

Order 2004-9-17
Served: September 22, 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 September, 2004

Essential Air Service at

HANA, HAWAII
KALAUPAPA, HAWAII
KAMUELA, HAWAII

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

DOCKET OST-1999-6502
DOCKET OST-2000-6773
DOCKET OST-97-2833

ORDER REQUESTING PROPOSALS

Summary

By this order, the Department is requesting proposals from carriers interested in providing essential air service at Hana, Kalaupapa, and Kamuela, Hawaii, for a new two-year period, with or without subsidy. The order reflects new, streamlined procedures for processing such proposals.

Background

By Order 2002-8-10, August 12, 2002, the Department re-selected Pacific Wings, Inc. (Pacific Wings), to provide subsidized essential air service at Hana, Kalaupapa, and Kamuela, Hawaii, through November 30, 2004. Under that order, Pacific Wings operates the following number of nonstop round trips each week, all with 9-seat Cessna Caravans: Hana, 13 to Honolulu and 15 to Kahului for \$945,029 per year; Kalaupapa, 12 to Honolulu for \$483,982 per year; and Kamuela, 6 to Honolulu and 6 to Kahului for \$745,773 per year.

Request for Proposals

Under prior procedures when nearing the end of a subsidy rate term, absent any expected interest from carriers other than the incumbent, we negotiated a new subsidy rate with the incumbent and issued an order tentatively reselecting it for a new rate term at the agreed rate, while directing other parties to show cause why we should not finalize our tentative decision. Other carriers wishing to submit competing proposals were invited to do so in response to the show-cause order. If any such proposals were filed, we processed them as a competitive case.

In this instance, however, we expect that other carriers will be interested in providing service at Hana, Kalaupapa, and Kamuela. In order to give the communities and ourselves a full array of service/subsidy options for consideration, we have decided to forgo negotiating new rates with Pacific Wings at this time and instead proceed directly to a competitive carrier-selection case by requesting proposals from all interested carriers, including the incumbent.

Carriers interested in filing proposals, with or without subsidy requests, should file them within 30 days of the date of service of this order. At the end of that period, our staff will docket the proposals, thereby making them public, and direct each carrier to serve a copy of its proposal on the civic parties and other applicants. Shortly afterwards, we will provide a summary of the proposals to the communities and ask them to submit their final comments. We urge the communities to rank their preferences for the various options. We will give full consideration to all proposals that are timely filed.¹

New Procedures

The preceding paragraph reflects streamlined carrier-selection procedures that we have introduced for the essential air service program generally. In the past, we have accepted *initial* carrier proposals, reviewed them, and then negotiated *final* proposals with each applicant before formally presenting the proposals to the communities and asking for their final comments. We had 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 were unable to rely on competition to discipline carrier subsidy requests, and the communities had to wait on a protracted selection process. More recently, however, we have noticed that most orders requesting essential air service have drawn proposals from at least two carriers, and sometimes more. Under the 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.² We retain the discretion to negotiate proposals with carriers when we deem it desirable; in such cases, of course, we would give all applicants the same opportunity. For example, we anticipate that we will continue to negotiate rates in cases where there is only a single interested carrier, as is frequently the situation in Alaska. We also retain the discretion to reject outright all unreasonable or unrealistic proposals and resolicit a new round of proposals. However, we anticipate that negotiation or rejection will remain only occasional exceptions to the rule.

We are hereby providing interested carriers with some basic information to serve as guidance when they prepare their proposals, but we will not prescribe a precise format for their proposals. We expect proposals to adequately describe the service being proposed

¹ 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.

² For this reason, we will allow carriers 30 days to submit their proposals, rather than just 20 as in the past. Also, it is incumbent on each carrier to discuss with the communities its preferences before it submits its proposals.

and the annual amount of subsidy being requested. The 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 aircraft type, flight frequencies, projected block hours, passengers, revenues and expenses, completion factor, intermediate stops (if any), and whether or not upline service is contemplated. We strongly encourage clear, well-documented proposals that will facilitate their evaluation by the affected community and the Department. We do not anticipate any change in our selection criteria, or in the general provisions governing subsidy payments for essential air service.³

We encourage proposals that meet the needs of the communities in an efficient manner. Carriers are also welcome to propose more than one service option, if they choose, and they need not limit themselves in any way if they envision other, potentially more attractive service possibilities -- different hubs or smaller aircraft, for example -- with subsidy requirements that remain competitive.

Service and Traffic History

Pacific Wings has provided service to Hana, Kalaupapa, and Kamuela for a number of years. During the year ended May 2004, the most recent 12-month period for which traffic data are available, daily enplanements were as follows: Hana, 8.9 to Honolulu and 3.1 to Kahului; Kalaupapa, 5.3 to Honolulu; and Kamuela, 5.7 to Honolulu and 4.7 to Kahului.⁴ At Hana, applicants should consider an option adding service to Honolulu, the bigger traffic generating hub, and reducing or eliminating service to Kahului, which has generated much less traffic.

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 for 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 the regulations governing lobbying activities. Because the Department is prohibited from paying subsidy to carriers that do not submit these documents, all carriers that plan to submit proposals involving subsidy should be aware that the selected carrier will be required to complete the required

³ In selecting a carrier to provide subsidized essential air service, 49 U.S.C. 41733(c)(1) directs us to consider four factors: (1) service reliability; (2) contractual and marketing arrangements with a larger carrier at the hub; (3) interline arrangements with a larger carrier at the hub; and (4) community views. In addition, we have always given weight to the applicants' relative subsidy requirements. Appendix C contains the general provisions governing essential air service; as in the past, these provisions will be included in the selection order as part of the Department's authorization of subsidy for the selected service.

⁴ See Appendix B for historical traffic. Average enplanements per day are based on 313 days per year.

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).

certifications. Interested carriers requiring more detailed information regarding these requirements should contact the Office of Aviation Analysis at (202) 366-1053.⁶

Communities and State Comments

The communities and state are welcome to submit comments at any time. We encourage prospective applicants to contact the communities before they submit their proposals because their proposals are final. As noted earlier, we will provide a copy 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.

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 Hana, Kalaupapa, and Kamuela, Hawaii, submit their proposals, with or without subsidy requests, no later than 30 days after the date of service of this order. The proposals should be sent to the EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street S.W., Washington, DC 20590, with the title "Proposal to Provide Essential Air Service at Hana, Kalaupapa, and Kamuela, Hawaii, Dockets 6502, 6773, and 2833;⁷
2. This docket will remain open until further order of the Department; and
3. We will serve copies of this order on the mayor and airport managers of Hana, Kalaupapa, and Kamuela, Hawaii, Pacific Wings, Inc., and the carriers shown in Appendix D.

By:

KARAN K. BHATIA
Assistant Secretary for Aviation
and International Affairs, X-1

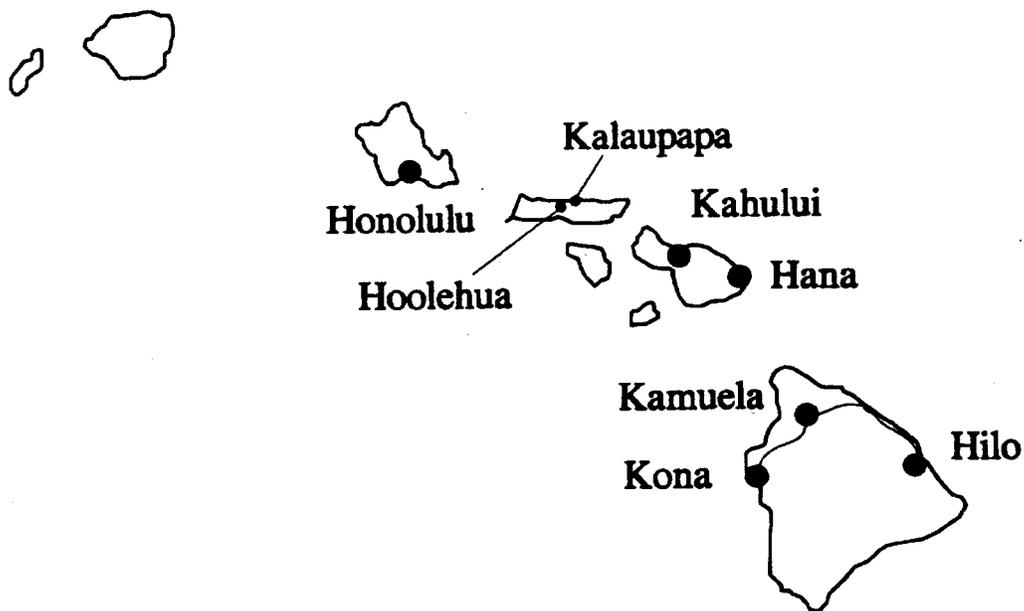
(SEAL)

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

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

⁷ Questions regarding filings in response to this order may be directed to Kevin Adams at (202) 366-1047.

HAWAII



Mileages

Kamuela - Kona	33
Kamuela - Hilo	45
Kamuela - Honolulu	171
Kamuela - Kahului	78
Hana - Kahului	28
Hana - Honolulu	128
Kalaupapa - Hoolehua	9
Kalaupapa - Honolulu	62

Historical Traffic Carried by Pacific Wings

		Hana							
		Honolulu		Kahului		Other		Total	
Year	Month	TO	FROM	TO	FROM	TO	FROM	TO	FROM
2003	1	226	146	123	104	0	0	349	250
2003	2	198	175	86	87	0	0	284	262
2003	3	206	235	91	96	0	0	297	331
2003	4	233	241	102	86	6	4	341	331
2003	5	230	243	95	91	6	3	331	337
2003	6	207	290	90	65	5	1	302	356
2003	7	216	216	72	70	10	10	298	296
2003	8	227	226	66	71	5	1	298	298
2003	9	250	228	99	98	2	5	351	331
2003	10	239	254	91	75	11	6	341	335
2003	11	253	246	120	107	0	3	373	356
2003	12	188	243	80	58	3	3	271	304
2004	1	241	251	97	70	0	2	338	323
2004	2	277	231	61	60	0	0	338	291
2004	3	259	270	59	54	0	0	318	324
2004	4	229	193	72	61	0	0	301	254
2004	5	<u>206</u>	<u>236</u>	<u>59</u>	<u>61</u>	<u>27</u>	<u>4</u>	<u>292</u>	<u>301</u>
YE 12/31/03		2,673	2,743	1,115	1,008	48	36	3,836	3,787
YE 5/31/04		2,792	2,884	966	850	63	35	3,821	3,769

		Kamuela							
		Honolulu		Kahului		Other		Total	
Year	Month	TO	FROM	TO	FROM	TO	FROM	TO	FROM
2003	1	106	109	174	154	0	0	280	263
2003	2	96	94	122	113	0	0	218	207
2003	3	146	119	143	155	0	2	289	276
2003	4	117	105	174	157	2	0	293	262
2003	5	140	147	130	123	0	0	270	270
2003	6	126	134	140	128	1	3	267	265
2003	7	152	166	140	131	0	0	292	297
2003	8	143	163	122	112	2	0	267	275
2003	9	134	151	102	96	2	0	238	247
2003	10	169	179	132	102	75	0	376	281
2003	11	152	170	106	112	0	0	258	282
2003	12	169	184	131	104	0	1	300	289
2004	1	185	165	113	109	10	0	308	274
2004	2	132	128	122	84	0	0	254	212
2004	3	158	139	111	96	0	0	269	235
2004	4	142	133	109	101	0	0	251	234
2004	5	<u>132</u>	<u>146</u>	<u>140</u>	<u>110</u>	<u>0</u>	<u>12</u>	<u>272</u>	<u>268</u>
YE 12/31/03		1,650	1,721	1,616	1,487	82	6	3,348	3,214
YE 5/31/04		1,794	1,858	1,468	1,285	90	16	3,352	3,159

Source: T-100 Market Report

Historical Traffic Carried by Pacific Wings

Year	Month	Kalauapapa					
		Honolulu		Kahului		Total	
		TO	FROM	TO	FROM	TO	FROM
2003	1	122	114	0	0	122	114
2003	2	163	151	0	0	163	151
2003	3	111	129	5	1	116	130
2003	4	108	109	3	4	111	113
2003	5	107	101	0	2	107	103
2003	6	130	131	5	5	135	136
2003	7	131	134	7	6	138	140
2003	8	126	145	13	11	139	156
2003	9	144	118	4	12	148	130
2003	10	156	153	12	8	168	161
2003	11	138	137	4	8	142	145
2003	12	107	134	12	11	119	145
2004	1	126	119	15	12	141	131
2004	2	108	111	2	4	110	115
2004	3	144	118	0	0	144	118
2004	4	145	150	0	0	145	150
2004	5	<u>131</u>	<u>128</u>	<u>0</u>	<u>0</u>	<u>131</u>	<u>128</u>
YE 12/31/03		1,543	1,556	65	68	1,608	1,624
YE 5/31/04		1,586	1,578	74	77	1,660	1,655

General Terms and Conditions for Essential Air Service

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 plans 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 the 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 ensured 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 stipulated amounts or at the stipulated 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 Department and carrier 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.

SERVICE LIST FOR THE STATE OF HAWAII

Air Molokai, Inc.
Air Nevada Airlines, Inc.
Aloha Islandair, Inc.
Amerijet International, Inc.
Corporate Airlines, Inc.
Delta Connection
Hawaiian Airlines, Inc.
Mahalo Air, Inc.
Mesa Airlines, Inc.
Midwest Express Airlines, Inc.
Mokulele Flight Service, Inc.
SkyVantage Corporation
Trans Executive Airlines of Hawaii, Inc.
Westward Airways, Inc.

Ken Bannon
Gregorio Salas Calvo, Jr.
Myron Caplan
Doug Franklin
E.B. Freeman
Kawehi Inaba
A. Edward Jenner
Lee Mason
Cory Robin