

Order 2003-2-25
Served: March 5, 2003



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

Issued by the Department of Transportation
on the 28th day of February, 2003

Essential Air Service at:

PONCE , PUERTO RICO

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

Docket OST-00-6592

**ORDER TENTATIVELY RESELECTING CARRIER
AND SETTING SUBSIDY RATES**

Summary

By this order, the Department is tentatively reselecting Hyannis Air Service, Inc., d/b/a Cape Air, to continue to provide essential air service (EAS) at Ponce, Puerto Rico, for a new two-year period at an annual subsidy rate of \$552,388, from January 1, 2003, through December 31, 2004. We are also setting a past-period rate retroactive from January 1, 2002, through December 31, 2002, at \$467,371 annually. (See Appendix A for a map)

Background

By Order 2000-10-10, October 19, 2000, the Department selected Cape Air to provide essential air service at Ponce through December 31, 2002, at annual subsidy rates of \$474,910 the first year and \$337,551 the second year, to provide five nonstop round trips a day to San Juan, using 9-seat Cessna 402s.

Under our normal procedures, when nearing the end of a subsidy rate term, we contact the incumbent carrier to determine whether it is interested in continuing service and whether it will continue to require subsidy. We would usually negotiate a new subsidy rate with the carrier, issue an order tentatively reselecting it for a new rate term at the agreed-to rate, and direct other parties to show cause why we should not finalize our tentative decision. Other carriers wishing to submit competing proposals are then invited to do so in response to the show-cause order; if any such proposals are filed, we process them as a competitive case. More recently, the terrorist attacks of September 11 changed the aviation industry

and our standard procedures in many ways. In the case of carriers that provide subsidized EAS, they are paid on a pre-agreed, fixed rate per flight. Since September 11, carriers' expenses are significantly higher and revenues are down meaning that the carriers have incurred substantial losses to the point of jeopardizing service to small, rural communities across the country. As a result, the Department issued Order 2002-2-13, February 15, 2002, authorizing emergency subsidy to carriers, effective retroactive to October 1, 2001, through the end of the normal contract period.¹ That order granted immediate rate relief to carriers in order to get them much-needed cash as soon as possible, and also stated our intention of renegotiating all essential air service contracts, retroactive to October 1. Cape Air submitted a proposal for Ponce based on post-September 11 operating results in response to that order, and, because Cape Air's contract expired on December 31, 2002, the carrier also submitted a proposal for a new, two-year prospective contract.

Proposal

Cape Air submitted a service option for the prospective two-year period consisting of five nonstop round trips a day for most of the year, from October 1 through May 31, but only three round trips a day during the four-month period from June 1-September 30. It would continue to operate all service with its 9-seat Cessna 402s. For this service level, the carrier and staff have agreed to an annual subsidy rate of \$552,388 for the new two-year period starting January 1, 2003.

Tentative Decision

We have tentatively decided to select Cape Air to provide EAS at Ponce. We have reviewed Cape Air's proposal at Ponce as well as the community's traffic history and find that the proposed service and subsidy levels are appropriate. We note that traffic levels at Ponce have declined since the terrorist attacks of September 11. As a result, we find that Cape Air's proposal for reduced service seasonally is fully appropriate. In addition, we have received letters from community officials fully supporting Cape Air and its service proposal.

Responses to Tentative Decision

As usual, we will allow interested parties 20 days from the date of service of this order to file objections or competing proposals in this case. If no timely objections or competing proposals are filed, this order will automatically become final. 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 carrier to serve a copy of its proposal on the civic parties and other applicants. Each applicant, including the incumbent, will then have an opportunity to finalize its proposal in rate discussions with Department staff before we seek final community comments. We will give full consideration to all proposals that are filed in a timely manner.

¹ See Order 2002-2-13 for a full discussion.

Of course, as always, we will formally solicit the community's views on any service options we receive before making a long-term carrier selection decision.

In order to assist carriers in making their passenger and revenue projections, we have included historical traffic data back to calendar year 1996 in Appendix D to this order. During calendar year 2001, Cape Air enplaned a total of 9,556 passengers at Ponce, an average of 31 per day. During 2002, after the September 11 attacks, enplanements fell to 6,676, an average of 21 per day.

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 Cape Air's fitness by Order 2000-10-20, October 19, 2000, in connection with its prior selection to serve Ponce. 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. We find that Cape Air continues to have available adequate financial and managerial resources to maintain reliable service at Ponce, 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 its regulations, and knows of no reason why we should not find that Cape Air remains fit. Cape Air has a great deal of experience providing air service, and, based on its operating record, we find that the carrier continues to be fit to provide the essential air transportation at issue in this case.

Procedures for Filing Competitive 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 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.² Consequently, all carriers receiving Federal subsidy for 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

If we receive competing proposals, the community and Commonwealth 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.³

Past-period Rate

As we mentioned earlier, the Department increased carriers' rates across-the-board as interim rates, subject to being finalized at higher, lower or the same levels, in order to get them much-needed cash quickly. In this case, Cape Air's two-year contract that ended on December 31, 2002, was set at \$474,910 for the first year and \$337,551 for the second, premised on the carrier's forecasting significant passenger increases in the second year. In fact, Cape Air was probably well on the way to meeting its passenger forecast when the attacks of September 11 occurred. While its traffic and revenue suffered, its revenues were still at or above projected levels from October 1, 2001, through December 31, 2001, so we will make no adjustment for that period. However, for the second year, from January 1, 2002, through December 31, 2002, passengers and revenues were well below projections, which had assumed big increases as we mentioned earlier. For that time period, we find that an increase of \$129,820 is appropriate to offset the revenue effects of September 11. Thus, Cape Air will be compensated at the annual rate of \$467,371, i.e., the contract rate of \$337,551 plus \$129,820.

² The regulations applicable to these areas are: (1) 49 CFR Part 20 – New restrictions on lobbying; (2) 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 disability in programs and activities receiving or benefiting from Federal financial assistance; and 14 CFR Part 382 – Nondiscrimination on the basis of disability in air travel; and (3) 49 CFR Part 29 – Government-wide debarment and suspension (non-procurement) and government-wide requirements for drug-free workplace (grants).

³ In cases where a carrier proposes to provide 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.

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

ACCORDINGLY,

1. The Department sets a past-period annual rate of \$467,371 for Hyannis Air Service, Inc., d/b/a Cape Air, at Ponce, Puerto Rico, effective January 1, 2002, through December 31, 2002, as described in page 1 of Appendix C, payable as follows: for each calendar month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceiling set forth in page 1 of Appendix C, and shall be determined by multiplying the subsidy-eligible arrivals and departures flown during the month by \$129.32;⁴
2. The Department tentatively reselects Hyannis Air Service, Inc., d/b/a Cape Air, to continue to provide essential air service at Ponce, Puerto Rico, as described in page 2 of Appendix C, for a two-year term beginning January 1, 2003, through December 31, 2004, at an annual subsidy rate of \$552,388, payable as follows: for each calendar month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceiling set forth in page 1 of Appendix C, and shall be determined by multiplying the subsidy-eligible arrivals and departures flown during the month by \$176.31;⁵
3. The Department directs Hyannis Air Service, Inc., d/b/a Cape Air, to retain all books, records, and other source and summary documents 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;
4. We find that Hyannis Air Service, Inc., d/b/a Cape Air, continues to be fit, willing and able to operate as a commuter air carrier and capable of providing reliable essential air service at Ponce, Puerto Rico;
5. We direct any interested persons having objections to the selection of Hyannis Air Service, Inc., d/b/a Cape Air, to continue to provide essential air service as described in ordering paragraph 2 above, at the rate set forth in the same ordering paragraph, to file such objections or competing service proposals no later than 20 days from the date of service of this order;⁶

⁴ See Appendix B, page 1, for the calculation of this rate, which assumes the use of the aircraft designated. If the carrier reports a significant number of aircraft substitutions, a revision of this rate may be required.

⁵ See Appendix B, page 2, for the calculation of this rate, which assumes the use of the aircraft designated. If the carrier reports a significant number of aircraft substitutions, a revision of this rate may be required.

⁶ Objections should be filed with the Documentary Services and Media Management Division, SVC-124, Room PL. 401, 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, S-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 40 7th Street, S.W., Washington DC 20590. Questions regarding filings in response to this order may be directed to Kevin Adams at 202-366-1047.

6. If we receive objections or competing proposals within the 20-day period, Hyannis Air Service, Inc., d/b/a Cape Air, will be compensated at the subsidy rate set forth in ordering paragraph 2 above as a final rate until all objections are resolved;
7. 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.⁷ If no objections or competing service proposals are filed, all further procedural steps will be deemed waived and this order shall become final, effective on the twenty-first day after its service date;
8. Docket OST-2000-6592 will remain open until further order of the Department; and
9. The Department will serve a copy of this order on Puerto Rico Port Authority, the Mayor of Ponce, Cape Air, and the carriers listed in Appendix E.

By:

READ C. VAN de WATER
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>

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

HYANNIS AIR SERVICE, INC., d/b/a CAPE AIR
ANNUAL SUBSIDY CALCULATION FOR ESSENTIAL AIR SERVICE AT
PONCE, PUERTO RICO

(January 1, 2002, through December 31, 2002)

	<u>Original</u>	<u>Revised</u>
Flt.Time	0.4	0.4
Total Flight Hours 1/	1,445	1,445
Projected Passengers	8,213	
Projected Yield	<u>\$ 70.00</u>	
Actual Passengers		7,283
Actual Yield		<u>\$ 61.29</u>
Projected Pax. Revenue	\$574,910	
Actual Pax Revenue		\$446,375
<u>Other Rev. @ 1%</u>	<u>\$5,749</u>	<u>\$4,464</u>
Total Rev.	\$580,659	\$450,839
Crew @ \$66.67/hr.	\$96,338	\$96,338
Fuel:\$2.85/gall. @ 44 gph	\$181,203	\$181,203
Maintenance @ \$110.83/hr.	\$160,149	\$160,149
Hull Insurance (1 aircraft)	\$6,000	\$6,000
<u>Lease (1 aircraft)</u>	<u>\$54,000</u>	<u>\$54,000</u>
Total Direct Exp.	\$497,690	\$497,690
Indirect Operating Exp.	\$376,796	\$376,796
Total Operating Expense	\$874,486	\$874,486
<u>Profit @ 5%</u>	<u>\$43,724</u>	<u>\$43,724</u>
Total Economic Cost	\$918,210	\$918,210
Subsidy @ 99% Completion	\$337,551	\$467,371
Annual Subsidy Adjustment		<u>\$129,820</u>

1/ .4 hours/flight x 10 flts./day x 365 days x .99 = 1,445.

HYANNIS AIR SERVICE, INC., d/b/a CAPE AIR
ANNUAL SUBSIDY CALCULATION FOR ESSENTIAL AIR SERVICE AT
PONCE, PUERTO RICO

5 daily round trips – 10/1 thru 5/31 & 3 daily round trips 6/1 thru 9/30

(January 1, 2003, through December 31, 2004)

Completed Departures (OW)	3,132		
Block Hours per Flight	0.46		
Total Block Hours	1,441		
Average Seats per Departure	9	Mileage (OW)	47
Passengers/Trip	2.22	Total Psgrs	6,938
RPM's	326,082	ASMs	1,324,709
Load Factor	25%		
Average Fare (OW)	\$59.63		

REVENUES:

Passenger Revenues	\$520,344
Cargo/Other	\$500
Total Revenue	\$520,844

DIRECT EXPENSES:

Crew	\$93,638	\$65 per Hr
Fuel	\$164,226	\$2.85 per Gal @ 40 GPH
Maintenance	\$126,771	\$88 per Hr
Hull Insurance	\$14,500	
Aircraft Lease	\$54,000	
Total Direct Expenses	\$453,135	

INDIRECT EXPENSES:

Station Costs at SJU	\$141,792	6FTE @\$8 + 30%, \$12,000 Rents Yr. (25% OH)
Station Costs at Ponce, PR	\$152,792	6FTE @\$8 + 30%, \$23,000 Rents Yr.
Landing Fees at SJU	\$18,790	\$12 per Landing
Landing Fees at Ponce, PR	\$18,790	\$12 per Landing
US Agriculture at Ponce, PR	\$36,429	
Commissions	\$15,625	3% of Revenues
Security Expense	\$24,283	\$3.50 per pax
Reservations and Ticketing	\$27,752	\$4 per pax
Additional War Insurance	\$10,407	\$1.50 per pax
Liability Insurance	\$25,200	
Advertising & Marketing	\$20,814	\$3 per pax
General & Admin./Other	<u>\$76,317</u>	\$11 per pax
Total Indirect Expense	\$568,990	
Total Operating Expense	\$1,022,126	

RETURN:	\$51,106	5% of Expenses
Total Economic Costs	\$1,073,232	

ANNUAL COMPENSATION **\$552,388**

HYANNIS AIR SERVICE, INC., d/b/a CAPE AIR
ESSENTIAL AIR SERVICE AT
PONCE, PUERTO RICO

Effective period:	January 1, 2002, through December 31, 2002
Service:	Five daily nonstop round trips per week to San Juan.
Intermediate stops and upline service:	No intermediate or upline service permitted without prior Department approval.
Aircraft type:	Cessna 402 (9 passenger seats).
Timing of flights:	Flights must be well-timed and well-spaced in order to ensure full compensation.
Annual compensation:	\$467,371. ¹
Subsidy Rate Per Arrival/Departure:	\$129.32 ²
Weekly Compensation Ceiling:	\$9,052.40 ³

¹ This rate assumes an annual completion factor of 99 percent. A compensation ceiling is to be applied per calendar week such that service above that ceiling in one week cannot make up for service shortfalls in another week.

² Annual compensation of \$467,371 divided by 3,614 annual arrivals and departures (10/day x 365 days x 99% completion).

³ Subsidy rate per arrival/departure of \$129.32 multiplied by 70 eligible arrivals and departures each week.

HYANNIS AIR SERVICE, INC., d/b/a CAPE AIR
ESSENTIAL AIR SERVICE AT
PONCE, PUERTO RICO

Effective period:	January 1, 2003, through December 31, 2004.
Service:	Peak (Oct 1-May 31): Five daily nonstop round trips per week to San Juan. Off-peak (June 1-Sept 30): Three daily nonstop round trips per week to San Juan.
Intermediate stops and upline service:	No intermediate or upline service permitted without prior Department approval.
Aircraft type:	Cessna 402 (9 passenger seats).
Timing of flights:	Flights must be well-timed and well-spaced in order to ensure full compensation.
Annual compensation:	\$552,388. ¹
Subsidy Rate Per Arrival/Departure:	\$176.37 ²
Weekly Compensation Ceiling:	\$12,345.90 (peak) ³ ; \$7,407.54 (off-peak) ⁴

¹ This rate assumes an annual completion factor of 99 percent. A compensation ceiling is to be applied per calendar week such that service above that ceiling in one week cannot make up for service shortfalls in another week.

² Annual compensation of \$552,388 divided by 3,132 annual arrivals and departures as shown in Appendix B.

- ³ Peak period weekly ceiling calculated as follows: arv/dep rate of \$176.37 x 70 depts/wk.
- ⁴ Off-peak period weekly ceiling calculated as follows: arv/dep rate of \$176.37 x 42 depts/wk.

NOTE

The carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate order, including the service plan outlined in the order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the carrier does not schedule or operate its flights in full conformance with this order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the order during the applicable period of this rate, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be assured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on this route. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this order, then, at the end of the period for which the Department does make payments in the agreed amounts or at the agreed service levels, the carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the parties to the agreement do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

HISTORICAL TRAFFIC DATA
AT PONCE, PUERTO RICO

<u>Year</u>	<u>Annual Enplanements at Ponce</u>	<u>Average Enplanements Per Day <u>1/</u></u>
1996	20,300	64.9
1997	15,746	50.3
1998	12,038	38.5
1999	10,109	32.3
2000	8,586	27.4
2001	9,556	30.5
2002	6,676	21.3

1/ Based on 313 days a year to reflect generally reduced service on weekends.

SERVICE LIST FOR PUERTO RICO

Aero Virgin Islands Corporation
Amerijet International, Inc.
CaribAir
Delta Connection
Flamenco Airways, Inc.
L.A.P.S.A., Inc.
Metroflight, Inc.
Midwest Express Airlines, Inc.
Northwest Airlink
Redtail Aviation
Sea Air Shuttle Corporation
Vieques Air Link, Inc.
Westward Airways, Inc.

Ken Bannon
Doug Franklin
E.B. Freeman
Luis A. Irizarry
A. Edward Jenner
Lee Mason
John McFarlane