



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

Issued by the Department of Transportation
on the 1st day of April, 2003

Essential air service at

VICTORIA, TEXAS

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

**Served: April 4, 2003
Docket OST-2003-14604**

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

Summary

By this order, the Department is (a) prohibiting ExpressJet Holdings, Inc., d/b/a Continental Express, from suspending its unsubsidized service at Victoria, Texas, at the end of its 90-day notice period, and (b) requesting proposals, with or without subsidy requests, from carriers interested in providing replacement service.

Background

On February 26, 2003, ExpressJet filed a 90-day notice of its intent to suspend its unsubsidized scheduled air service at Victoria as of May 31, 2003. ExpressJet is the only carrier providing scheduled service at Victoria, where it currently operates three nonstop round trips each weekday and weekend to Houston (except two on Tuesdays) with 37-seat Embraer ERJ135 regional jets.¹

On behalf of the Victoria community, the Victoria County Airport Commission filed an objection to ExpressJet's notice on March 17. The community asks that the Department prohibit ExpressJet from suspending service, and also asks that the Department evaluate the level of service to be provided by ExpressJet in light of carriers' obligations under the Air Transportation Safety and System Stabilization Act, P.L. 107-42.

Essential Air Service Determination

Victoria's essential air service determination, as last established by Order 84-5-77, May 22, 1984, required at least two round trips each weekday and weekend to Houston providing

¹ See Appendix A for a map.

a total of 67 inbound and 67 outbound seats.²

Decision

ExpressJet's suspension of service would leave Victoria without any scheduled air service. In accordance with 49 U.S.C. 41734, we will therefore prohibit ExpressJet from suspending service at the community. In doing so, we will require ExpressJet to operate two nonstop round trips each weekday and weekend -- i.e., 12 round trips a week -- to Houston. That level of service will provide the community with 74 inbound and outbound seats each weekday and weekend, and thus meet the community's essential air service requirement of 67 seats.

The community suggests that the Department might be able to require a higher level of service under the terms of P.L. 107-42, which provided for carriers to receive payments in partial compensation for their losses after the September 11 terrorist attacks. We conclude, however, that the community's reliance on that statute is misplaced. Section 105(c)(1) simply stated that the Department "may require air carriers receiving direct financial assistance under this Act to maintain scheduled air service to any point served by that carrier before September 11, 2001," but did not require that we do so, and nowhere did the law prescribe a particular level of service. More importantly, section 101 clearly stated that the payments were specifically intended to compensate carriers for (a) losses associated with government-ordered stoppages of service, such as occurred immediately after the September 11 attacks, and (b) incremental losses incurred through December 31, 2001, as a direct result of those attacks.

Request for Proposals

We will also seek proposals, with or without subsidy requests, from carriers interested in providing replacement service at Victoria. We ask that carriers submit their proposals within 20 days of the date of service of this order; we will give full consideration to all proposals that are timely filed. We request proposals that contemplate service to Houston or any other suitable hub, providing a level of service commensurate with the community's determination and operated with twin-engine, two-pilot, pressurized aircraft with at least 15 passenger seats. As always, we will solicit the community's views on any service proposals we receive before selecting a carrier.

Service and Traffic History

ExpressJet has served Victoria since September 1987. The carrier has operated turboprop aircraft at the community during most of its tenure, with the aircraft generally increasing in size over time, from Metroliners to ATR-42 aircraft. ExpressJet introduced Embraer regional jets at the community in December 2002. The community registered its highest traffic total during ExpressJet's tenure in calendar year 1998, when it averaged 77.3 enplanements a day. During calendar year 2002, the most recent 12-month period for which data are available, Victoria

² Order 84-5-77 required capacity sufficient to accommodate 40 inbound and outbound passengers. Under the 60-percent load-factor standard subsequently established by the Airport and Airway Safety and Capacity Expansion Act of 1987, P.L. 100-223, the number of guaranteed seats became 67: $40/0.60 = 66.7$.

averaged 46.3 enplanements a day, which represented an 11.3 percent decline from 52.3 enplanements a day the previous year.³

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.⁴ 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.

³ See Appendix B for traffic data. Averages are based on 313 weekdays and weekends a year.

⁴ 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).

Community and State Comments

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.⁵

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

ACCORDINGLY,

1. We prohibit ExpressJet Holdings, Inc., d/b/a Continental Express, from suspending service at Victoria, Texas, at the end of its 90-day notice period, and require it to maintain service at the community, as set forth in Appendix C, for the 30-day period through June 30, 2003, or until a carrier capable of providing reliable essential air service actually begins service, whichever is first;⁶
2. We direct ExpressJet Holdings, Inc., d/b/a Continental Express, 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;
3. We request that carriers interested in providing essential air service at Victoria, Texas, 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 204.4). An original and five copies of the proposal should be sent to the EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street S.W., Washington, DC 20590, with the title "Proposal to Provide Essential Air Service at Victoria, Texas, Docket OST-2003-14604";⁷

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 ExpressJet's 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 applicants must then file a certificate of service with the Department's Documentary Services Division.

4. This docket will remain open until further order of the Department; and
5. We will serve copies of this order on the mayor and airport manager of Victoria, Texas; ExpressJet Holdings, Inc., d/b/a Continental Express; and the persons listed in Appendix D.

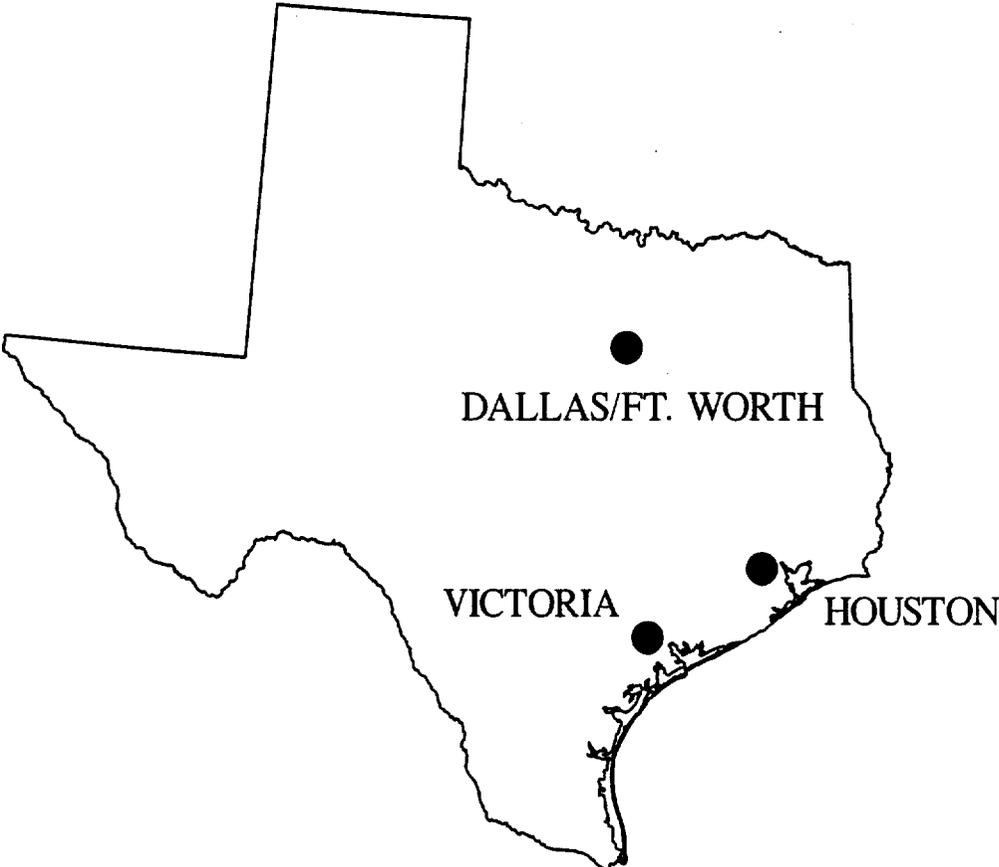
By:

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>*

VICTORIA, TEXAS,
AND THE SURROUNDING REGION



APPENDIX B

VICTORIA, TEXAS
HISTORICAL ENPLANEMENTS

	<u>NO.</u>	<u>AVG.</u>
1987	11,410	36.5
1988	13,836	44.2
1989	19,592	62.6
1990	21,808	69.7
1991	20,566	65.7
1992	20,790	66.4
1993	20,393	65.2
1994	20,447	65.3
1995	19,517	62.4
1996	19,779	63.2
1997	22,482	71.8
1998	24,181	77.3
1999	20,962	67.0
2000	19,467	62.2
2001	16,356	52.3
2002	14,505	46.3

SOURCE: Victoria Regional Airport. Averages are based on 313 weekdays and weekends a year.

APPENDIX C

EXPRESSJET HOLDINGS, INC., d/b/a CONTINENTAL EXPRESS
ESSENTIAL AIR SERVICE TO BE MAINTAINED
AT VICTORIA, TEXAS

EFFECTIVE PERIOD	May 31, 2003, until further Department action
SERVICE	12 nonstop round trips to Houston each week
AIRCRAFT TYPE	Embraer ERJ135 aircraft (37 seats)
TIMING OF FLIGHTS	Flights must be well-timed and well-spaced to ensure full compensation

SERVICE LIST FOR THE STATE OF TEXAS

ACT International Airlines, Inc.
Aero Freight, Inc.
Air L.A., Inc.
Air Midwest, Inc.
Air Transport, Inc.
Alpine Air Express
Amerijet International, Inc.
Corporate Airlines, Inc.
Delta Connection
Exec Express II, Inc.
Indianapolis Heliport Corporation
L'Express, Inc.
Laredo Air, Inc.
Lone Star Airlines, Inc.
Mesa Airlines, Inc.
Metroflight, Inc.
Midwest Express Airlines, Inc.
Multi Aero, Inc.
Northwest Airlink
Premier Aviation Services, Inc.
Rio Grande Air
Ross Aviation, Inc.
Texas National Airlines, Inc.
Westward Airways, Inc.

Francis Armstrong
Ken Bannon
Rick Bauer
Jeff Fonner
Doug Franklin
E.B. Freeman
Ben Harrison
A. Edward Jenner
Keith Kahle
Colleen O'Day
Wes Marden
Lee Mason
Helen McCoy
John McFarlane
Andy Pike
D.E. Rowan
William C. Seigler
Andrew Spinks
Wayne Trawick
Robert Wigmore
Tim Woldridge