

Order 2002-5-21
Served: May 30, 2002



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

Issued by the Department of Transportation
on the 24th day of May, 2002

Essential Air Service at

SHOW LOW, ARIZONA

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

Docket OST-1998-4409

ORDER DISMISSING PETITION
AND DISMISSING MOTIONS

Summary

By this order the Department is (1) dismissing Mesa Airlines, Inc.'s (Mesa) Petition for Reconsideration of Order 2002-4-21 selecting Arizona Express to provide essential air service at Show Low, Arizona, (2) dismissing Mesa's Motion for Stay of Order 2002-4-21, and (3) dismissing Mesa's Motion to Reopen the Record.

Background

By Order 2002-4-21, issued April 15, 2002, the Department selected Arizona Express, Inc. to provide subsidized essential air service (EAS) at Show Low, Arizona, for a one-year period in a competitive case among a total of four applicants. Subsidy was set at \$538,432 per year, for fourteen nonstop round trips each week between Show Low and Phoenix with 9-seat Beech King Air aircraft.

Show Low has been without scheduled air service since April 2001 when Express Air, Inc. filed for bankruptcy protection under Chapter 11 and shortly thereafter ceased all operations.

Petition for Reconsideration and Motions for Stay and to Reopen the Record

On May 2, 2002, Mesa, one of the four applicants, filed a Petition for Reconsideration of Order 2002-4-21, a Motion for Stay of the effectiveness of Order 2002-4-21, and a Motion to Reopen the Record.

Mesa states that its service proposal was superior to that of Arizona Express in terms of every relevant statutory criterion the Department must consider under 49 U.S.C. 41733, that it was the community's first choice, and that Arizona Express does not even hold the necessary FAA certificate and DOT operating authority to perform the scheduled passenger service for which it was selected. Mesa further states that the sole basis for the selection by the Department of Arizona Express was that carrier's lower subsidy requirement. Mesa further states that vastly changed airline industry conditions, as opposed to the operating environment immediately after September 11, now enable it to commit to providing service to Show Low at a cost far less than the Department authorized for Arizona Express.

Decision

We are dismissing Mesa's petition and motions in this docket, without addressing the merits of its revised proposal. Mesa had ample opportunity to amend or perfect its proposal during the process of our requesting proposals and working with all the applicants to ensure that we had their best and final offer. Indeed, Mesa and EAS staff signed such an agreement. And after we had such signed agreements with all four applicants, we sent a letter to the civic officials of Show Low asking for their final comments, with copies to all four applicants, as is longstanding EAS practice. Mesa had an opportunity even at that late date to submit comments or to correct any errors that we may have made in describing its proposal to the community.¹ Now after all of the carriers' "best and final offers" have been revealed to the community and the Department has made its decision based on a complete record, Mesa asks that it be given yet another opportunity to amend its proposal. If we were to grant Mesa's motion, regardless of the merits, it would signify that no case would ever be completed; losing carriers could simply petition to underbid the lowest carrier. That would not only be fundamentally unfair to the applicants that "played by the rules," it would be administratively impossible to manage the program. It would also virtually guarantee that the Department would never get carriers' best and final offers and would ultimately result in increased spending of Federal funds. Finally, we note that Mesa has participated in the EAS program for about 20 years and should be fully aware of the carrier selection procedures by now.

¹ Mesa has not alleged that we misrepresented its proposal in any way.

While we encourage active participation in the EAS program by Mesa and all other carriers, we must to ensure procedural fairness and a level playing field for all parties in order for carriers to be willing to participate in the program. Based on all of the above, we dismiss Mesa's petition and motions in this docket.

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

ACCORDINGLY,

1. We dismiss the Petition and Motions filed by Mesa Airlines, Inc. in Docket OST-1998-4409;
2. Docket OST-1998-4409 shall remain open until further order of the Department; and
3. We will serve copies of this order on the civic officials of Show Low, the manager of the Show Low Airport, the Arizona Department of Transportation, the Governor of Arizona; Arizona Express, Mesa Airlines, AEX Airlines, Air West, and Great Lakes Aviation.

By:

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

(SEAL)

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