

Order 2008-1-12
Served: January 22, 2008



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

Issued by the Department of Transportation
on the 16th day of January, 2008

Essential Air Service at

**PLATTSBURGH, NEW YORK
SARANAC LAKE/LAKE PLACID, NEW
YORK**

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

Docket: DOT-OST-2003-14783

Docket: DOT-OST-2000-8025

**ORDER SELECTING CARRIER
AND ESTABLISHING SUBSIDY RATES**

Summary

By this order, the Department is selecting Hyannis Air Service, Inc., d/b/a Cape Air (Cape Air), to provide essential air service (EAS) at Plattsburgh and Saranac Lake/Lake Placid, New York, for the two-year period beginning when the carrier starts full EAS at both communities. (See Appendix A for an area map.)

Background

Big Sky was selected to provide EAS at eight communities by a series of orders.¹ On December 20, 2007, Big Sky filed notices of intent to suspend its subsidized EAS at all eight of the communities because it was incurring unsustainable losses on the routes. On January 7, Big Sky ceased all operations at these communities, notwithstanding the statutory EAS obligations that require a full 90-day notice period. As a result, the Department issued an emergency request for proposals by Order 2007-12-20, December 20, 2007.

¹ Order 2007-3-5, March 9, 2007, for Cape Girardeau, Jackson and Owensboro; Order 2007-9-13, September 13, 2007, for Plattsburgh and Saranac Lake/Lake Placid; and Order 2006-12-22, December 22, 2006, for Massena, Ogdensburg and Watertown. We will deal with the carrier-selection decision at the other six communities in separate orders.

Carrier Proposals

In response to our request, we received one proposal, from Cape Air. Cape Air proposes to provide each community with three daily nonstop round trips to Boston with nine-seat Cessna 402 aircraft. The carrier has a code-share agreement with JetBlue Airways at Boston. Cape Air has requested an annual subsidy of \$1,379,257 for its service at Plattsburgh and \$1,431,875 for Saranac Lake/Lake Placid.

Community Comments

Both communities fully support Cape Air. In an email dated January 13, the supervisor of the Town of Santa Clara at Saranac Lake stated that Cape Air “has the best potential to offer a service to our residents.” On January 14 we received an email from a town Council member from Brighton (near the Adirondack regional Airport at Saranac Lake/Lake Placid) fully supporting Cape Air. On January 15, we received a letter from the County Administrator of Clinton County Plattsburgh fully supporting Cape Air. He states that the County believes that “Cape Air will not only restore public confidence in, but will also enhance passenger air service in our community.” He also notes that Cape Air’s code-share arrangement with JetBlue Airlines will benefit Plattsburgh passengers.

Decision

After reviewing Cape Air’s proposal and the communities’ comments, we have decided to select Cape Air to provide EAS at Plattsburgh and Saranac Lake/Lake Placid for a two-year period, beginning when the carrier inaugurates full EAS at both communities. The communities fully support the resumption of service to Boston, and we find that Cape Air’s proposed subsidy rates are reasonable for the service it intends to provide. Cape Air is the only carrier that has shown an interest in providing service in this case; it is experienced in operating commuter service both as a general matter and within the essential air service program specifically; and it has a code-share alliance with JetBlue Airways, a low-fare carrier serving Boston.

Carrier Fitness

49 U.S.C. 41737(b) and 41738 require that we find an air carrier fit, willing, and able to provide reliable service before we may subsidize it to provide essential air service. Cape Air was most recently found fit to provide scheduled passenger service by Order 2007-9-13, September 13, 2007, selecting it to provide EAS at Rutland, Vermont. Since that time, no information has come to our attention that would lead us to question the carrier’s ability to operate in a reliable manner. The FAA 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. Based on the above, we find that Cape Air is fit to provide the essential air transportation at issue in this case.

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

ACCORDINGLY,

1. The Department selects Hyannis Air Service, Inc., d/b/a Cape Air, to provide essential air service at Plattsburgh and Saranac Lake/Lake Placid, New York, for the two-year period beginning when the carrier starts full EAS at both communities, as described in Appendix B;

2. We set the final rates of compensation for Hyannis Air Service, Inc., d/b/a Cape Air, for the provision of essential air service at Plattsburgh and Saranac Lake/Lake Placid, New York, as described in Appendix B, for the two-year period beginning when the carrier begins full EAS, payable as follows: for each month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceilings set forth in Appendix B and shall be determined by multiplying the subsidy-eligible flights each way completed during the month by \$649.37 for Plattsburgh and \$674.14 for Saranac Lake/Lake Placid;²
3. The Department directs Hyannis Air Service, Inc., d/b/a Cape Air, 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, whichever comes earlier. 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 Plattsburgh and Saranac Lake/Lake Placid, New York;
5. These dockets will remain open until further order of the Department; and
6. We will serve copies of this order on the Mayors and airport managers of Plattsburgh and Saranac Lake/Lake Placid, New York and Hyannis Air Service, Inc., d/b/a Cape Air.

By:

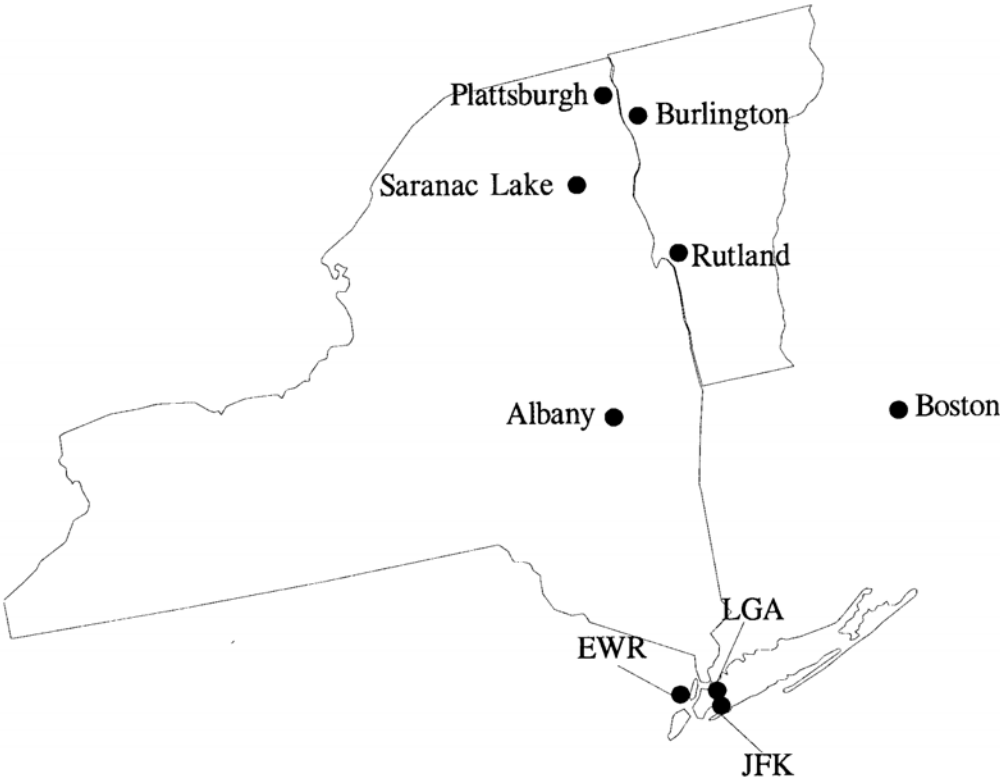
MICHAEL W. REYNOLDS
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
www.regulations.gov*

² See Appendix B 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.

Area Map



Hyannis Air Service, Inc. d/b/a Cape Air
Essential Air Service at Plattsburgh and Saranac Lake/Lake Placid, New York

Effective period:	Two years beginning when Cape Air begins full essential air service
Service at Plattsburgh and Saranac Lake/Lake Placid:	Three daily nonstop round trips to Boston.
Intermediate stops and upline service:	No other service to any intermediate or upline points is contemplated under the terms of this proposal; accordingly, no such service may be provided on subsidized flights without prior Department approval.
Timing of Flights:	Flights must be well-timed and well-spaced to ensure full compensation.
Aircraft type:	Cessna 402 aircraft (nine seats).
<u>Subsidy Rate per Flight:</u> Plattsburgh	\$649.37 ¹
Saranac Lake/Lake Placid	\$674.14 ²
<u>Weekly Compensation Ceiling:</u>	
Plattsburgh	\$27,273.54 ³
Saranac Lake/Lake Placid	\$28,313.88 ⁴

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 these rates, 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 these routes. 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.

Funds are not currently available for performance under this order beyond September 30, 2008. The government's obligation for performance under this order beyond September 30, 2008, is contingent on the availability of appropriated funds from which payment for services can be made. No legal liability on the part of the government for any payment may arise for performance under this order beyond September 30, 2008, until funds are made available to the Department for performance. If funds are not made available for performance beyond September 30, 2008, the carrier will receive notice in writing from the Department. 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,

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.

All claims for payment must be submitted within 60 days of the last day of service provided under this order.

¹ \$1,379,257 compensation, divided by 2,124 departures (6 departures/day x 365 days x 97.0% completion factor = 2,124 flights).

² \$1,431,875 compensation, divided by 2,124 departures (6 departures/day x 365 days x 97.0% completion factor = 2,124 flights).

³ 42 flights per week * \$649.37 x 42 = \$27,273.54.

⁴ 42 flights per week * \$674.14 x 42 = \$28,313.88.