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

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on the **25th day of February, 2003**

Served: February 28, 2003

Essential Air Service at

OSHKOSH, WISCONSIN

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

Docket OST-1999-5712

FINAL ORDER TERMINATING SUBSIDY

SUMMARY

By this order, the Department is finalizing its earlier, tentative decision in Order 2002-12-24 to terminate the subsidy eligibility of Oshkosh, Wisconsin, under the essential air service (EAS) program because the subsidy exceeds the $200 per passenger statutory ceiling.

BACKGROUND

By Order 99-10-6, October 6, 1999, the Department authorized an annual subsidy rate of $460,392 for Great Lakes Aviation, Ltd. (Great Lakes), then operating as United Express, to provide EAS at Oshkosh, consisting of two nonstop round trips each weekday and each weekend to Chicago O'Hare airport with 19-passenger Beech 1900D aircraft. As we approached the end of the usual two-year contract period, we learned that other air carriers were interested in serving several communities in the region, including possibly Oshkosh. Hence, we issued Order 2002-2-18, February 27, 2002, requesting proposals from interested carriers to serve Oshkosh, as well as Manistee/Ludington, and Iron Mountain/Kingsford, Michigan, and Ironwood, Michigan/Ashland, Wisconsin. By Order 2002-10-26, October 22, 2002, the Department selected Astral Aviation, Inc. d/b/a Skyway Airlines (Skyway) to serve Manistee/Ludington and Ironwood/Ashland. Since the only Oshkosh proposals we received were also linked to serving Manistee, and Skyway, the selectee at Manistee, did not propose to serve Oshkosh, we did not have any stand-alone Oshkosh proposals from which to choose. As a result, Order 2002-10-26 also resolicited proposals from carriers to serve only Oshkosh.[1]

[1] The order also deferred action on a selection decision at Iron Mountain/Kingsford.

In response to our resolicitation in Order 2002-10-26, we received proposals from Mesa Air Group, on behalf of its wholly owned subsidiary, Air Midwest, Inc. (Mesa) and from Great Lakes, the incumbent. Mesa proposed to provide Oshkosh with two nonstop round trips to Chicago O'Hare each weekday and weekend using 19-seat Beech 1900D aircraft for an annual subsidy of $988,880. Great Lakes proposed to provide two nonstop round trips to O'Hare each weekday and weekend with 19-seat Beech 1900D aircraft, for an annual subsidy of $1,034,085. Great Lakes proposed to operate as a United Air Lines code-share affiliate, while Mesa did not indicate it would operate at Oshkosh with a code-share affiliation. Both carriers' proposals required significant subsidy levels relative to the few passengers that have historically used the service, to the extent that both exceeded the statutory subsidy cap of $200 per passenger.[2]

On January 6, 2003, the Department issued show-cause Order 2002-12-24, tentatively terminating Oshkosh's subsidy eligibility because its per passenger subsidy exceeded the $200 statutory cap, and Oshkosh is less than 210 miles from the Milwaukee airport, a medium hub, and thus not exempt from the $200 cap. Consistent with longstanding procedures, we allowed interested persons 20 days to file objections to our tentative decision. On January 27, 2003, we received objections from both the Oshkosh community, through the Winnebago County Airport Department, and Mesa.

COMMUNITY OBJECTIONS

The Community asserts that the Department used historical traffic to calculate the subsidy per passenger. It further asserts that the airport's low number of passengers has been exacerbated by Great Lakes' unreliable service, and that the carrier made no significant effort to improve its performance. The airport claims that Great Lakes has had to bus some 500 passengers each year to other airports due to flight cancellations.[3] The community also believes that it has a substantial passenger base that could be better served with a more reliable carrier. The community states that passengers from surrounding communities would also be better served through Chicago's Midway airport, rather than through United Air Lines' Chicago O'Hare hub, because "approximately 70 percent of Oshkosh passengers are connecting to airlines other than United" and neither the Appleton nor Green Bay airport has service to Midway. Oshkosh also met recently with Mesa and fully supports that carrier, expressing its belief that the carrier "has the desire and capability to make Oshkosh service a success." Finally, to support Mesa, the community indicates that it has agreed to waive landing fees, terminal rent, and provide hangar space without charge, and that it has pledged up to $100,000 in advertising support for the new service.

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[2] Congress first imposed that eligibility standard in fiscal year 1992 appropriations language and repeated it every year through fiscal year 1999. Then, by P.L. 106-69, the Department of Transportation and Related Agencies Appropriations Act, 2000, Congress made it a permanent eligibility standard. The statute does not set the maximum subsidy we may pay at $200 per passenger; rather, it totally disqualifies for subsidy eligibility any community where the cost per passenger exceeds that level, unless the community is more than 210 highway miles from the nearest medium or large hub airport.

[3] The community's estimate of bused passengers is based on the average number of passengers per flight times the number of cancelled flights, less those flights cancelled because of the lack of passengers.

Mesa's objections primarily concern the fact that the Department did not hold a rate conference in response to the proposal the carrier submitted on December 12, 2002. Further, the carrier suggests that the Department targets "communities for subsidy termination." In addition, Mesa states that because Oshkosh's previous subsidy rate included both Oshkosh and Manistee costs and revenues, the Department must even now calculate the subsidy per passenger for Oshkosh by dividing the combined subsidy of both Manistee and Oshkosh by the number of historical passengers assigned to each community. It cites Order 2002-6-21, involving EAS to Watertown and Utica, New York, where we divided the total subsidy in half and then by each community's historical passengers to determine the whether the subsidy per passenger for one of the communities was above $200. Mesa also argues that its December 12 proposal was only a preliminary one, submitted before it met with Oshkosh officials, and, by not holding a rate conference, the Department had denied it the opportunity to revise its earlier proposal, which would ultimately be renegotiated with the Department to a reduced amount resulting in the carrier's best and final offer. Mesa's objection also incorporates several of the community's objections, namely that the Oshkosh community believes that the incumbent carrier, Great Lakes, had bused some 500 passengers per year to surrounding airports -- passengers that were not included in the airport's passenger statistics; that the community had recently agreed to waive terminal rent and landing fees at the Wittman Regional Airport; and that it (Mesa) was "prepared to explore in good faith service options to" the Chicago Midway airport in lieu of serving the Chicago O'Hare airport. Finally, Mesa notes that it has produced a final compensation request that would reduce the compensation requirement below the $200 statutory ceiling.

DECISION

After carefully considering the objections we have received from and on behalf of the Oshkosh community, we have decided to affirm our tentative decision to terminate Oshkosh's subsidy eligibility, as both Great Lakes and Mesa's proposals would require subsidy well above the $200 per passenger cap.

Regarding Mesa's comments on the mechanics of the subsidy-per-passenger calculation, the carrier correctly points out that the Department uses historical passenger data, not carriers' passenger estimates or forecasts. In fact, the Department has a longstanding and consistent policy of using historical passenger data, as we have noted in previous EAS orders.[4] While the Department *could* use carriers' passenger forecasts in the calculation, forecasts represent only carriers' best estimates. We find that the actual number of passengers carried is the best measure of demand.[5] In reviewing the subsidy-per-passenger further, we not only examined the current subsidy rate in effect for Great Lakes, but also Mesa's proposal to see if it was below the $200 statutory cap. In this case, both Great Lakes' current rate and Mesa's proposed rate are above the ceiling.

Both the community and Mesa argue that when Great Lakes cancelled flights, it would provide passengers with bus service to nearby airports, and that those passengers should properly be included in the calculations as Oshkosh air passengers. However, the number

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[4] See, for example, Orders 2001-9-1 regarding Ottumwa, IA, and 2002-9-24 re Gallup, NM.

[5] In addition, though not alleged here, carriers could inflate or deflate their passenger projections to achieve a desired goal.

of Oshkosh passengers reported by Great Lakes to the Department's Bureau of Transportation Statistics includes both revenue passengers who enplaned and deplaned at Oshkosh, as well as those ticketed passengers who were bused by Great Lakes to alternate airports, including Chicago O'Hare, to begin their travel. Thus, the community's position that 500 passengers should be added to Great Lakes' traffic is misplaced; the vast majority are already included in the traffic base. Also, even if we added the 500 passengers to the reported calendar year 2002 passenger total of 2,874, it would only reduce Mesa's proposal to $293, an amount still well above the $200 statutory cap.

Also regarding cancelled flights, the community and Mesa assert that Great Lakes provided poor service, which depressed traffic levels. We do not disagree that Great Lakes' service has been far from stellar. During 2002, the carrier completed only 86.5% of all its scheduled flights, although some of the cancellations were because there were no passengers.[6] Nonetheless, we do not find that Great Lakes' service is the sole reason that Oshkosh's traffic levels are so low. Appleton's Outagamie Airport is less than 20 miles from downtown Oshkosh, and currently receives service to five hubs from five different carriers. Air Wisconsin, a United Express carrier, provides five nonstop jet round trips a day to Chicago O'Hare; Comair, an affiliate of Delta Air Lines, provides five nonstop jet round trips to Cincinnati; the Northwest Airlink carrier Pinnacle Airlines provides four nonstop jet round trips to Detroit; Mesaba, another Northwest Airlink carrier, and Pinnacle provide a mix of five nonstop large turbo-prop and jet round trips a day to Minneapolis; and Midwest Express Airlines provides a mix of nonstop jet and turboprop round trips (via Skyway) to Milwaukee. Service at Green Bay, about 50 miles from Oshkosh, consists of a similar mix of nonstop jet and turboprop service to Chicago O'Hare, Cincinnati, Detroit, Milwaukee, and Minneapolis. Also, Milwaukee, about 95 miles south, is a medium hub airport served by most of the major airlines in the country. Given that the EAS program is able to support only two round trips a day to one hub with a 19-seat aircraft, it would be nearly impossible for a carrier to compete effectively with multiple jet carriers only 20 miles away, no matter how exemplary the service.

In an attempt to reduce the subsidy per passenger below the $200 cap, in its objection, the community offered to support Mesa by pledging up to $100,000 in advertising support, waiving landing fees and terminal rent, and providing hangar space without charge. However, even reducing Mesa's Oshkosh station expenses to account for the community's offer, as well as adding in the 500 additional passengers that we have already discussed, would still not lower the subsidy per passenger below the $200 statutory cap.

Mesa and the community's final comments regarding the mechanics of the calculations assert that the Department should use the combined subsidies and passengers for both Manistee and Oshkosh. In support, they refer to Order 2002-6-21 in which we stated that we included the subsidy for both Utica and Watertown, New York, allocated one-half of the subsidy to each community, and then divided that by each community's respective historical passengers. However, in that case, the same carrier, CommutAir, was

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[6] As we have mentioned earlier, until very recently Great Lakes provided the service over a Manistee-Oshkosh-O'Hare routing. In cases when there were no Oshkosh passengers arriving or departing, Great Lakes would not stop at Oshkosh.

proposing to serve both communities over a Watertown-Utica-Albany linear routing. Under those circumstances, we have traditionally used the methodology that Mesa described. The case at Oshkosh is not at all analogous. Manistee is served by Skyway Airlines to Milwaukee while Oshkosh is served by Great Lakes to O'Hare. Under these circumstances, we find that there is no basis to combine the costs and passengers of Manistee, or of any other subsidized EAS community for that matter, with those of Oshkosh.

Regarding Mesa's assertion that the Department selects "communities for subsidy termination," as Mesa is fully aware, federal law prohibits the Department from subsidizing service at any community if the subsidy per passenger exceeds $200, unless the community is more than 210 miles from the nearest medium or large hub airport. Congress intended the EAS program to sustain service to those communities that are isolated from the Nation's air transportation system. Congress did not afford those communities located within a reasonable drive of air service the same guarantee.

Mesa and the community have also argued that the Department should allow for a change in hub from O'Hare to Midway. Because a large percentage of Oshkosh passengers seek low-fare service to many leisure destinations, Oshkosh believes that the community would be better served through Chicago Midway, where connections can be made to low-fare carriers, including Southwest and American Trans Air. However, EAS definitions issued by the Department do not specify airports but, rather, cities. Moreover, in our several rounds of requests for proposals, we solicited carriers to provide service to Chicago, without specifying O'Hare, as well as to Minneapolis, Milwaukee, or any other suitable hub in the area. The community has had ample opportunity over the last 3½ years that we have held Great Lakes in place to discuss service to Midway with any interested carrier.

Finally, Mesa objects to the fact that the Department did not hold a rate conference following the Department's request for proposals in Order 2002-10-26. There was little reason to do so. We had recently concluded a rate conference with Mesa in response to our request for proposals in Order 2002-2-18. The rate conference resulted in a rate agreement, signed by Mesa on August 8, 2002, which would have set a subsidy rate for Oshkosh-Manistee-Chicago service for a two-year period if we had not selected another carrier to provide Manistee-only service. That rate agreement established Oshkosh unit costs for Mesa -- the identical unit costs found in their December 12, 2002, Oshkosh-only proposal. Since Mesa submitted the same Oshkosh operating costs in both their August 8, 2002, rate agreement and in their December 12, 2002, proposal, we saw little need to conduct a rate conference. Moreover, Great Lakes originally filed to suspend its service at Oshkosh on May 20, 1999. In the ensuing 3½ years, we have continued to hold Great Lakes' service in place and requested proposals three times, yet we still have no proposals in hand that are selectable, i.e., below the $200 cap.

Since we issued show-cause Order 2002-12-24 tentatively eliminating Oshkosh's subsidy eligibility, additional traffic data have become available. In the show-cause order, we noted that each carrier's proposal required subsidy per passenger in excess of $200.

Mesa proposed an annual subsidy of $988,880. That subsidy, coupled with 4,162 Oshkosh passengers as of the year ended June 30, 2002, produced a subsidy per passenger of $238. Since then, calendar year 2002 data have become available showing 2,874 Oshkosh passengers, which produces a subsidy per passenger of $344.[7]

Based on all of the above, we find that Oshkosh does not meet the $200 subsidy-per-passenger cap as required by statute, and, thus, we finalize our earlier, tentative decision to terminate its subsidy eligibility.

As we previously stated in Order 2002-12-24, in an effort to provide an orderly and smooth shutdown in service, and before Great Lakes terminates service, we expect it to contact all passengers holding reservations for travel after the suspension date, to notify them of the suspension of service and the availability of nearby air services, and to assist them in making alternate travel arrangements.

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

ACCORDINGLY,

1. We finalize our tentative finding and conclusions as set forth in Order 2002-12-24, December 29, 2002, and terminate the subsidy eligibility of Oshkosh, Wisconsin, under the essential air service program not later than 45 days from the date of service of this order;

2. Great Lakes Aviation, Ltd. may terminate service effective on the service date of this order, provided that it contact all passengers holding reservations for travel after the suspension date to notify them of the suspension of service and the availability of nearby air services, and to assist them in making alternate travel arrangements; and

[7] Based on Great Lakes' proposal of $1,034,085, the subsidy per passenger based on YE 6/30/02 passenger traffic is $248, and for CY 2002, $359.

3. We will serve a copy of this order on the Mayor and airport manager of Oshkosh, Wisconsin, the Governor of Wisconsin, the Bureau of Aeronautics of the Wisconsin Department of Transportation, Mesa Air Group, Inc., and Great Lakes Aviation, Ltd.

By:

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

(SEAL)

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