Order 2003-12-27
Served: December 31, 2003

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

Issued by the Department of Transportation
on the **31st day of December, 2003**

Essential Air Service at **ELY, NEVADA** Under 49 U.S.C. 41731 *et seq.*	**DOCKET OST-1995-361**

ORDER SETTING FINAL RATE

Order 2001-7-14, July 24, 2001, selected Eagle Canyon Airlines, Inc., d/b/a Scenic Airlines, to provide essential air service (EAS) to Ely, Nevada, for $976,533 annually for the two-year period that just ended on November 30. By Order 2003-11-3, November 5, 2003, we requested proposals for replacement service for a new two-year period. We are obligated to continue to pay compensation to Scenic during the carrier-selection proceeding.

On December 12, the carrier proposed a rate of $698,078 for six nonstop round trips per week with 19-seat Twin Otter equipment for the prospective two-year period that reflects the same level of service as it is currently providing. We have decided to compensate Scenic at that rate until further Department action, *i.e.*, until we conclude the long-term selection proceeding and select a replacement carrier, either Scenic or another operator.

The proposed rate is at a level significantly below the rate that expired on November 30 and is reasonable. We will continue to process the carrier selection proceeding.

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

ACCORDINGLY,

1. The Department sets the final subsidy rate for Eagle Canyon Airlines, Inc., for the provision of essential air service at Ely, Nevada, effective from December 1, 2003, until further Department action, as described in Appendix C, to be 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 and shall be determined by

multiplying the subsidy-eligible flights completed during the month to and from Las Vegas by $1,140.65; [1]

2. We direct Eagle Canyon Airlines 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 the 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 first. 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. This Docket will remain open until further Department action; and

4. The Department will serve copies of this order on the White Pine County Commissioner and Airport Manager of Ely, Nevada, the Governor and Department of Transportation of the State of Nevada, and Eagle Canyon Airlines, Inc.

By:

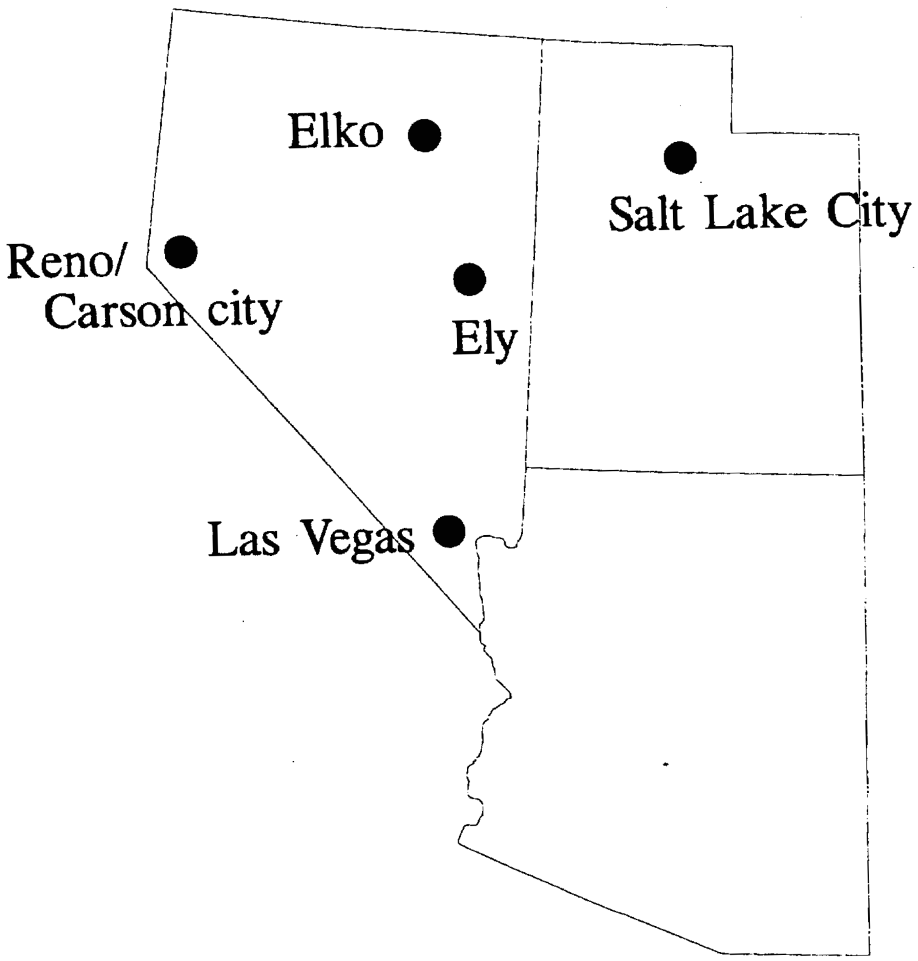
KARAN BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov

[1] See Appendix C for calculations.

MAP



Ely to-- Reno-264
-- Salt Lake City -184
-- Las Vegas -223
-- Elko - 116

Appendix B

Eagle Canyon Airlines, Inc., Essential Air Service to be Provided to Ely, Nevada, Docket 361

Effective Period: December 1, 2003, until further Department action.

Scheduled Service:
6 nonstop round trips each week to Las Vegas

Aircraft: 19-seat DHC-6 Twin Otters

Subsidy Rate per Las Vegas Flight: $1,140.65 [1]

Weekly Compensation Ceilings: $13,687.80 [2]

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 parities 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.

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[1] $698,078 annual compensation, divided by 612 annual flights, calculated as follows:
12 flights/week*52 weeks*.98 completion.
[2] 12 flights per week x $1,140.65.