

Order 2003-5-9
Served: May 9, 2003



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

Issued by the Department of Transportation
on the 6th day of May, 2003

Essential Air Service at

WEST YELLOWSTONE, MONTANA

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

Docket-OST-2003-14626

**ORDER PROHIBITING TERMINATION OF SERVICE AND
REQUESTING PROPOSALS**

Summary

By this order the Department is (a) prohibiting SkyWest Airlines, Inc., d/b/a Delta Connection (SkyWest), from terminating its unsubsidized service at West Yellowstone, Montana; (b) requiring the carrier to maintain service between the community and Salt Lake City for an initial 30-day period following the end of the notice period; and (c) requesting proposals from carriers interested in providing replacement service at the community. (See Appendix A for an area map.)

Background

West Yellowstone is guaranteed to receive at least a minimum level of air service under the Essential Air Service (EAS) program by virtue of the fact that it received service from a certificated carrier on October 24, 1978, the date the Airline Deregulation Act of 1978 was signed into law. (See 49 U.S.C. 41731-41744 for the EAS program's governing statutes.)

The EAS determination for West Yellowstone, established by Order 87-5-76, issued May 28, 1987, requires at least two daily nonstop or one-stop round trips from June through September, to either Denver or Salt Lake City.¹ During the months of June and September, at least 19 seats inbound and outbound must be provided; during July and August, at least 45 seats inbound and outbound must be provided.

SkyWest filed a 90-day notice of its intent to suspend its unsubsidized scheduled air service at West Yellowstone, effective on June 1, 2003. SkyWest was the only carrier serving West Yellowstone during the period June 1-September 30, 2002, and is obligated to resume such service on June 1, 2003. Last summer, its service consisted of three daily nonstop round trips to Salt Lake City with 30-seat Embraer Brasilia aircraft.

Since SkyWest is the only carrier obligated to provide scheduled air service at West Yellowstone, by this order, we will require the carrier to begin its service on June 1, 2003, and we will request proposals for replacement service.

As a practical matter, in view of the fact that the summer season for West Yellowstone is only a little more than one month away, there is little chance that we can process a carrier selection case and have a new carrier in place by June 1. Such proceedings usually take a minimum of three months at best. Therefore, unless another carrier is willing to inaugurate service at West Yellowstone on June 1, without subsidy, SkyWest will be required to provide air service at the community through September 30, 2003. This order will “hold the carrier in” for an initial 30-day period, through July 2, 2003. Successive orders will be issued every 30 days continuing the carrier’s obligation to provide service at West Yellowstone during the months of June, July August and September, until the selection case has been completed.

Request for Proposals

We request that any carriers interested in providing essential air service at West Yellowstone, with or without subsidy, file their proposals within 20 days of the service date of this order. We ask that carriers submit proposals for two or three round trips per day to Salt Lake City or Denver with 15-seat or larger, pressurized aircraft. We will also entertain proposals to serve other hubs that provide access to the national air transportation system in order to give the Department and the communities as broad an array of proposals as possible from which to choose. 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 traffic and revenue forecasts, we have included historical traffic data for West Yellowstone in Appendix B.

¹ Service to Denver must be provided with equipment having a cruise speed of at least 250 miles per hour.

Procedures For Filing Proposals

For interested air carriers that are not familiar 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 seeking proposals, conducting financial and operational audits of the applicant carriers and selecting a replacement carrier. The second is an evidence request containing an explanatory statement, and a copy of section 14 CFR 204.4 of the Department's regulations which deals with the information required of all applicants for authority to provide basic essential air service, and provides schedules giving our recommended form for submitting data required for determining the financial and operational ability of applicants to provide dependable air service.²

Community and State Comments

The West Yellowstone community and the State of Montana are welcome to submit comments on the proposal or proposals at any time.³ Early in the proceeding, comments on the perceived strengths and weaknesses of the proposals would be particularly helpful to the Department. The civic parties may also express a preference for a particular carrier or proposal option at that time, if they choose. In any event, after we conclude 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.⁴

Other Carrier Requirements

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.⁵ Consequently, all carriers receiving Federal subsidy to support essential air service must certify that they are

² Copies of these documents can be obtained from: EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street, S.W., Washington, DC 20590. Telephone requests for these documents are accepted at (202) 366-1053.

³ Civic parties should file an original and five copies of their comments in Docket OST-2002-11348. This filing should be addressed to: Docket Operations and Media Management Division, SVC-124, Office of the Secretary, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, S.W., Washington D.C. 20590.

⁴ 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.

⁵ 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).

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 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.

Requirement to Maintain Service

SkyWest is the only carrier obligated to provide scheduled air service at West Yellowstone. The community is guaranteed to receive service under the EAS program, and 49 U.S.C. 41734 requires that we prohibit SkyWest from terminating service for an initial 30-day period beyond the end of its 90-day notice period, through July 1, 2003.⁶ We will require SkyWest to continue to provide two nonstop or one-stop round trips each day in the West Yellowstone-Salt Lake City market while we process the carrier replacement case.

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

ACCORDINGLY,

1. We request that carriers interested in providing essential air service at West Yellowstone, Montana, during the months of June, July, August and September, submit their proposals, with or without requests for subsidy, within 20 days of the service date of this order. An original and five copies of the proposal should be sent to the EAS and Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, with the title: "Proposal to Provide Essential Air Service at West Yellowstone, Montana, Docket OST-2003-14626;⁷
2. The Department prohibits SkyWest Airlines, Inc., d/b/a Delta Connection, from terminating service at West Yellowstone, Montana, at the end of its 90-day notice period, and requires it to maintain at least two nonstop or one-stop round trips each day to Salt Lake City, through July 1, 2003, or until a carrier capable of providing reliable essential air service actually begins service, whichever comes first;

⁶ In accordance with 49 U.S.C. 41734(c), we will extend SkyWest's service obligation for successive 30-day periods as necessary until replacement service actually begins.

⁷ After serving a copy of its proposal on the civic officials of West Yellowstone and each of the other applicants, each applicant must then file a certification of service with the Department's Docket Operations and Media Management Division, M-30. Questions regarding filings in response to this order may be directed to John McCamant at (202) 366-1060.

3. The Department directs SkyWest Airlines, Inc., d/b/a Delta Connection, 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. 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 West Yellowstone, the Governor of Montana, the Montana Department of Transportation, Aeronautics Division, SkyWest Airlines, and the carriers listed in Appendix C.

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>



**SKYWEST AIRLINES
HISTORICAL TRAFFIC
AT WEST YELLOWSTONE, MONTANA**

		<u>WYS-SLC</u>	<u>SLC-WYS</u>	<u>TOTAL</u>
1996	2	501	618	1,119
	3	2,341	2,380	4,721
1997	2	540	672	1,212
	3	3,278	3,261	6,539
1998	2	348	447	795
	3	3,154	3,144	6,298
1999	2	776	983	1,759
	3	3,951	4,176	8,127
2000	2	709	1,062	1,771
	3	3,030	3,337	6,367
2001	2	790	1,114	1,904
	3	3,122	3,266	6,388
2002	2	517	722	1,239
	3	3,349	3,291	6,640

MONTANA SERVICE LIST

Air Wisconsin, Inc.
Alpine Air Express
Alpine Aviation, Inc.
Amerijet International, Inc.
Barken International, Inc.
Big Sky Transportation Co.
Delta Connection
Empire Airlines, Inc.
Mesa Airlines, Inc.
Mesaba Aviation, Inc.
Metroflight, Inc.
Midwest Express Airlines, Inc.
Northern Tier Airlines, Inc.
Northwest Airlink
West Isle Air, Inc.
Westward Airways, Inc.

Ken Bannon
Doug Franklin
E.B. Freeman
Ben Harrison
A. Edward Jenner
Keith Kahle
Bob Karns
Colleen O'Day
Gene Mallette
Lee Mason
John McFarlane
John Rahenberg
Richard A. Raymer
Tracy Schoenrock
Dan Traitor
Gary L. White