

2015-7-10



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

Issued by the Department of Transportation
on this 22nd day of July, 2015

Great Lakes Aviation, Ltd.

**Violations of 14 CFR Part 323
And 49 U.S.C. § 41734**

Docket OST 2015-0002

Served July 22, 2015

CONSENT ORDER

This consent order concerns violations by Great Lakes Aviation, Ltd. (Great Lakes) of the statutory and regulatory provisions requiring the carrier to provide advance notice before ending, suspending, or reducing air transportation provided under the Essential Air Service (EAS) Program, 49 U.S.C. § 41734 and 14 CFR Part 323. This order directs Great Lakes to cease and desist from future similar violations and assesses the carrier \$40,000 in civil penalties.

Background and Applicable Law

Through the EAS Program, the Department of Transportation (DOT) subsidizes air carriers that provide air service to rural and/or isolated communities that would not otherwise receive scheduled air transportation following the deregulation of the airline industry in 1978. Through the EAS Program, the Department enters into contracts with air carriers to provide guaranteed minimum levels of service to EAS communities. 49 U.S.C. §§ 41732-41733.¹

¹The standards for basic essential air service are set forth in detail at 49 U.S.C. § 41732. In general, minimum service consists of two daily round trip flights a hub airport, six days per week. 49 U.S.C. § 41732(a), (b)(1)(A).

Before a carrier participating in the EAS Program may end, suspend, or reduce EAS service below guaranteed minimum levels, the carrier must first provide 90 days' advance notice to the affected community, the appropriate state authority, and the DOT. 49 U.S.C. § 41734(a). These notice requirements are incorporated into both the Department's regulations for the EAS Program (14 CFR Part 323), and the Department's Carrier Selection Orders. *See, e.g.*, DOT Order 2011-12-4 (December 13, 2011) (Great Lakes Selection Order for Pueblo, CO). The notice requirement gives the DOT and affected communities the opportunity to seek alternative providers in a timely and orderly manner. The notice requirement also gives interested parties the opportunity to file objections to the proposed reduction in service. See 14 CFR 323.9-323.13.

The notice requirements are set forth in detail at 14 CFR 323.4.² Generally, notice must conform to the procedural rules of subpart A of 14 CFR Part 302 (relating to service of documents in DOT proceedings). 14 CFR 323.6. Notice must be served upon: (1) the chief executive of the local government at the affected place; (2) the state agency with jurisdiction over air transportation; (3) the manager of the affected airport; (4) certain other air carriers that may be directly affected by the notice; and (5) the DOT. 14 CFR 323.7.

Facts

Great Lakes is a commuter air carrier based in Cheyenne, Wyoming, serving both EAS and non-EAS communities in nine states. Between January 1, 2014, and April 8, 2014, Great Lakes, without the required 90-day procedural notice to the DOT and others, ceased providing EAS service to 13 of the 32 EAS communities that it served.³ During that same time period, Great Lakes reduced service below EAS minimum levels to three other EAS communities.⁴ In each case, Great Lakes did not provide the full, 90-day notice requirements found in 14 CFR Part 323. In doing so, Great Lakes failed to comply with 14 CFR Part 323 and 49 U.S.C. § 41734.

By failing to provide notice as required, Great Lakes compromised the ability of all EAS stakeholders, including the Department, to ensure that adequate and uninterrupted EAS service was provided to the affected communities. One purpose of the statutorily required 90-day notice provision is to give passengers and shippers in the community sufficient notice that the service may not be in place after the end of the 90-day period,

²For example, the notice must, *inter alia*: provide contact information for the carrier; name all the other air carriers serving the point; provide a detailed description of the service to be terminated, including the specific routes that will be discontinued; provide the calendar date by which objections to the notice are due; and provide proof of service. 14 CFR 323.4.

³Moab, UT; Vernal, UT; Pueblo, CO; Fort Dodge, IA; Mason City, IA; Ironwood, MI/Ashland, WI; Thief River Falls, MN; Devils Lake, ND; Jamestown, ND; Great Bend, KS; Hays, KS; and McCook, NE. At Clovis, NM, Great Lakes filed the requisite 90-day notice on December 10, 2013, but ceased serving Clovis before the end of the 90-day notice period and before a replacement carrier inaugurated service. Service at McCook resumed by June 2014, albeit with less than EAS-minimum requirements.

⁴Alliance, NE; Chadron, NE; and Silver City/Deming/Hurley, NM.

and to give them sufficient time to make alternate travel and shipping arrangements. Great Lakes' failure to provide the required notice deprived the affected communities of this ability.

Mitigation

According to Great Lakes, the August 1, 2013, new First Officer 1500-hour, ATP-certificate requirements, together with the 2014 duty-rest rules led to a nationwide pilot supply emergency that made compliance with 14 CFR Part 323 beyond Great Lakes' capacity. Great Lakes states that in April of 2013, it attempted to ameliorate the expected pilot shortage by asking the FAA to allow the use of FAR Part 135 hiring standards for FAR Part 121 operations. Great Lakes states that after many delays, on March 18, 2014, the FAA ultimately granted the operation specification certification that allowed FAR Part 135 hiring standards and duty rest rules on the FAR Part 121 Air Carrier Certificate. According to Great Lakes, this change enabled Great Lakes to fly Beech 1900 aircraft in 9-seat configurations, so as to comply with all applicable regulations while at the same time building up new-pilot flight time.

Great Lakes states that beyond seeking an exception to FAA hiring restrictions, it could not have anticipated or planned for the swift and significant pilot crunch that gripped the company and the nation in 2014. Great Lakes states that it gave the affected EAS communities and the Department the best and earliest notice that the situation allowed, and that it informed the Department by email and telephone about the staffing problem that led to the abrupt discontinuation of EAS service to several communities.

Decision

The Department takes compliance with the EAS provisions of Federal aviation statutes and regulations very seriously. The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by Great Lakes but continues to believe that enforcement action is warranted. Great Lakes was unable to hire sufficient pilots in early 2014 to provide service to both EAS and non-EAS communities. In response, the carrier provided informal and untimely notice to the Department and affected communities by way of various emails, telephone calls, and press releases. However, this notice was no substitute for the full and formal 90-day notice requirements set forth in Part 323.

Great Lakes and the Enforcement Office have reached a settlement of this matter in order to avoid litigation. Great Lakes consents to the issuance of an order to cease and desist from future similar violations of 49 U.S.C. § 41734 and 14 CFR Part 323, and to the assessment of \$40,000 in compromise of potential penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Great Lakes Aviation, Ltd., violated 14 CFR Part 323 by failing to comply with the 90-day notice requirements found in that Part;
3. We find that Great Lakes Aviation, Ltd., violated 49 U.S.C. § 41734 by failing to provide 90 days' notice to the DOT and affected communities before ending, suspending, or reducing air service below EAS minimum levels;
4. We order Great Lakes Aviation, Ltd., and its successors and assignees to cease and desist from future similar violations of 49 U.S.C. § 41734 and 14 CFR Part 323.
5. We assess Great Lakes Aviation, Ltd., \$40,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. The first installment of \$10,000 shall be due and payable within 30 days after the service date of this order. A second installment of \$10,000 shall be due and payable on September 1, 2015. A third installment of \$10,000 shall be due and payable on October 1, 2015. The fourth installment of \$10,000 shall be due and payable on November 1, 2015; and
6. Payment shall be made to the account of the U.S. Treasury through the pay.gov website in accordance with the attached instructions. Failure to pay shall subject Great Lakes Aviation, Ltd., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order.

This order will become a final order of the Department ten days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

BLANE A. WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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