

Order 2004-5-14
Served: May 20, 2004



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

Issued by the Department of Transportation
on the 17th day of May, 2004

Essential Air Service at

DUBOIS, PENNSYLVANIA

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

Docket OST-2004-17617

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

Summary

By this order, the Department is (a) prohibiting Air Midwest, Inc., d/b/a US Airways Express (Air Midwest), from terminating its unsubsidized service at DuBois, Pennsylvania; (b) requiring the carrier to maintain service between the community and Pittsburgh, Pennsylvania, 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 DuBois. (See Appendix A for an area map.)

Background

DuBois is guaranteed to receive at least a minimum level of air service under the Essential Air Service (EAS) program. (See 49 U.S.C. 41731-41744 for the EAS program's governing statutes.) On April 23, 2004, Air Midwest filed a 90-day notice of its intent to suspend its unsubsidized scheduled air service at DuBois, effective on July 22, 2004. Air Midwest is the only carrier serving DuBois, providing three nonstop round trips each weekday and four nonstop round trips each weekend to Pittsburgh International Airport with 19-seat, Beech 1900-D turboprop aircraft.

The community's EAS determination, last reviewed by the Civil Aeronautics Board, the predecessor agency to the Department of Transportation for the EAS program, in 1983 (Order 83-3-15), calls for a minimum of two daily nonstop round trips and 67 seats each way, in the Pittsburgh market.¹

Historical Traffic

The number of annual passengers had been relatively stable at the DuBois-Jefferson County Airport for the years from 1992 through 1999, excluding 1995, averaging about 18,400 per year, or about 58 passengers per day enplaning at DuBois. After 1999 however, the number of annual passengers fell each year to 15,183 in 2003, or to 24 enplanements per day. In order to assist prospective carriers in making traffic and revenue forecasts, historical passenger data has been included in Appendix B.

Request for Proposals

We request that any carriers interested in providing essential air service at DuBois, with or without subsidy, file their proposals within 30 days of the service date of this order. With respect to the specific DuBois market, we expect proposals consisting of service, at a minimum, with two-pilot, twin-engine aircraft with at least 15 passenger seats, and offering two or three one-stop or nonstop round trips each weekday and each weekend period to Pittsburgh or any other suitable hub such as Cleveland or Baltimore. Carriers are also welcome to propose more than one service option, if they choose; they need not limit themselves to those basic requirements if they envision other, potentially more attractive service possibilities -- different hubs, for example -- with subsidy requirements that remain competitive. We will give full consideration to all proposals that are timely filed.² At the end of the 30-day period, our staff will docket any proposals that we receive, thereby making them public, and also direct each carrier to serve a copy of its proposal(s) on the Mayor and airport manager of the DuBois-Jefferson County Airport and on any other applicants.

New Procedures

The preceding paragraph reflects streamlined carrier-selection procedures that we first introduced in Order 2003-8-10 for the EAS program generally and are continuing here. In the past, we have accepted *initial* carrier proposals, reviewed them, and then negotiated *final* proposals with each applicant before formally presenting them to the community and

¹ Order 83-3-15 required capacity sufficient to accommodate 40 inbound and 40 outbound passengers a day. 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: $40/0.60 = 66.7$.

² 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 proceed with the carrier-selection case. Instead, we simply rely on that carrier's subsidy-free service as proposed.

asking it to submit any final comments. We found that a two-step process was generally necessary because, in most cases, the incumbent carrier was the only one interested. As a result, we had been unable to rely on competition to discipline carrier subsidy requests, and communities had to wait on a protracted negotiation and selection process. More recently, however, most orders requesting essential air service proposals have drawn interest from at least two carriers and sometimes more. Under these circumstances, we expect that competition among multiple carriers will ensure reasonable subsidy requests, obviate the need for rate negotiations, and allow us to streamline the carrier-selection process.

Consequently, interested carriers should prepare their proposals with every expectation that their initial proposals will also be their *final* and *only* proposals.³ We retain the discretion to negotiate proposals when we deem it desirable; in such cases, of course, we will give all applicants the same opportunity. Further, we anticipate that we will continue to negotiate rates in cases where there is only a single interested carrier, as is typically the situation in Alaska. We also retain the discretion to reject outright all unreasonable or unrealistic proposals, and to resolicit a new round of proposals when necessary. However, we anticipate that negotiation or rejection will remain only occasional exceptions to the rule.

We are here providing interested carriers with some basic information to help guide the preparation of their proposals, but we will not prescribe a precise format for them to follow. We expect proposals to adequately describe the service being proposed and the annual amount of subsidy being requested. Applicants can make their own judgments as to the level of detail they wish to present; however, they might want to include proposed schedules as well as supporting data for their subsidy requests, such as projected block hours, revenues, and expenses. We strongly encourage clear, well-documented proposals that will facilitate their review and evaluation by DuBois officials and the Department. We do not anticipate any change in our selection criteria, nor in the general provisions governing subsidy payments for essential air service.⁴

³ For this reason, we will allow carriers 30 days to submit their proposals, rather than just 20 as in the past. Because the new procedures anticipate that a carrier's first proposal will also be its final proposal, we expect to enforce our filing deadlines more stringently than in the past. Carriers should not expect the Department to accept late filings. The additional 10 days will comfortably accommodate the additional time carriers may find necessary to prepare their proposals.

⁴ In selecting a carrier, 49 U.S.C. 41733 directs us to consider four factors: (1) the demonstrated reliability of the applicant in providing scheduled air service; (2) the contractual and marketing arrangements the applicant has made with a larger carrier to ensure service beyond the hub airport ; (3) the interline arrangements that the applicant has made with a larger carrier to allow passengers and cargo of the applicant at the hub airport to be transported by the larger carrier through one reservation, ticket, and baggage check-in; and (4) the preferences of the actual and potential users of air transportation at the eligible place, giving substantial weight to the views of the elected officials representing the users.

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 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.⁶

Community and State Comments

The community and state are welcome to submit comments on the proposals at any time. As noted earlier, however, we will provide a summary of the proposals to the civic parties and ask them to submit their final comments shortly after the end of the 30-day period for carrier proposals.⁷

Requirement to Maintain Service

Air Midwest is the only carrier providing scheduled air service at DuBois. The community is guaranteed to receive service under the EAS program, and 49 U.S.C. 41734 requires that we prohibit Air Midwest from terminating service for an initial 30-day period beyond the end of its 90-day notice period, through August 23, 2004.⁸ We will require Air Midwest to

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).

⁶ The certifications are available on the web at <http://ostpxweb.dot.gov/aviation/index.html>.

⁷ Civic parties should file an original and two copies of their comments in Docket OST-2004-17617. This filing should be addressed to: EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street, S.W., Washington, DC 20590.

⁸ In accordance with 49 U.S.C. 41734(c), we will extend Air Midwest's service obligation for successive 30-day periods as necessary until replacement service actually begins.

provide three nonstop or one-stop round trips on weekdays and over the weekend in the DuBois-Pittsburgh 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 DuBois, Pennsylvania, submit their proposals, with or without requests for subsidy, within 30 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 DuBois, Pennsylvania, Docket OST-2004-17617;"⁹

2. The Department prohibits Air Midwest, Inc., d/b/a US Airways Express, from terminating service at DuBois, Pennsylvania, at the end of its 90-day notice period, and requires it to maintain three nonstop or one-stop round trips each weekday and weekend to Pittsburgh, Pennsylvania, through August 23, 2004, or until a carrier capable of providing reliable essential air service actually begins service, whichever comes first;

3. The Department directs Air Midwest, Inc., d/b/a US Airways Express, 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, 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;

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 DuBois, the Governor of Pennsylvania, the Bureau of Aviation of the Pennsylvania Department of Transportation, Air Midwest, Inc., and the carriers listed in Appendix C.

⁹ Carriers should also provide copies of their proposals to the Mayor and Airport Manager of DuBois, Pennsylvania, and to the Bureau of Aviation of the Pennsylvania Department of Transportation. Questions regarding filings in response to this order may be directed to Mike Waters at (202) 366-6494.

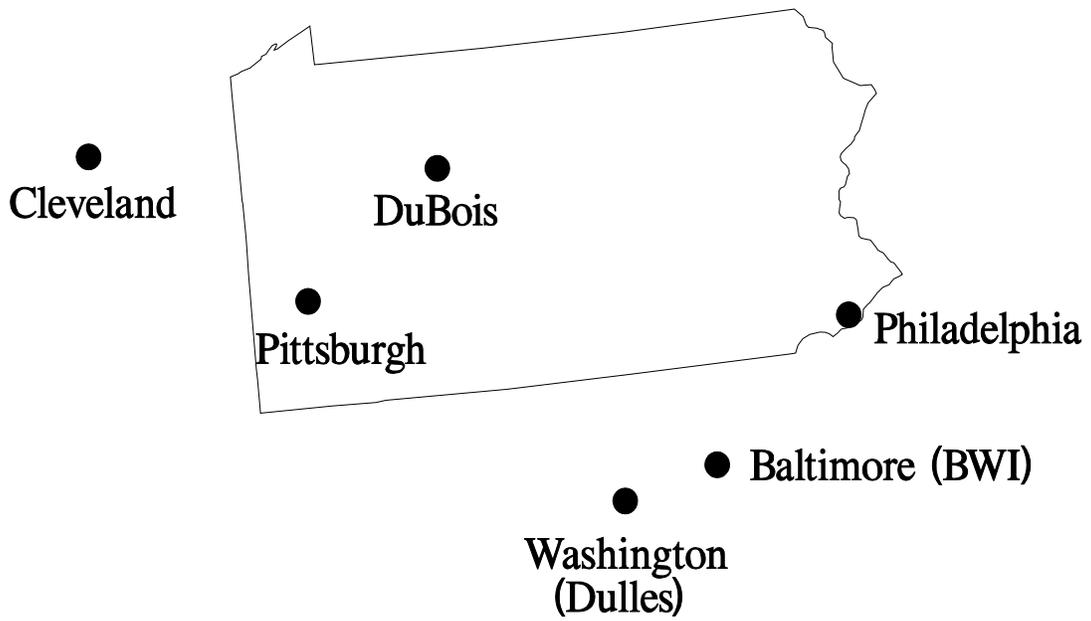
By:

KARAN K. 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>

AREA MAP



Historical Passenger Traffic At DuBois, Pennsylvania¹

Year	Total Annual Passengers	Average Annual Enplanements	Average Annual Enplanements per Service Day²
1992	37,732	18,866	60.3
1993	42,140	21,070	67.1
1994	41,544	20,772	66.2
1995	27,722	13,861	44.0
1996	35,191	17,596	56.2
1997	32,665	16,333	52.0
1998	36,211	18,106	57.7
1999	32,842	16,421	52.3
2000	29,496	14,748	47.2
2001	23,001	11,501	36.6
2002	17,790	8,895	28.3
2003	15,183	7,592	24.2

¹ Source: Department of Transportation, Bureau of Transportation Statistics, for the period indicated. Data for 2nd Quarter 1995, is missing because of a mistake made by the reporting carrier.

² Annual Enplanements divided by 313 days, 314 for 1992, 1996, and 2000.

SERVICE LIST FOR THE STATE OF PENNSYLVANIA

Air Midwest, Inc.
Air Wisconsin, Inc.
Amerijet International, Inc.
Chautauqua Airlines, Inc.
Chester County Aviation, Inc.
Colgan Air
Columbia Aviation, Inc.
CommutAir, Inc.
Corporate Air, Inc.
Corporate Airlines, Inc.
Delta Connection
Enterprise Airlines, Inc.
Heartland Aviation, Inc.
Henson Aviation Inc.
Horizon Air, Inc.
Jetstream International Airlines, Inc.
Long Island Airlines
Mesa Air Group, Inc.
Midwest Express Airlines, Inc.
New York Helicopter Corporation
Northcoast Executive Airlines, Inc.
Omniflight Helicopter Service, Inc.
Pennsylvania Aviation, Inc.
Southern Air Transport, Inc.
Westward Airways, Inc.

Ken Bannon
Gregorio Salas Calvo, Jr.
Doug Franklin
E.B. Freeman
Douglas Gumula
A. Edward Jenner
Lee Mason
Eric Nordling
Mark Prange
John Sinisi