

WHAT IS ESSENTIAL AIR SERVICE?

Prepared by the Office of Aviation Analysis, U. S. DOT
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BACKGROUND:

In 1978, when the Airline Deregulation Act (ADA) was enacted, 746 communities in the United States and its territories were listed on air carrier certificates issued under section 401 of the Federal Aviation Act of 1958. Before deregulation, air carriers' operating certificates for most of these communities required carriers to schedule and provide two daily round trips at each point on their certificates. During the pre-ADA debates, the prospect of allowing carriers to terminate scheduled service without prior Government approval raised concern that communities with relatively lower traffic levels would lose service entirely as carriers shifted their operations to larger, potentially more lucrative markets. To address this concern, Congress added section 419 to the Federal Aviation Act, which established the essential air service program, which today is administered by the Department of Transportation, to ensure that smaller communities would retain a link to the national air transportation system, with Federal subsidy where necessary.

Under this program, the Department determines the minimum level of service required at each eligible community by specifying a hub through which the community is linked to the national network, a minimum number of round trips and available seats that must be provided to that hub, certain characteristics of the aircraft to be used, and the maximum permissible number of intermediate stops to the hub. The program's guidelines were codified by rulemaking as a Policy Statement of the Department in Volume 14, Code of Federal Regulations (CFR), Part 398. Where necessary, the Department pays subsidy to a carrier to ensure that the specified level of service is provided. Most certificated points, of course, do not require subsidized service; as of May 1998, the Department was subsidizing service at about 78 communities in the contiguous 48 states and Hawaii, and at 26 in Alaska.

Congress initially authorized the program for a ten-year period, through October 23, 1988. Its interest in ensuring service at small communities remained strong, and before the program's expiration, Congress enacted the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100-223, which expanded the program and extended it for ten more years, through fiscal year 1998. Insofar as service guarantees were concerned, Public Law 100-223 amended section 419 of the Federal Aviation Act by codifying many of the Department's guidelines in 14 CFR 398 as well as specifying an increased minimum level of service--termed "basic" essential air service--for any community that was eligible for service under the earlier program and actually receiving service during any part of fiscal year 1988. In addition, Public Law 100-223 provided for a higher level of service--termed "enhanced" essential air service--which communities could obtain either by agreeing to a subsidy-sharing commitment or by agreeing to risk the loss of basic service if the Department-funded enhanced service failed to meet agreed levels of passenger use. Finally, the new law contained provisions by which new communities could participate in the program if they were willing to pay part of the total subsidy.

The various statutorily-mandated elements comprising basic essential air service exceeded the minimums that had prevailed under the Department's discretionary regulatory guidelines since 1978, but, at the time that Public Law 100-223 was enacted, program funding was insufficient for the Department to implement the service upgrades to meet the new standards, much less for what would be necessary to support enhanced service or service at new points. In fact, during fiscal year 1990, twenty-six communities were made ineligible as a result of reduced funding.¹

¹ Winslow, Arizona; Blythe, California; Moultrie/Thomasville, Georgia; Elkhart and Kokomo/Logansport/Peru, Indiana; Clinton, Iowa; Hutchinson and Independence/Parsons/Coffeyville, Kansas;

However, under the Omnibus Budget Reconciliation Act of 1990, Public Law 100-508, Congress committed to authorize funds (\$38.6 million annually), beginning in fiscal year 1992, that would enable the Department to implement the upgrades necessary to ensure all remaining eligible communities of basic essential air service as envisioned by Public Law 100-223. (No specific provision was made in this appropriation for enhanced service or for service at new points.) The revised levels of basic essential air service were authorized by the Department by the end of fiscal year 1991. In general, Public Law 100-223 required the following elements of basic essential air service:

- (a) service to a hub airport, defined as an FAA-designated medium- or large-hub airport,
- (b) service with no more than one intermediate stop to the hub,
- (c) service with aircraft having at least 15 passenger seats at communities that averaged more than 11 passenger enplanements a day in any calendar year from 1976-1986,
- (d) under certain circumstances, service with pressurized aircraft, and
- (e) "flights at reasonable times taking into account the needs of passengers with connecting flights."

In addition, Public Law 100-223 authorized the Department to enter into agreements and to incur obligations from the Airport and Airway Trust Fund for the payment of subsidy for the provision of essential air service, effective fiscal year 1992. (Previously, the program was funded from the general fund.)

The Department's budget for fiscal year 1994, set by the Department of Transportation and Related Agencies Appropriations Act, 1994 (Public Law 103-122), provided that the program's annual appropriation be reduced by \$5.2 million, to \$33.4 million. Thus, the Department, using criteria set by Congress in Public Law 103-122,² was initially compelled to discontinue subsidy support for essential air service at an additional eleven communities,³ effective December 1, 1993, and at Trenton, New Jersey, effective June 8, 1994.

Effective June 1994, the Federal Aviation Act was recodified as subtitles II, III, and V-X of title 49, United States Code, "Transportation." The former section 419 of the Federal Aviation Act is now 49 U.S.C. 41731--41742.

The essential air service program was again funded at \$33.4 million for fiscal year 1995. The Department again had to discontinue subsidy support for a community, Danville, Illinois, effective November 30, 1994.

For fiscal year 1996, Congress appropriated \$22.6 million to the Department to fund the essential air service program. This represented a \$10.8 million, or about one-third, reduction from the \$33.4 million that had been

Lewiston/Auburn, Maine; New Bedford/Fall River, Massachusetts; Battle Creek, Benton Harbor/St. Joseph, and Jackson, Michigan; Columbus and Sidney, Nebraska; Rocky Mount/Wilson, North Carolina; Mansfield, Ohio; McAlester, Oklahoma; Salem, Oregon; Clarksville, Tennessee/Ft. Campbell/Hopkinsville, Kentucky; Brownsville and Temple, Texas; Montpelier/Barre, Vermont; and Beloit/Janesville and Manitowoc, Wisconsin.

² A community is ineligible to receive subsidized essential air service if it is within 70 miles of a medium or large hub, or if its subsidy exceeds \$200 per passenger (unless it is more than 210 miles from a medium or large hub.)

³ Gadsden, Alabama; Stockton, California; Galesburg, Illinois; Bloomington, Muncie/Anderson/New Castle, and Terre Haute, Indiana; Laconia, New Hampshire; Santa Fe, New Mexico; Paris, Texas; Hot Springs, Virginia; and Elkins, West Virginia.

appropriated for the program for fiscal years 1994 and 1995. This funding level was insufficient to maintain full essential air service at fiscal year 1995 levels at all eligible points that were receiving subsidized service. In order to fit the program to the appropriation, the Department looked for guidance to the Conference Committee Report and noted that:

The conferees fully intend that all essential air service communities that are participating in the program in fiscal year 1995 will continue to be eligible for participation in the essential air service program in fiscal year 1996, albeit at reduced levels. The conferees expect that the Department may be required to make pro-rata reductions in the subsidy or daily/weekly service levels to manage the funding reductions included in the conference report.

Consequently, unlike in earlier rounds of funding cuts in which certain communities were eliminated entirely from subsidized service eligibility, the Department was directed to implement subsidy reductions across the board. The Department did this by discontinuing subsidy support for weekend service, service to more than one hub, and service in excess of two round trips each weekday. (See Order 95-11-28, November 17, 1995, for a full discussion.) During fiscal year 1996 the Department also discontinued subsidy support for three communities that failed the statutory eligibility requirements originally set by Public Law 103-122: Danville, Virginia; Worthington, Minnesota; and Anniston, Alabama.

The essential air service program was funded at \$25.9 million for fiscal year 1997. No structural changes were made.

Beginning in fiscal year 1998, Congress funded the essential air service program at \$50 million a year by the Rural Air Service Survival Act, which is part of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264. That legislation also removed the September 30, 1998, sunset date when the program would otherwise have ended. The Department has used 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 (discussed above), which in turn we find imperative for communities to regain traffic and promote growth.

NOTES ON PROGRAM ADMINISTRATION:

If an air carrier providing basic essential air service at a point wishes to terminate, suspend, or reduce that service below the required level, it must file a 90-day notice with the community officials, the appropriate state aviation agency, and the Department. Any air carrier may propose to replace the incumbent carrier on a subsidy-free basis before the expiration of the notice period. If the proposed service is reasonable in terms of its projected profitability and meets the community's basic essential air service definition, and if the Department finds the applicant carrier to be financially and operationally fit and capable of providing reliable essential air service, the Department will rely on the carrier's subsidy-free service. The Department will require the incumbent carrier to maintain its service until a replacement carrier begins service.

If no air carrier is willing to serve a particular eligible point on a subsidy-free basis, the Department is required to solicit proposals for subsidized service. Any interested air carrier may submit a proposal to provide subsidized service; such carriers are expected to carefully detail the bases for their calculations of subsidy need. Once Department staff has reviewed the proposals and met with each applicant to finalize the proposals, the Department will elicit civic party comments. It then selects a carrier on the basis of several factors, including the preferences of the community, the level of subsidy required, the quality of the proposed service, the applicant's financial stability, and the applicant's experience in providing reliable scheduled air

transportation. The legislation also directs the Department to consider applicants' marketing relationships with major carriers in our selection decisions.

The Department will normally select a carrier to provide subsidized basic essential air service at an eligible point for two years. At the end of each selection period, the Department will either: (1) renegotiate a rate for continuation of service with the incumbent carrier and publish this tentative rate in an order to show cause (which may be responded to by any interested air carriers), or (2) solicit proposals as described above. Thus, air carriers wishing to participate in the program have recurring opportunities to propose to provide essential air service at communities of interest to them.

The following Department of Transportation documents and publications, while not exhaustive, set forth more detailed information on the essential air service program:

- (1) 49 United States Code 41731--41742
- (2) Rural Air Service Survival Act, section 278 of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264
- (3) "List of Eligible Points" (As Defined by the Airline Deregulation Act of 1978)
- (4) List of points for which eligibility to receive subsidized essential air service has been discontinued after fiscal year 1988
- (5) Report on "Subsidized Essential Air Service," updated at least quarterly indicating the current status of each subsidized essential air service point in the contiguous 48 states and Puerto Rico
- (6) Report on "Subsidized Essential Air Service in Alaska," updated at least biannually indicating the current status of each subsidized essential air service point in the State of Alaska
- (7) "Air Carrier Selection Procedures" which summarizes the Department's essential air carrier selection process, and sets forth the minimum information that air carriers must submit with their proposals to provide subsidized essential air service
- (8) "Information Packet on How to Become a Commuter Air Carrier" which sets forth in detail how to obtain commuter air carrier authority from the Department
- (9) Checklist of States, Territories, and Possessions of the United States which air carriers may use to be placed on the Department's essential air service mailing list
- (10) The Department's aviation economic regulation, "Guidelines for Subsidizing Air Carriers Providing Essential Air Transportation," (14 CFR 271)
- (11) The Department's aviation procedural regulation, "Terminations, suspensions, and Reductions of Service," (14 CFR 323)
- (12) The Department's aviation policy statement, "Guidelines for Individual Determinations of Essential Air Service," (14 CFR 398)

To receive copies of any of these documents, interested parties should contact:

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