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Order 2000-5-5

Served: May 11, 2000



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

Issued by the Department of Transportation  
on the 8th day of May, 2000

Essential Air Service at

**KEARNEY, NEBRASKA**

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

DOCKET OST-96-1715-10

ORDER TENTATIVELY SELECTING CARRIER  
AND SETTING SUBSIDY RATE

**Summary**

By this order, the Department is tentatively reselecting Great Lakes-Aviation to provide essential air service at **Kearney**, Nebraska, for the **two-year** period **from** April 1, 2000-March 31, 2002, at an annual subsidy of **\$839,487**. We are also setting a final annual subsidy rate of **\$806,511** for the carrier's service at **Kearney** for the period July 1, 1999, through March 31, 2000.

**Background**

By Order 97-10-10, issued October 14, 1997, the Department selected Great Lakes Aviation, Ltd., d/b/a United Express (Great Lakes); to provide essential air service at **Kearney**, Nebraska.<sup>1</sup> Great Lakes was selected to provide service to Denver consisting of **18** one-stop (at **Goodland**, Kansas) round trips per week with **19-seat** Beech 1900 aircraft, at an annual subsidy rate of **\$1,666,766**. The carrier's rate term expired June 30, 1999.

As is our normal custom when nearing the end of a carrier's rate term, we contact the carrier to determine whether it is interested in continuing service at the community and whether it will continue to require subsidy. If the carrier wishes to continue service with subsidy, we usually negotiate a new subsidy rate with the carrier, issue an order tentatively reselecting the carrier for a new two-year rate term at the agreed rate, and direct other parties to show cause why we should not **finalize** our tentative decision. Other carriers wishing to submit competing proposals are invited to do so in response to the show-cause order. If any such proposals are filed, we process them as a

<sup>1</sup> See Appendix A for a map.

competitive case. Consistent with this practice, we invited Great Lakes to submit a proposal for continuation of essential air service at **Kearney**.

### **Carrier Proposal**

Great Lakes submitted a proposal to provide essential air service at **Kearney** for a new two-year rate term. The carrier proposes to provide the community with **18** nonstop round trips to Denver each week with **19-seat** Beech **1900** aircraft. In rate discussions concluded on February **15, 2000**, Department staff and Great Lakes agreed to an annual subsidy of **\$839,487** for this service.

The Department and Great Lakes have also agreed to an annual subsidy rate of **\$806,511** for the carrier's service at **Kearney** for the period that began on July **1, 1999**, and ended on March **31, 2000**. We will set a final rate for that service in accordance with the agreement.

### **Tentative Reselection**

Great Lakes continues to provide **Kearney** with reliable essential air service and the amount of subsidy that the carrier is requesting for continuing its service for a new **two-**year period appears reasonable. Passenger traffic has steadily grown at **Kearney**, as can be seen from the data in Appendix **F**. In negotiating the prospective subsidy rate, the carrier and staff have agreed to an annual passenger forecast of **16,000** passengers, an average of more than **50** passengers a day. In view of the above, we will tentatively reselect Great Lakes to provide **18** nonstop round trips to Denver each week, for a **two-**year period beginning April **1, 2000**, and ending March **31, 2002**. As set forth in Appendix **B**, service is to be provided with **19-seat** Beech **1900** aircraft at an annual subsidy of **\$839,487**.

### **Responses to Tentative Decision and Competing Proposals**

We will give interested persons **20** days from the date of service of this order to show cause why we should not make final our tentative decision to reselect Great Lakes to provide essential air service at **Kearney**, at the service and subsidy level discussed above. We expect persons objecting to our tentative decision to support their objections with relevant and material facts. We will not entertain general, vague or unsupported objections.

Carriers interested in filing competing proposals, with or without subsidy requests, should file them within the **20-day** period set for objections. At the end of that period, our staff will docket any competing proposals, thereby making them public, and direct each applicant to serve a copy of its proposal on the civic parties and other applicants. We will give full consideration to all proposals that are timely filed.

Competing proposals may contemplate service to Denver or Kansas City, or any other appropriate hub city. Service should consist of at least three round trips each service day to the hub with **15-** to **19-seat** aircraft, or two round trips a day if provided with

larger aircraft. In order to help carriers in their passenger and revenue forecasts, we have included historical traffic data in Appendix F.

### **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 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**.<sup>2</sup> 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.

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<sup>2</sup> The regulations applicable to each of these three areas are **(1) 49 CFR Part 20**, New Restrictions of 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; 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.

### **Community and State Comments**

If we receive competing proposals, the community and state are welcome to submit comments on the proposals at any time. 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. In any event, after conducting rate conferences with all applicants, we will provide a summary of the conference results to the civic parties and ask them to file their final comments.<sup>3</sup>

### **Carrier Fitness**

According to 49 U.S.C. 41737(b) and 41738, the Department must find an air carrier fit, willing and able to provide reliable service before we compensate it for providing essential air service. We last reviewed Great Lakes' fitness by Order 2000-2-18, February 14, 2000, in connection with its subsidized air service in Colorado and Kansas. Since then, the Department has routinely monitored the carrier's continuing fitness, and no information has come to our attention that would lead us to question its ability to operate in a reliable manner. Based on our review of its most recent submissions, we find that Great Lakes continues to have available adequate financial and managerial resources to maintain reliable service at **Kearney**, and that it continues to possess a favorable compliance disposition. The Federal Aviation Administration has advised us that the carrier is conducting its operations in accordance with 14 CFR Part 121, and knows of no reason why we should not find that Great Lakes remains fit.

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

### **ACCORDINGLY,**

1. We tentatively reselect Great Lakes Aviation, Ltd., to provide essential air service at **Kearney**, Nebraska, as described in Appendix B, for the period beginning April 1, 2000, through March 31, 2002;
2. We tentatively set the final rate of compensation for Great Lakes Aviation, Ltd., for the provision of essential air service at **Kearney**, Nebraska, as described in Appendix B, for the period from April 1, 2000, through March 31, 2002, payable as follows: for each month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceiling set forth in Appendix B, and shall be determined by multiplying the subsidy-eligible arrivals and departures completed during the month by \$456.24;<sup>4</sup>

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<sup>3</sup> 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.

<sup>4</sup> See Appendix C for the calculation of this rate, which assumes the use of the aircraft designated. If the carrier reports a significant number of aircraft substitutions, revision of this rate may be required.

3. We set a final rate for Great Lakes Aviation, Ltd., provision of essential air service at **Kearney**, Nebraska, as described in Appendix D, for the period from July 1, 1999, through March 31, 2000, payable as follows: for each month during which essential air service was provided, the amount of compensation shall be subject to the weekly ceiling set forth in Appendix D, and shall be determined by multiplying the subsidy-eligible arrivals and departures completed during the month by \$438.32;<sup>5</sup>

4. We direct Great Lakes Aviation, Ltd., to retain all books, records, and other source and summary documentation to support 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. We find that Great Lakes Aviation, Ltd., continues to be **fit**, willing and able to operate as a commuter air carrier and capable of providing reliable essential air service at **Kearney**, Nebraska;

6. We direct any interested parties having objections to the selection of Great Lakes Aviation to provide essential air service as described in ordering paragraph 1 above, at the rate set forth in ordering paragraph 2 above, to file such objections or competing service proposals no later than 20 days from the date of service of this order;<sup>6</sup>

7. If we receive objections or competing proposals within the 20-day period, Great Lakes Aviation, Ltd., will be compensated at the subsidy rate set forth in ordering paragraph 2 above as a final rate, effective April 1, 2000, until all objections are resolved;

8. We will afford full consideration to the matters and issues raised in any timely and properly filed objections and service proposals before we take further action.<sup>7</sup> If no objections or competing service proposals are filed, all further procedural steps will

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<sup>5</sup> See Appendix E for the calculation of this rate, which assumes the use of the aircraft designated. If the carrier reports a significant number of aircraft substitutions, revision of this rate may be required.

<sup>6</sup> Objections should be filed with the Documentary Services Division, **SVC-121.30**, Room **PL401**, Department of Transportation, **400 7th Street, S.W.**, Washington, DC **20590**. Proposals to provide essential air service should be filed with the Chief, **EAS & Domestic Analysis Division, X-53**, Office of Aviation Analysis, Room **6401**, Department of Transportation, at the same address. Questions regarding filings in response to this order may be directed to John **McCament** at **(202) 366-1060**.

<sup>7</sup> Since we are providing for the filing of objections to this order, we will not entertain petitions for reconsideration.

be deemed waived and this order shall become effective on the twenty-first day after its service date;

9. Docket OST 96-1715 shall remain open until further order of the Department; and

10. We will serve copies of this order on the Mayor and City Manager of **Kearney**, the manager of the **Kearney** Municipal Airport, the Nebraska Department of Aeronautics, the Governor of Nebraska; Great Lakes Aviation, and the parties listed in Appendix G.

By:

**A. BRADLEY MIMS**  
Deputy Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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<http://dms.dot.gov/>*