

Order 97-9-1

Served: September 8, 1997



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

Issued by the Department of Transportation  
on the 2<sup>nd</sup> day of September, 1997

Essential air service at

**KAMUELA, HAWAII**

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

**Docket OST-97- 2833 (48638)**

**ORDER TENTATIVELY RESELECTING CARRIER,  
ESTABLISHING SUBSIDY RATES,  
AND REQUESTING CARRIER PROPOSALS**

**Summary**

By this order, the Department is amending the level of service and subsidy to be provided by Trans Executive Airlines, Inc., d/b/a TransAir, at Kamuela, Hawaii, for the period October 1, 1997, through April 30, 1998.<sup>1</sup> It sets the minimum service level as 12 nonstop round trips a week between Kamuela and Honolulu for an annualized subsidy rate of \$376,848. All service would be with 9-seat Cessna 402 aircraft. Furthermore, the order directs all parties to show cause why we should not reselect TransAir at this service/subsidy level for an additional two-year period, from May 1, 1998, through April 30, 2000.

**Background**

By Order 96-6-30, June 14, 1996, the Department last selected TransAir to provide subsidized essential air service between Kamuela and Honolulu, Hawaii, for the two-year period ending April 30, 1998.<sup>2</sup> Specifically, TransAir was selected to operate ten nonstop round trips each week between Kamuela and Honolulu at an annual subsidy of \$292,061. All service was to be provided with 9-seat Cessna 402 aircraft.

The ten round trips a week reflected Congressional reductions in funding for the essential air service program and the Department's implementation of program-wide subsidy reductions. For TransAir's service at Kamuela, we reduced the level of subsidized service from 12 round trips a week to ten round trips a week, consistent with our actions throughout the program, except in Alaska.<sup>3</sup>

Under our normal procedures when nearing the end of a subsidy rate term, we contact the incumbent carrier to determine whether it is interested in continuing its service and whether it will continue to

<sup>1</sup> Because Trans Air was selected through April 30, 1998, we will not request competing proposals for that period, but only for the ensuing two-year period.

<sup>2</sup> See Appendix A for a map.

<sup>3</sup> See Orders 95-11-28, November 17, 1995, and 96-2-1, February 2, 1996.

require subsidy. We usually negotiate a new subsidy rate with the carrier, issue an order tentatively reselecting it for a new rate term at the agreed rate, and direct other parties to show cause why we should not finalize our tentative decision. Other carriers wishing to submit competing proposals are invited to do so in response to the show-cause order; if any such proposals are filed, we process them as a competitive case. Consistent with this practice, we invited TransAir to submit proposals for the continuation of its essential air service at the Kamuela.

Congress has now provided a funding level of \$50 million a year for the program beginning in fiscal year 1998, i.e., beginning October 1, 1997. These funds are provided for by the Rural Air Service Survival Act which is part of the Federal Aviation Administration reauthorization legislation enacted in 1996. The Department intends to use these funds to restore compliance with the statutory essential air service frequency requirements established in the Airport and Airway Safety and Capacity Expansion Act of 1987 of two round trips a day, six days a week.

### **Carrier Proposal**

In response to our request, TransAir has submitted a service/subsidy option of 12 nonstop round trips a week between Kamuela and Honolulu with 9-seat Cessna 402 aircraft. It requests \$376,848 for this service. TransAir would provide this level of service through the end of its current selection period, April 30, 1998, and for an additional two-year period thereafter, through April 30, 2000.

### **Decision**

Because the additional funding is not available until fiscal year 1998, the carrier will continue operating under Order 96-6-30 -- ten round trips a week subsidized at \$292,061 annually through September 30, 1997.<sup>4</sup> Effective October 1, 1997, and through the end of the current rate term, April 30, 1998, we will amend TransAir's service and subsidy levels to provide for 12 nonstop or one-stop round trips a week between Kamuela and Honolulu with 9-seat Cessna 402 aircraft and set an annual subsidy of \$376,848.<sup>5</sup> We have also tentatively decided to reselect TransAir to provide essential air service at Kamuela for the following two-year period, May 1, 1998, through April 30, 2000, for \$376,848 annually.<sup>6</sup> Consistent with long-standing program policy, we will allow interested carriers to submit competing proposals for the latter two-year period.

We have reviewed TransAir's proposals and the community's traffic history and find that the restoration of subsidy for the service levels that were in place before the program-wide reductions is appropriate. We also find that TransAir's service has been reliable and its proposed subsidy is reasonable.

### **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 TransAir fit to provide scheduled passenger service by Order 96-6-30, June 14, 1996, when we selected it to provide subsidized service at Kamuela. The Department has routinely monitored the carrier's continuing fitness, and based on our review of its most recent submissions, we find TransAir continues to have available adequate financial and managerial resources to maintain quality service at Kamuela, and that 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 TransAir remains fit. TransAir has experience providing essential air service at Kamuela, and, based on its operating record, we find that the carrier continues to be fit to provide the essential air transportation at issue in this case.

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<sup>4</sup> Order 97-8-14 provides all subsidized carriers, including TransAir, additional subsidy to reinstate the full statutory service level -- 12 round trips a week, effective August 9, 1997 -- at the carriers' discretion. Subsidy per departure will be that set in Order 96-6-30, and is slightly less than that provided for here.

<sup>5</sup> If TransAir is not in a position to increase its service to 12 round trips a week promptly on October 1, we would expect it to do so as soon as possible thereafter.

<sup>6</sup> Appendix B contains details of Trans Air's compensation requirements for these rates.

### **Responses to Tentative Decision**

We will give interested persons 20 days from the date of service of this order to show cause why we should not make final our tentative decision to reselect TransAir to provide essential air service at Kamuela at the subsidy rates discussed above. We expect persons objecting to our tentative decision to support their objections with relevant and material facts. We will not entertain general, vague or unsupported objections.

Carriers interested in filing competing proposals, with or without subsidy requests, should file them within the 20-day period set for objections. At the end of that period, our staff will docket any competing proposals, thereby making them public, and direct each applicant to serve a copy of its proposal on the civic parties and other applicants. We will give full consideration to all proposals that are timely filed.

### **Service History and Traffic Data**

TransAir has provided subsidized essential air service at Kamuela for a number of years, over the Kamuela-Honolulu nonstop routing, beginning on April 17, 1993. Before that time, Kamuela was served by Aloha Island Air. TransAir has provided 12 nonstop round trips a week to Kamuela, except for the period after December 1995 when, subject to budget constraints, the subsidy level was cut back to support only ten round trips a week. Traffic has continually trended down since 1989, as shown in Appendix D.

### **Procedures for Filing Replacement Proposals**

For interested carriers unfamiliar with our procedures and recommended form for supplying the necessary information, we have prepared two explanatory documents that we will make available upon request. The first describes the process for handling carrier replacement cases under 49 U.S.C. 41734(f), and discusses in detail the process of requesting proposals, conducting reviews of applicants, and selecting a replacement carrier. The second is an evidence request containing an explanatory statement, a copy of Part 204 of our regulations (14 CFR 204), and schedules setting forth our recommended form for submitting data required for calculating compensation and determining the financial and operational ability of applicants to provide reliable essential air service. (Section 204.4 describes the fitness information required of all applicants for authority to provide essential air service.) Applicant carriers that have already submitted this information in another case need only resubmit it if a substantial change has occurred. However, if there are more recent data or if there have been any changes to the information on file, carriers should provide updates of those information elements. Interested carriers that need to obtain copies of these documents may contact the Office of Aviation Analysis at (202) 366-1053.

### **Other Carrier Requirements**

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.<sup>7</sup> 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 the 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

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<sup>7</sup> The regulations applicable to each of these three areas are (1) 49 CFR Part 20, New Restrictions of Lobbying, implementing title 31, United States Code, section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions"; (2) 49 CFR Part 29, Subpart F, Drug-Free Workplace Requirements (Grants), implementing the Drug-Free Workplace Act of 1988; and (3) 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 Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and 14 CFR Part 382, Nondiscrimination on the Basis of Handicap in Air Travel.

of Aviation Analysis at (202) 366-1053. The Department is prohibited from paying subsidy to carriers that do not submit these documents.

### **Community and State Comments**

If we receive competing proposals, the community and State are welcome to submit comments on the proposals at any time. Early in the proceeding, comments on the proposals' strengths and weaknesses would be particularly helpful, and the civic parties may also express a preference for a particular carrier, if they choose. In any event, after conducting rate conferences with all applicants, we will provide a summary of the conference results to the civic parties and ask them to file their final comments.<sup>8</sup>

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

### **ACCORDINGLY,**

1. We set the final rate of compensation for Trans Executive Airlines, Inc., d/b/a TransAir, for the provision of essential air service at Kamuela, Hawaii, as described in Appendix C, for the period from October 1, 1997, or when TransAir implements the new service pattern, whichever is later, through April 30, 1998, 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 \$311.19;<sup>9</sup>

2. We tentatively reselect TransAir to provide essential air service at Kamuela, Hawaii, as described in Appendix C, for the period May 1, 1998, through April 30, 2000, and extend the rate in paragraph (1) through that time;

3. We direct TransAir to retain all books, records, and other source and summary documentation to support 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;

4. We find that TransAir continues to be fit, willing and able to operate as an air carrier and capable of providing essential air service at Kamuela, Hawaii;

5. We direct TransAir and any other interested persons having objections to the selection of TransAir to provide essential air service as described in ordering paragraph (1) above at the rate set forth in that paragraph, to file such objections or competing service proposals no later than 20 days from the date of service of this order;<sup>10</sup>

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<sup>8</sup> 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 normally hold rate conferences. Instead, we rely on the carrier's subsidy-free service as proposed.

<sup>9</sup> 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.

<sup>10</sup> Objections should be filed with the Documentary Services Division, SVC-121.30, Room PL401, Department of Transportation, 400 7th Street, S.W., Washington, DC 20590. Proposals to provide essential air service should be filed with the Chief, EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, at the same address. Questions regarding filings in response to this order may be directed to Dennis J. DeVany at (202) 366-1061.

6. If we receive objections or competing proposals within the 20-day period, TransAir will be compensated at the subsidy rate set forth in Order 97-8-14 or at the rate set in ordering paragraph (1) above, as appropriate, as a final rate until all objections are resolved;
7. We will afford full consideration to the matters and issues raised in any timely and properly filed objections and service proposals before we take further action.<sup>11</sup> If no objections or competing service proposals are filed, all further procedural steps will be deemed waived and this order shall become effective on the twenty-first day after its service date;
8. This docket will remain open until further order of the Department; and
9. We will serve copies of this order on the Mayor and airport manager of Kamuela, the Hawaii Department of Transportation; the Governor of Hawaii; Trans Executive Airlines, Inc., d/b/a TransAir, and the parties listed in Appendix E.

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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<sup>11</sup> Since we are providing for the filing of objections to this order, we will not entertain petitions for reconsideration.

Appendix B

**Trans Air, Essential Air Service at Kamuela, Hawaii, Docket 48638**

Weekly Round Trip Frequency	12
Fares	\$40
Total Pax.	3,600
Passenger Revenue	\$144,000
<u>Other Revenue @ 1%</u>	<u>\$1,440</u>
Total Revenue	\$145,440
Flight Hours	1,110 1/
<u>Expenses:</u>	
Flying Operations @ \$66.34/hr.	\$73,637
Fuel @ \$95.33/hr.	\$105,816
Maintenance @ \$102.28/hr.	\$113,531
<u>Depr. &amp; Ins. @ \$31.01/hr.</u>	<u>\$34,421</u>
Direct Expense	\$327,405
Marketing	\$5,000
Indirect Exp. @ 50.4% of directs	\$170,012
Total Operating Expense	\$497,417
<u>Return at 5%</u>	<u>\$24,871</u>
Total Economic Cost	\$522,288
Annual Subsidy Need	
97% completion	\$376,848

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1/ MUE-HNL: 55 min./flt. x 24 flts./week x 52 weeks x .97/60 = 1,110 ft. hrs.

**TRANSAIR COMMUTER AIRLINES, INC.  
ESSENTIAL AIR SERVICE AT KAMUELA, HAWAII**

**EFFECTIVE PERIOD:** October 1, 1997, through April 30, 2000

**SCHEDULED PASSENGER SERVICE:** 12 nonstop round trips each week between Kamuela and Honolulu

**AIRCRAFT TYPE:** Cessna 402, 9-seats.

**Pilots:** A pilot and co-pilot are required.

**TIMING OF FLIGHTS** Flights must be well-timed and well-spaced to ensure full compensation.

10/1/97 - 4/30/2000

**SUBSIDY RATE PER ARRIVAL/DEPARTURE** \$311.19<sup>1</sup>

**COMPENSATION CEILING EACH WEEK:** \$7,468.56<sup>2</sup>

**NOTE**

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 plan 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 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 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 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 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 the agreement 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.

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<sup>1</sup> Annual compensation of \$376,848 divided by the estimated annual completed departures and arrivals at a 97 percent completion factor: 24 departures/arrivals x 52 weeks x .97 = 1,211.

<sup>2</sup> Subsidy rate per arrival/departure of \$306.85 multiplied by 24 subsidy-eligible arrivals and departures each week.

## Appendix D

### Historical Enplanements at Kamuela

1989	7,670
1990	6,325
1991	6,349
1992	6,078
1993	1,476 <sup>1</sup>
1994	1,783
1995	1,769
1996	989

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<sup>1</sup> Trans Air began regular service on April 17, 1993, after a service hiatus. Includes 362 enplanements reported by Aloha Island Air in the first quarter.