



Order 2004-7-30

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

Issued by the Department of Transportation
on the 30th day of July, 2004

Essential air service at

**EL DORADO/CAMDEN, ARKANSAS
JONESBORO, ARKANSAS
HARRISON, ARKANSAS
HOT SPRINGS, ARKANSAS
ENID, OKLAHOMA
PONCA CITY, OKLAHOMA
BROWNWOOD, TEXAS**

Served: August 4, 2004

Docket OST-1997-2935

Docket OST-1997-2401

Docket OST-1997-2402

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

ORDER EXTENDING TIME FOR FILING OBJECTIONS

Background

By Order 2004-6-12, June 14, 2004, the Department requested interested persons to show cause why it should not terminate the essential air service subsidy eligibility of Enid and Ponca City, Oklahoma, and Brownwood, Texas, as of October 1, 2004, and allow Air Midwest, Inc., to suspend its subsidized services at those communities as of the same date.¹ The Department's tentative decision was based on a review indicating that subsidy at the three communities exceeds the statutory ceiling of \$200 per passenger; that those three communities are located within 210 miles of the nearest large or medium hub; and that, consequently, they are no longer eligible for subsidy to support their scheduled service. The order encouraged communities to work with Air Midwest and other operating carriers to develop credible service proposals with subsidy requirements of less than \$200 per passenger, and to include them as part of their objections. Under Order 2004-6-12, objections to the Department's tentative decision were due no later than 30 days after the order's service date, by July 19.

By Order 2004-7-6, July 9, 2004, the Department granted a two-week extension for the filing of objections, until August 2, after the Brownwood community requested an extension of 90 days. In that request, the community stated that it questioned the traffic data used by the Department to calculate Brownwood's subsidy per passenger, and that the additional time was necessary for it

¹ The Department also tentatively decided to terminate the subsidy eligibility of Jonesboro, Arkansas, in Order 2004-6-12, but later withdraw its tentative decision insofar as Jonesboro was concerned by Order 2004-7-2, July 1, 2004.

to provide traffic data of its own. In limiting the extension to two weeks, the Department noted that the original 30-day period was already 10 days more than usually allowed in such cases, and that an additional two weeks, giving communities more than double the usual amount of time for preparing objections, was far more than ample, particularly since carriers and airport authorities normally have traffic statistics immediately at hand.

Petition for Review

In a letter dated July 23, the Brownwood community filed a petition for review of Order 2004-7-6 under the Department's Regulations, 14 CFR 385.50, in which it asks that the due date for objections be extended by nearly four more weeks, until August 27. The community no longer claims that additional time is necessary to compile traffic statistics. Instead, the community now states that the additional two weeks granted by Order 2004-7-6 does not give it enough time to locate a carrier prepared to submit a proposal to serve Brownwood at a subsidy of less than \$200 per passenger. The community states that it is working with AirCap Partners, LLC, to locate such a carrier, but that AirCap Partners needs "at least until August 20, 2004, to gather and provide this information to the City, and a few days to finalize all details before submitting the actual bid to the Department."² The community also asks that it be given more time in order to evaluate its possible participation in the Alternate Essential Air Service Pilot Program.³

Decision

We have decided to extend the time for the filing of objections until August 13. Interested persons have already been given nearly seven weeks for preparing objections and/or proposals.⁴ That period goes well beyond the usual allowances of 20 days for objections or 30 days for carrier proposals. However, we want to ensure that the affected communities will have had every reasonable opportunity to respond to Order 2004-6-12. We will therefore give interested persons a short while longer to prepare their objections and/or to develop proposals in conjunction with *bona fide* operating carriers.

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

ACCORDINGLY,

1. We extend the due date for the filing of objections to Order 2004-6-12 until August 13, 2004;

² The community's petition is accompanied by a July 22 letter from Mr. Richard A. Bauer, President and CEO of AirCap Partners, to the Mayor of Brownwood. Neither Brownwood's petition nor Mr. Bauer's letter identifies an interested carrier. Brownwood's petition states that, "The City has pressed Mr. Bauer for details as to which carriers he may be presenting to the City, but he is not at liberty to provide that information as of yet."

³ See the Notice dated July 22, 2004, "Establishment of Alternate Essential Air Service Pilot Program Pursuant to Vision 100 -- 49 U.S.C. 41745," which provides information to communities interested in pursuing an alternative to the traditional essential air service program. Under the new program, communities have an opportunity to forgo their traditional essential air service for a prescribed amount of time in exchange for a grant to spend in a variety of ways that might better suit their individual needs.

⁴ From June 17, the service date of Order 2004-6-12, until August 2.

2. These dockets 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 El Dorado/Camden, Jonesboro, Harrison and Hot Springs, Arkansas, Enid and Ponca City, Oklahoma, and Brownwood, Texas, and on Air Midwest, Inc.

By:

KARAN K. BHATIA
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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