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Order 97-8-9
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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 6th day of August, 1997

Essential Air Service at **FAIRMONT, MINNESOTA** **BROOKINGS, SOUTH DAKOTA** **YANKTON, SOUTH DAKOTA** **DEVILS LAKE, NORTH DAKOTA** **JAMESTOWN, NORTH DAKOTA** **NORFOLK, NEBRASKA** under 49 U.S.C. 41731 *et seq.*	**Docket OST-97-2785**

ORDER RESELECTING CARRIER
AND ESTABLISHING FINAL SUBSIDY RATE

Summary

By this order, the Department is revising the service levels and subsidy rate for the essential air service (EAS) to be operated by Great Lakes Aviation, Ltd., d/b/a United Express, at Fairmont, Minnesota, Brookings and Yankton, South Dakota, Devils Lake and Jamestown, North Dakota, and Norfolk, Nebraska, and reselecting Great Lakes to provide subsidized essential air service at the six communities for a new two-year rate term beginning when the new service is implemented, on or about August 18, 1997, through July 31, 1999.[1]

[1] See Appendix A for a map.

Background

Air service at the six communities that we are addressing in this order has been adversely affected over the past two years by a succession of events. Consequently, four of the cities (Fairmont, Brookings, Yankton and Norfolk) have no air service at this time, and the other two (Devils Lake and Jamestown) had a service hiatus from mid-May of this year until July 22 when Great Lakes reinstated service there.

All of these communities now require subsidy support for their air service. In November 1995 service was reduced at each community (except at Norfolk, which was subsidy-free at that time) to ten round trips a week, reflecting program-wide cutbacks as a result of congressional reductions in funding for the essential air service program.[2] That reduction eroded traffic and the operating efficiencies of their incumbent airline, Great Lakes Aviation. Great Lakes subsequently discontinued its service at Fairmont, citing the Court's decision in *Mesa Air Group, Inc., v. DOT* decision (D.C. Cir. No. 96-1017); and in May of this year the carrier voluntarily suspended all flight operations while it worked with the Federal Aviation Administration to resolve operational deficiencies in its system. Great Lakes has since resumed service at many of its communities, including Devils Lake and Jamestown, and, subject to the authorization of new subsidy rates, plans to resume service at Fairmont, Brookings, Norfolk and Yankton on or about August 18.

In addition, with the passage of the FAA reauthorization legislation in 1996, Congress has now provided for increased funding for essential air service beginning October 1997.[3] The Department intends to use these funds to restore compliance with the statutory essential air service requirements established in the Airport and Airway Safety and Capacity Expansion Act of 1987 which in turn we find imperative for communities to regain traffic and promote growth. Therefore, we requested that Great Lakes submit a proposal contemplating increased service at the six communities. We also encouraged Great Lakes to consider implementing the higher service levels before October 1997 in recognition of the communities' hiatus in service following Great Lakes' temporary suspension of operations on May 16. Funds are available for improved service for these communities this fiscal year.

Previous Service and Subsidy Rates

For each of the six communities, the most recent Department actions established subsidy rates for Great Lakes for a service level of ten round trips a week as follows: By Order 97-6-25, June 24, 1997, the Department selected Great Lakes to provide ten nonstop or one-stop round trips a week between Devils Lake and Minneapolis/St. Paul, and between Jamestown and Minneapolis/St. Paul with 19-seat Beech 1900 aircraft at an annual subsidy rate of $831,011 for the period from April 1, 1997, until

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[2] See Orders 95-11-28, November 17, 1995, and 96-2-1, February 2, 1996.

[3] Funds for the Essential Air Service Program in the amount of $50 million are provided for by the Rural Air Service Survival Act, which is part of the Federal Aviation Administration Reauthorization Act of 1996.

further Department action. By Order 97-4-7, April 4, 1997, the Department approved Great Lakes' request to resume subsidized essential air service at Brookings subject to a use-it-or-lose-it test, and to change Brookings' hub from Minneapolis/St. Paul to Chicago. Great Lakes was selected to operate ten round trips each week between Brookings and Chicago O'Hare Airport via Sioux Falls at an annual subsidy rate of $216,622 for the two-year period from May 1, 1996, through April 30, 1998. By Order 97-1-4, January 8, 1997, Great Lakes was selected to operate ten nonstop or one-stop round trips each week between Norfolk and Minneapolis/St. Paul and between Yankton and Minneapolis/St. Paul with 19-seat Beech 1900 aircraft at an annual subsidy rate of $686,462 for the two-year period from October 1, 1996, through September 30, 1998. There was no rate in place for Fairmont because the Department received no replacement proposals following Great Lakes' invoking the Mesa decision to terminate its service there last February.

Prior to the November 1995 service reductions the Department had subsidized 17 round trips a week at Fairmont and Brookings and 18 at Devils Lake, Jamestown and Yankton -- *i.e.*, three each weekday, with reduced weekend frequencies. Great Lakes provided subsidy-free service at Norfolk until it filed a suspension notice and was subsequently selected to provide subsidized service consisting of ten nonstop or one-stop round trips a week between Norfolk and Minneapolis, effective July 8, 1996.

Carrier Proposal

Great Lakes submitted a proposal in response to our request and, as a result of discussions with Department staff, has agreed to provide 18 round trips a week between each of the communities and Minneapolis/St. Paul with 19-seat Beech 1900 aircraft at an annual subsidy rate of $4,070,247. This rate would be effective for a new two-year rate term beginning when the new service is implemented, on or about August 18, 1997, through July 31, 1999. Specifically, Great Lakes has agreed to provide 18 nonstop round trips each week between Fairmont and Minneapolis/St. Paul, Jamestown and Minneapolis/St. Paul, and Yankton and Minneapolis/
St. Paul, 18 nonstop or one-stop round trips each week between Devils Lake and Minneapolis/
St. Paul, and Norfolk and Minneapolis/St. Paul, and 18 round trips each week, at least 12 of which would be nonstop and the remainder no more than one-stop, between Brookings and Minneapolis/St. Paul.

Decision

After a thorough review of Great Lakes' proposal and its recent service history, we have decided to select it to provide the service it has proposed for the period beginning when the new service is implemented, on or about August 18, 1997, through July 31, 1999, at the agreed subsidy rate of $4,070,247 annually.[4] The rate

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[4] Appendix B contains details of Great Lakes' compensation requirement. Because the communities at issue here have all endured suspensions of service during this year, we find in the special circumstances of this case that it is appropriate to

appears reasonable for the service proposed and Great Lakes' performance continues to be satisfactory.

When the Department implemented the program-wide subsidy cuts in November 1995, service at most subsidized communities was reduced below statutory minimums. With the full funding anticipated for fiscal year 1998, the Department now expects to restore service at all of the subsidized communities to levels that are commensurate with statutory and program guidelines.[5]

In this case, we have reviewed Great Lakes' proposal and the communities' traffic histories and find that the provision of additional service is appropriate. We must note, however, that the subsidy necessary to support the service increases is considerable. We expect Great Lakes, civic officials, and major businesses to work energetically together to promote the service improvements. In that regard, we have earmarked in Great Lakes' subsidy rate a specific dollar amount for local advertising, and fully expect the carrier to use that amount as proposed.

Carrier Fitness

49 U.S.C. 41738 requires that we find an air carrier fit, willing and able to provide service before we may compensate it for essential air service. We last found Great Lakes fit to provide scheduled passenger service as a commuter air carrier by Order 97-6-25, June 24, 1997, when we selected it to provide subsidized service at Devils Lake and Jamestown, North Dakota. We noted at that time that after a brief shutdown in May 1997, Great Lakes had applied for a redetermination of its fitness to permit it to resume commuter operations. Our review indicated that Great Lakes continued to be fit to provide scheduled passenger operations and, on that basis, we allowed Great Lakes to resume operations on May 23. The carrier has since that time accomplished a gradual and systematic reinstatement of services under the close scrutiny and approval of the Federal Aviation Administration. Great Lakes continues to have available adequate financial and managerial resources to maintain quality service at the six points addressed in this order and it continues to possess a favorable compliance disposition. The Federal Aviation Administration has advised us that the carrier is conducting its operations in accordance with its regulations, and knows of no reason why we should not find that Great Lakes remains fit. With specific regard to the new services at issue in this order, the FAA has advised us that the carrier is progressing on schedule and it anticipates full approval of the expansion by the August 18 target date. Great Lakes' operations remain subject to the Department's ongoing monitoring of its continuing fitness.

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authorize Great Lakes to implement its proposal, at the rates established here, prior to the end of the current fiscal year. Great Lakes has informally agreed that, if funding for fiscal year 1998 is not sufficient to support the full service levels authorized in this order after October 1, 1997, it will maintain a reduced service level for each point, at a reduced rate that would be open to negotiation.

[5] 49 U.S.C. 41732(b)(1)(A) specifies that eligible communities are to receive at least two round trips a day, six days a week; moreover, the Department's program guidelines (14 CFR 398.5) contemplate service levels commensurate with a community's historical traffic and traffic-generating potential.

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

ACCORDINGLY,

1. We reselect Great Lakes Aviation, Ltd., d/b/a United Express, to provide essential air service at Fairmont, Minnesota, Brookings and Yankton, South Dakota, Devils Lake and Jamestown, North Dakota, and Norfolk, Nebraska, as described in Appendix C, for the period beginning when the new service is implemented, on or about August 18, 1997, through July 31, 1999;

2. We terminate the rates set by Orders 97-6-25, 97-4-7, and 97-1-4, effective on the day before the new service is implemented, and set the new final rate of compensation for Great Lakes for the provision of essential air service at Fairmont, Minnesota, Brookings and Yankton, South Dakota, Devils Lake and Jamestown, North Dakota, and Norfolk, Nebraska, at $4,070,247 per year, as described in Appendix C, for the period beginning when the new service is implemented, on or about August 18, 1997, through July 31, 1999, payable as follows: for each month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceiling set forth in Appendix C, and shall be determined by multiplying the subsidy-eligible arrivals and departures completed during the month by $368.58;[6]

3. If sufficient funding is not available on October 1, 1997, to compensate Great Lakes in accordance with ordering paragraph 2 above, Great Lakes will continue to provide a reduced level of service for each community, at a reduced subsidy rate to be negotiated, for the remainder of the present rate period or until such time as increased funding does become available;

4. We direct Great Lakes Aviation, Ltd., d/b/a United Express, to retain all books, records, and other source and summary documentation 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. 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;

5. We find that Great Lakes Aviation, Ltd., d/b/a United Express, continues to be fit, willing and able to operate as a commuter air carrier and is capable of providing reliable essential air service at Fairmont, Minnesota, Brookings and Yankton, South Dakota, Devils Lake and Jamestown, North Dakota, and Norfolk, Nebraska;

6. This docket will remain open until further order of the Department; and

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[6] See Appendix B for the calculation of this rate, which assumes the use of the aircraft designated. If the carrier reports a significant number of aircraft substitutions, revision of this rate may be required.

7. We will serve a copy of this order on the Mayors and airport managers of Fairmont, Minnesota, Brookings and Yankton, South Dakota, Devils Lake and Jamestown, North Dakota, and Norfolk, Nebraska, the Governors of Minnesota, Nebraska, North Dakota, and South Dakota, the Departments of Transportation of Minnesota, Nebraska, North Dakota, and South Dakota, and Great Lakes Aviation, Ltd., d/b/a United Express.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

GREAT LAKES AVIATION
ESSENTIAL AIR SERVICE AT
FAIRMONT, MINNESOTA, BROOKINGS AND YANKTON, SOUTH DAKOTA,
DEVILS LAKE AND JAMESTOWN, NORTH DAKOTA, AND
NORFOLK, NEBRASKA

EFFECTIVE PERIOD: August 18,	Beginning when the new service is implemented, on or about 1997, through July 31, 1999
SERVICE:	
Fairmont, Minnesota	18 nonstop round trips each week between Fairmont and Minneapolis/St. Paul
Brookings, South Dakota between	12 nonstop and 6 nonstop or one-stop round trips each week Brookings and Minneapolis/St. Paul
Yankton, South Dakota Minneapolis/	18 nonstop round trips each week between Yankton and St. Paul
Jamestown, North Dakota Minneapolis/	18 nonstop round trips each week between Jamestown and St. Paul
Devils Lake, North Dakota Devils Lake and	18 nonstop or one-stop round trips each week between Minneapolis/St. Paul
Norfolk, Nebraska and	18 nonstop or one-stop round trips each week between Norfolk Minneapolis/St. Paul
AIRCRAFT TYPE:	Beech 1900 -- 19 seats
TIMING OF FLIGHTS:	Flights must be well-timed and well-spaced to ensure full compensation.
ANNUAL SUBSIDY RATE:	$4,070,247
SUBSIDY RATE PER DEPARTURE/ARRIVAL	$368.58[1]

[1] Fairmont, Brookings, Yankton, Devils Lake, Jamestown, and Norfolk are each scheduled to receive 18 departures to Minneapolis/St. Paul and 18 arrivals from Minneapolis/St. Paul a week. Annual compensation of $4,070,247 divided by the number of flights scheduled annually to Minneapolis/St. Paul and from Minneapolis/St. Paul, calculated by multiplying: 36 arrivals/departures per service day x 313 days x 0.98 completion factor: $4,070,247/11,043=$368.58.

Appendix C
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COMPENSATION CEILING EACH WEEK	
FAIRMONT	$13,269.24[2]
BROOKINGS	$13,269.24[2]
YANKTON	$13,269.24[2]
DEVILS LAKE	$13,269.24[2]
JAMESTOWN	$13,269.24[2]
NORFOLK	$13,269.24[2]

NOTE

The carrier has been notified that it may forfeit its eligibility for compensation for any flights that it does not operate in full conformance with the terms and stipulations of this order, including the service plan outlined in this 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 this order during the applicable period of this order, 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 subsidized 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 parties to this order 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.

[2] The subsidy rate per arrival/departure ($368.58) times 36 scheduled subsidy-eligible flights each week.