



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

Issued by the Department of Transportation
on the 13th of August, 1999

Served: August 17, 1999

Essential Air Service at

OSHKOSH, WISCONSIN

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

Docket OST-1999-5712

**ORDER PROHIBITING SUSPENSION OF SERVICE AND
REQUESTING PROPOSALS FOR REPLACEMENT SERVICE**

Summary

By this order, the Department: (1) prohibits Great Lakes Aviation, Ltd., d/b/a United Express (Great Lakes), from suspending its essential air service at Oshkosh, Wisconsin, at the end of its 90-day notice period, and requires it to maintain air service through September 16, 1999; and (2) requests proposals from interested carriers to provide replacement service at the community, with or without subsidy. (See Appendix A for a map.)

Background

By notice dated May 20, 1999, Great Lakes announced its intention to suspend its subsidy-free service at Oshkosh on August 18, 1999.¹ Great Lakes is the only carrier providing service at Oshkosh. It has served the community since December 1994 when it requested and was granted four slot exemptions at Chicago O'Hare Airport to replace Air Wisconsin's Oshkosh-O'Hare service. (Air Wisconsin had filed a 90-day notice to terminate Oshkosh's service to O'Hare in September 1994.) Great Lakes currently provides three nonstop round trips a day in the Oshkosh-O'Hare market with 19-seat aircraft.

Oshkosh's current essential air service determination, as set by Order 84-7-77, July 26, 1984, requires a minimum of two nonstop or one stop round trips each weekday and weekend period to Chicago, offering at least 62 passenger seats inbound and outbound each day.

Great Lakes states that it can no longer sustain the continuing losses it is incurring in serving Oshkosh without subsidy. It cites four factors that are exacerbating its losses: 1) competing air service, including jet flights, at Appleton, Wisconsin, only 20 highway miles north of Oshkosh; 2) slot constraints at Chicago O'Hare which prevent it from offering competitive frequencies; 3) the cost of its transition from operating under Part 135 to Part 121 of the FAA regulations; and 4) higher operating costs at O'Hare.

¹ Great Lakes' notice was received on May 20, 1999, making the 90th day August 18 and not August 17 as stated in the carrier's 90-day notice.

On June 7, 1999, the Winnebago County Airport Department filed an objection to Great Lakes' suspension notice, stating that the community would suffer irreparable financial and economic harm if its EAS service to O'Hare is interrupted or terminated. The community asserts that Great Lakes' decline in passengers and profitability was due to problems with the carrier's service reliability, lack of marketing and available seats, and an unwillingness to compete against another United Express carrier serving Appleton. The community argues that Great Lakes misused the four O'Hare slot exemptions granted it for Oshkosh service by providing less service than it had agreed to provide and by serving other cities on the Oshkosh flights. The community requests that we hold Great Lakes in, request proposals for replacement service to the O'Hare Airport at the required EAS level, and make available four O'Hare slot exemptions for a replacement carrier.

Department staff recently met with a delegation of Oshkosh civic officials to discuss the community's air service needs.

Decision

Since Great Lakes is the only carrier providing scheduled air service at Oshkosh, its proposed termination of service would eliminate all air service to the community. Thus, in accordance with 49 U.S.C. 41734, we must prohibit Great Lakes from suspending service at Oshkosh for an initial 30-day period beyond the end of the 90-day notice period, through September 16, 1999, or until we secure replacement service at the community, whichever comes first.² In doing so, we will require Great Lakes to maintain at least two nonstop round trips, six days a week between Oshkosh and O'Hare Airport with 19-seat aircraft. We will also seek proposals, with or without subsidy requests, from carriers interested in providing replacement service at Oshkosh.

Solicitation for Service Proposals

We request carriers that are interested in providing replacement essential air service at Oshkosh to submit proposals, including subsidy projections if necessary, within 30 days of the date of service of this order. We will consider proposals that would provide Oshkosh with at least two nonstop or one-stop round trips a day, six days per week, to Chicago, or any other suitable hub, with aircraft having 15 or more passenger seats. For carriers proposing to serve O'Hare, we would make available the four O'Hare take-off and landing slot exemptions currently used by Great Lakes for replacement service.

Service History and Traffic Data

Prior to December 1994, Oshkosh received subsidy-free service from Air Wisconsin, consisting of two round trips a day with jet aircraft. In September 1994, Air Wisconsin filed a 90-day notice to suspend its service at Oshkosh. Contemporaneously with Air Wisconsin's suspension notice, Great Lakes filed a request for four slot exemptions at O'Hare, stating that it would replace Air Wisconsin's service at Oshkosh and provide Oshkosh-O'Hare service subsidy-free. Great Lakes' application was granted and in December 1994 it replaced Air Wisconsin and began providing four nonstop round trips a day between Oshkosh and O'Hare with a combination of 30-seat and 19-seat aircraft. Great Lakes changed its service to all 19-seat

² In accordance with 49 U.S.C. 41734, we will extend Great Lakes' service requirement for successive 30-day periods, as necessary.

aircraft in mid-1996 and reduced its frequencies from four to three round trips a day later that year. It currently provides three nonstop round trips a day in the Oshkosh-O'Hare market.

Oshkosh traffic has declined dramatically over the past 20 years, from 194 enplanements per day in 1978 to 13 a day in 1998. Conversely, during the same period, enplanements at Appleton increased steadily, from 123 a day in 1978 to 735 a day in 1998. For the year ended March 1999, the most recent 12-month period for which data are available, Oshkosh averaged 12 enplanements per day. See Appendix D for historical traffic data.

Procedures for Filing Replacement Proposals

For interested carriers unfamiliar 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 requesting proposals, conducting reviews of applicants, and selecting a replacement carrier. The second is an evidence request containing an explanatory statement, a copy of Part 204 of our regulations (14 CFR Part 204), and schedules setting forth our recommended form for submitting data required for calculating compensation and determining the financial and operational ability of applicants to provide reliable essential air service. (Section 204.4 describes the fitness information required of all applicants for authority to provide essential air service.) Applicant carriers that have already submitted this information in another case need only resubmit it if a substantial change has occurred. However, if there are more recent data or if there have been any changes to the information on file, carriers should provide updates of those information elements. Interested carriers that need to obtain copies of these documents may contact the Office of Aviation Analysis at (202) 366-1053.

Other Carrier Requirements

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.³ 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 the 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.

Community and State Comments

³ The regulations applicable to each of these three areas are: (1) 49 CFR Part 20, New Restrictions on Lobbying, implementing 31 U.S.C. 1352, entitled "Limitation of 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; and (3) 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964; 49 CFR Part 27, Nondiscrimination on the Basis of 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.

If we receive competing proposals, the community and State of Wisconsin are welcome to submit comments on the proposals at any time.⁴ Early in the proceeding, comments on the proposals' strengths and weaknesses would be particularly helpful, and the civic parties may also express a preference for a particular carrier, if they choose. If we receive proposals for subsidized service for Oshkosh, after conducting rate conferences with all applicants, we will provide a summary of the conference results to the Oshkosh civic parties and ask them to file their final comments.⁵

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

ACCORDINGLY,

1. We prohibit Great Lakes Aviation, Ltd., d/b/a United Express, from suspending service at Oshkosh, Wisconsin, at the end of its 90-day notice period, and require it to maintain service at the community, as set forth in Appendix D, for the 30-day period through September 16, 1999, or until a carrier capable of providing reliable essential air service actually begins service, whichever comes first;⁶

2. We direct Great Lakes Aviation, Ltd., d/b/a United Express, to retain all books, records, and other source and summary documentation 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;

3. We request that air carriers interested in providing essential air service at Oshkosh, Wisconsin, submit their proposals, with subsidy requests if necessary, within 20 days after the date of service of this order. Proposals should include all the data required by section 204.4 of the Department's Regulations (14 CFR Part 204). 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 Seventh Street, S.W., Washington, D.C. 20590, with the title, "Proposal to Provide Essential Air Service at Oshkosh, Wisconsin, Docket OST-1999-5712";⁷

⁴ Civic parties should file an original and five copies of their comments in Docket OST-1999-5712. This filing should be addressed to: Dockets Operations and Media Management, SVC-124
Office of the Secretary
U.S. Department of Transportation
Room PL401
400 7th Street, S.W.
Washington, D.C. 20590

⁵ 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 as proposed.

⁶ In accordance with 49 U.S.C. 41734(c), we will extend Great Lakes' service obligation for successive 30-day periods as necessary until replacement service actually begins.

⁷ After the proposals have been docketed, Department staff will contact each applicant and direct it to serve a copy of its proposal on the civic officials of the community, the state, and the other applicants. All

4. Docket OST-1999-5712 shall remain open until further order of the Department; and
5. We will serve a copy of this order on the Mayor and airport manager of Oshkosh, Wisconsin, the Governor of Wisconsin, the Wisconsin Department of Transportation, City of Chicago-Department of Aviation, Great Lakes Aviation, Ltd., and the parties listed in Appendix E.

By:

A. BRADLEY MIMS
Acting 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>
The electronic version may not include all of the appendices.*

applicants must then file a certificate of service with the Department's Dockets Operations and Media Management, SVC-124.

**Slot Exemptions at O'Hare Airport
for the Provision of Essential Air Service at
Oshkosh, Wisconsin**

| <u>Community</u> | <u>Slot Exemption Time Periods</u> |
|------------------|--|
| Oshkosh | 3:35-3:39 pm, 4:30-4:34 pm, 6:25-6:29 pm, 6:30-6:34 pm |

The above slot exemptions may only be used within the specific five-minute time periods, i.e., a 3:35-3:39 pm slot exemption could not be used before 3:35 pm or after 3:39 pm. These slot exemptions may not be bought, sold, traded, or leased without Department approval, and they are subject to the use-or-lose provision, and all other provisions of the slot rules.

Historical Traffic at Oshkosh, Wisconsin,^{1/}

| | <u>Oshkosh</u> | |
|----------------------|--------------------------------------|---------------------------------------|
| | <u>Annual</u> <u>Enplanements</u> | <u>Enplanements</u> <u>Per Day</u> |
| 1978 | 70,873 | 194 |
| 1979 | 70,068 | 192 |
| 1980 | 68,296 | 187 |
| 1981 | 35,934 | 98 |
| 1982 | 33,387 | 91 |
| 1983 | 39,056 | 107 |
| 1984 | 30,607 | 84 |
| 1985 | 18,442 | 51 |
| 1986 | 22,603 | 62 |
| 1987 | 24,546 | 67 |
| 1988 | 26,492 | 72 |
| 1989 | 22,167 | 61 |
| 1990 | 24,707 | 68 |
| 1991 | 16,337 | 45 |
| 1992 | 13,338 | 36 |
| 1993 | 9,770 | 27 |
| 1994 | 7,863 | 22 |
| 1995 | 10,125 | 28 |
| 1996 | 9,054 | 25 |
| 1997 | | |
| 1 st Qtr. | 1,163 | |
| 2 nd Qtr | 754 | |
| 3 rd Qtr | 1,522 | |
| 4 th Qtr | <u>1033</u> | |
| Total YE 1997 | 4 472 | 12 |
| 1998 | | |
| 1 st Qtr | 1,193 | |
| 2 nd Qtr | 1,182 | |
| 3 rd Qtr | 1,212 | |
| 4 th Qtr | <u>1,069</u> | |
| Total YE 1998 | 4,656 | 13 |
| 1999 | | |
| 1 st Qtr | <u>1,016</u> | 11 |
| Total YE March 1999 | 4,479 | 12 |

^{1/} Enplanements are based on 365 service days per year.

GREAT LAKES AVIATION, LTD., d/b/a UNITED EXPRESS
ESSENTIAL AIR SERVICE AT OSHKOSH, WISCONSIN

EFFECTIVE PERIOD: August 18, 1999, until further notice.

SERVICE: Two nonstop round trips to Chicago O'Hare International Airport six days per week.

AIRCRAFT TYPE: Beech 1900 (19 passenger seats)

MINIMUM NO. OF SEATS TO
BE AVAILABLE IN EACH
DIRECTION: 38 on weekdays and 38 over each weekend period
less any preemption from upline service.

TIMING OF FLIGHTS: Flights must be well timed and well-spaced in order
to ensure full compensation.

SERVICE LIST FOR THE STATE OF WISCONSIN

| | |
|--------------------------------|------------------|
| Aero Taxi Rockford, Inc. | Tom Alton |
| Air Casino, Inc. | Chester Anderson |
| Air Wisconsin, Inc. | Ken Bannon |
| AirVantage, Inc. | Sabrina Cranor |
| Amerijet International, Inc. | E.B. Freeman |
| Bemidji Airlines | A. Edward Jenner |
| Chicago Air Taxi, Inc. | Dan Katzka |
| Chicago Express Airlines, Inc. | John McFarlane |
| Delta Connection | Tracy Schoenrock |
| Direct Air, Inc. | Kevin Thomas |
| Dwyer Aircraft Sales, Inc. | Edward Wenz |
| Executive Airlines, Inc. | |
| Gorda Aero Service, Inc. | |
| Great Lakes Aviation, Ltd. | |
| Imperial International, Inc. | |
| Jet Services, Inc. | |
| Mesaba Aviation, Inc. | |
| Metroflight, Inc. | |
| Michigan Airways, Inc. | |
| Midway Airlines, Inc. | |
| Midwest Aviation | |
| Midwest Express Airlines, Inc. | |
| Northwest Airlink | |
| Planemaster Services Inc. | |
| Scott Aviation, Inc. | |
| Shawano Flying Service, Inc. | |
| Simmons Airlines, Inc. | |
| Thunderbird Aviation, Inc. | |
| Trans North Aviation Ltd. | |
| Welch Aviation, Inc. | |
| Wise Aviation Company | |