



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

Issued by the Department of Transportation  
on the 19<sup>th</sup> day of April, 2004

Precautionary 90-day notice of

**DELTA AIR LINES, INC.**

under 14 CFR 323.3(a)(5)

**Docket OST-2004-17082**

**ORDER DISMISSING NOTICE**

**Background**

On February 10, 2004, and pursuant to the Department's Aviation Economic regulations (14 CFR 323.3(a)(5)), Delta Air Lines, Inc., filed a 90-day notice of its intent to suspend its winter-season services at four communities: Aspen, Colorado; Steamboat Springs/Hayden/Craig, Colorado; Jackson Hole, Wyoming; and Indio/Palm Springs, California. Delta plans to suspend service at the first three communities on April 4, and at the fourth on May 31.<sup>1</sup>

Delta states that it has filed notice "on a precautionary basis." Delta notes that neither it nor other carriers have previously filed such notices with respect to the conclusion of seasonal services, but that it has decided to do so in light of Order 2003-9-21, September 26, 2003, where the Department did not specifically decide whether carriers operating seasonal services at Greenbrier/White Sulphur Springs/Lewisburg, West Virginia, were required to file 90-day notices, but nonetheless granted such carriers exemptions "to the extent necessary to allow them to suspend their services" as scheduled.<sup>2</sup>

Delta states that seasonal service should not be subject to the Department's notice requirements since a date certain for conclusion of such service is established in a carrier's schedule when the service is first introduced -- *i.e.*, the service is not being suspended within the meaning of the rule because, from the outset, it was never intended to continue beyond a specified date. Delta

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<sup>1</sup> 14 CFR 323.3(a)(5), the Department's "one-third rule," requires a carrier to file a 90-day notice if its proposed suspension of service would reduce the total number of passenger seats linking the affected community to a Federal Aviation Administration-designated hub by 33 percent or more. All four of the communities at issue would continue to receive abundant service after Delta's suspension, far beyond any level guaranteed by the essential air service program.

<sup>2</sup> Delta's remarks, as well as those of Continental in its answer below, concern more than just the "one-third rule" under which Delta has filed its notice in this instance, and instead address the underlying statutory notice requirements for the essential air service program contained in 49 U.S.C. 41734.

also states that application of the notice requirements would be inimical to the interests of small communities, as carriers would become wary of offering seasonal service in view of the risk of being required to continue such service beyond the period of high seasonal demand.

None of the communities have responded to Delta's notice, but Continental Airlines, Inc., has filed an answer. Continental requests that the Department "establish firmly" that suspension notices are not required for seasonal service and, accordingly, dismiss Delta's notice as unnecessary. Continental suggests that the Department should require any carrier planning to terminate year-round service at a community to disregard seasonal services available at that community when the carrier determines whether it needs to file notice, and when it does in fact file notice, to exclude seasonal services in the information provided to the Department regarding services that will remain at the community if it suspends service as proposed.<sup>3</sup>

### **Decision**

After careful consideration of Delta's notice and Continental's answer, we have decided to dismiss Delta's notice as unnecessary. We agree that the very concept of seasonal service presupposes a suspension of that service at the end of a period of seasonally higher demand. In fact, the concept is apparently so well understood and widely accepted that we are unaware of any community complaints about the suspension of such services without formal notice since the essential air service program's inception in 1978.<sup>4</sup>

Delta's concern that requiring a seasonal carrier to file notice at the end of a season puts the carrier at risk of being held in beyond its seasonal service is unfounded, since the Department will not hold a seasonal carrier in to perform year-round essential air service. We will not hold in a carrier even for seasonal service except in the rare instances where essential air service communities have been guaranteed seasonal-only service, in which instances we will require seasonal service until a replacement carrier is found.

We agree with Continental that a carrier offering year-round service should not count seasonal services when determining whether it needs to file notice at a community where it intends to suspend service. However, we do not agree that such a carrier should exclude seasonal services in its description of remaining services at the community. Rather, seasonal services should be included and identified as such, thus affording the Department a full picture of scheduled services available at the community and facilitating our review of the effect that the carrier's suspension of service would have on the community.

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<sup>3</sup> Continental here alludes to 14 CFR 323.4, which describes the information that carriers' 90-day notices are expected to contain.

<sup>4</sup> We do expect carriers offering seasonal services in a market to observe the notice requirements in cases where they have no intention of resuming service the following year -- *i.e.*, where they plan to suspend service permanently, and not just according to season. For purposes of 14 CFR 323.3, seasonal carriers are subject to the same notification obligations as year-round carriers. Such notice both allows time for the marketplace to react and provides the Department with the necessary information to ensure communities' essential air service needs are being met. We note that a seasonal carrier has to file notice under 14 CFR 323.3 only when it is permanently discontinuing air service to a community and meets one of the five requirements listed in 14 CFR 323.3(a).

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

**ACCORDINGLY,**

1. We dismiss the notice filed by Delta Air Lines, Inc., in Docket OST-2004-17082;
2. This docket will remain open until further order of the Department; and
3. We will serve copies of this order on the mayors and airport managers of Aspen, Colorado; Steamboat Springs/Hayden/Craig, Colorado; Jackson Hole, Wyoming; and Indio/Palm Springs, California; Delta Air Lines, Inc.; and Continental Airlines, Inc.

By:

**KARAN K. BHATIA**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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