virginia Department of Aviation, Atlantic Coast Airlines, United Air Lines, AirTran Airways, US Airways, and Delta Air Lines.

By:

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

(SEAL)

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