

Order 2007-4-
Served: April, 2007



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

Issued by the Department of Transportation
on the th of April, 2007

Essential air service at

**CLOVIS, NEW MEXICO
SILVER CITY/HURLEY/DEMING, NEW MEXICO**

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

**Docket OST-1996-1902
Docket OST-1996-1903**

ORDER VACATING ORDER 2007-3-18 AND REQUESTING PROPOSALS

Summary

By this order, the Department is granting the motion of Grant County, New Mexico, to file a petition for reconsideration of Order 2007-3-18, issued March 20, 2007, and, upon review, deciding to vacate our earlier decision and resolicit Essential Air Service (EAS) proposals.

Background

On March 20, 2007, Order 2007-3-18 was issued selecting Great Lakes Aviation (Great Lakes) to provide subsidized EAS at Clovis to Denver and Silver City/Hurley/Deming to Phoenix for the two-year period beginning May 1, 2007, at a combined subsidy of \$1,992,731.

Following our receipt of proposals from our initial solicitation, we solicited community views via letters dated January 8, 2007, to the Mayors of the City of Clovis, the City of Deming, the Town of Hurley, and the Town Manager of Silver City. Letters were also sent to the airport managers at Grant County Airport and Clovis Municipal Airport. The only responses we received were letters from the City of Deming, which supported a proposal by Pacific Wings Airlines (which ultimately withdrew its proposal), and Grant County, which appeared to support Great Lakes' proposed flight to Phoenix from Silver City.

With regard to the petitioner, Grant County, the service awarded consists of Great Lakes providing two nonstop round trips to Phoenix Sky Harbor International Airport each weekday and weekend with 19-seat Beech 1900 aircraft.

Motion to File Petition for Reconsideration

On March 23, 2007, Robert L. Scavron, P.C., on behalf of the Town of Silver City, the County of Grant, the Village of Hurley, and the City of Bayard, filed a petition for reconsideration of Order 2007-3-18, stating, “[D]ue to some ambiguities contained in communications from the local governments, the impression was given to your office [EAS] that a shift of Great Lakes’ air service ‘hub’ from Albuquerque to Phoenix was being solicited.” The petition states that the original letter was intended to communicate interest in supplementing existing service to Albuquerque with additional flights to Phoenix, with no intention to abandon Albuquerque as its air service hub. It requests the Department to reconsider the Order with “specific regard to the choice of Phoenix as the ‘hub’ for air service.”

In support of its petition, the letter states, “[I]t is the will of the mentioned governments, supported whole heartedly by the communities represented thereby, that option number 1 of Great Lakes’ proposal (maintaining the status quo) be accepted by your office.” The letter mentions several areas of potential disruptions if the shift of service from Albuquerque to Phoenix occurs, including: medical services based in Albuquerque serving rural New Mexico, business involving state capital offices in Santa Fe, economic and business relationships between Albuquerque and Grant County, and access to the University of New Mexico in Albuquerque for residents of Grant County who attend classes there. It further notes that current connections offered in Albuquerque have been “satisfactory” for travel beyond the Albuquerque area.

Other Communication

We received two other letters, one from the New Mexico Department of Transportation, and one from the City of Clovis. The New Mexico Department of Transportation states that “elimination of Albuquerque in the route structure is not acceptable.” It states that Clovis first wants service to Albuquerque, and Denver as a second destination “as an added bonus,” and that Silver City desires to keep Albuquerque in their route structure but requested DOT consider adding some flights to Phoenix.

The letter from the City of Clovis strongly objected to the order issued and states it is critical that Clovis maintain air service to and from Albuquerque.

Decision

We based our original decision on the facts that Great Lakes’ Denver/Phoenix option for Clovis and Silver City/Hurley/Deming, respectively, was about \$465,000 less expensive than its Albuquerque-only option, and that community support was split with Clovis supporting Albuquerque service and Silver City supporting Phoenix. Also, Denver and Phoenix are large hub airports that both provide extensive connections to the national air transportation system. Silver City has now petitioned on the basis that it had fully intended to support the Albuquerque option all along, and that we misinterpreted its position.

Regardless of whether the community's letter was ambiguous or whether we misinterpreted it, the facts underlying our original decision have now changed, and we will, therefore, reconsider our earlier decision and resolicit bids for service. The situation is unique. Usually, when considering a petition for reconsideration, we limit our decision to the proposals submitted by carriers in response to our original request for proposals and do not resolicit. However, in this case, the remaining alternate proposal by Great Lakes to provide service from Clovis and Silver City to Albuquerque for \$2,457,877 annually is \$739,764 more than the current rate of \$1,718,113 annually and \$465,146 more than the rate selected in Order 2007-3-18 of \$1,992,731 annually.¹

An EAS eligible community is only guaranteed service that connects it to the national air transportation system. Consequently, it is not unusual for an EAS subsidized community to receive air service to a hub that is not its first choice. However, the communities of Clovis and Silver City have argued that they have a unique need for service to Albuquerque and we are willing to resolicit proposals from all interested carriers, whether or not they submitted proposals under the original RFP, to determine if a carrier is willing to provide such service. As such, we hope to balance the statutory criterion of community views with the Department's fiscal responsibility. At this point, we strongly encourage any potential applicant to work with Clovis and Silver City officials to craft proposals that meet their needs within the fiscal constraints of the Department. After we receive proposals, we will follow our normal carrier-selection procedure, i.e. we will once again notify the communities and give them an opportunity to respond to the proposals.

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. The Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, Public Law 109-115, provides that when selecting a carrier to provide EAS, the Department may consider the relative subsidy requirements, codifying a factor that we have considered since the inception of the program.

In conclusion, we are vacating Order 2007-3-18 in response to objections filed by Grant County, the City of Clovis, and the New Mexico Department of Transportation, and soliciting new proposals for service to Clovis and Silver City/Hurley/Deming, New Mexico.

¹ Part of the increase in status-quo service from Great Lakes' current rates of \$1,718,113 annually to \$2,457,877 stems from Great Lakes' proposal that includes the cost of the Clovis-Amarillo portion of a Clovis-Amarillo-Denver round trip 5 days per week that allows the cycle of aircraft through its Denver operations center and maintenance base. Clovis and Silver City are the only cities Great Lakes serves via Albuquerque. The current rates do not include this cost.

ACCORDINGLY,

1. We grant the motion to file a Petition for Reconsideration of Order 2007-3-18, filed by Grant County, New Mexico, and, upon review, vacate Order 2007-3-18 and solicit new proposals for service to Clovis and Silver City/Hurley/Deming, New Mexico; and

2. We request that carriers interested in providing essential air service at Clovis and/or Silver City/Hurley/Deming, New Mexico, submit their proposals, with or without subsidy requests, no later than 20 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 [the community or communities at issue]," with the docket number corresponding to each community as shown on the first page of this order;¹

3. We will serve a copy of this order on the Mayor of the City of Clovis, New Mexico, the Town of Silver City, New Mexico, the Village of Hurley, New Mexico, the City of Deming, Great Lakes Aviation, Ltd., Pacific Wings, the New Mexico Department of Transportation, and the persons listed in Appendix D; and

4. These dockets will remain open until further order of the Department;

By:

MICHAEL W. REYNOLDS
Deputy Assistant Secretary for Aviation and
International Affairs

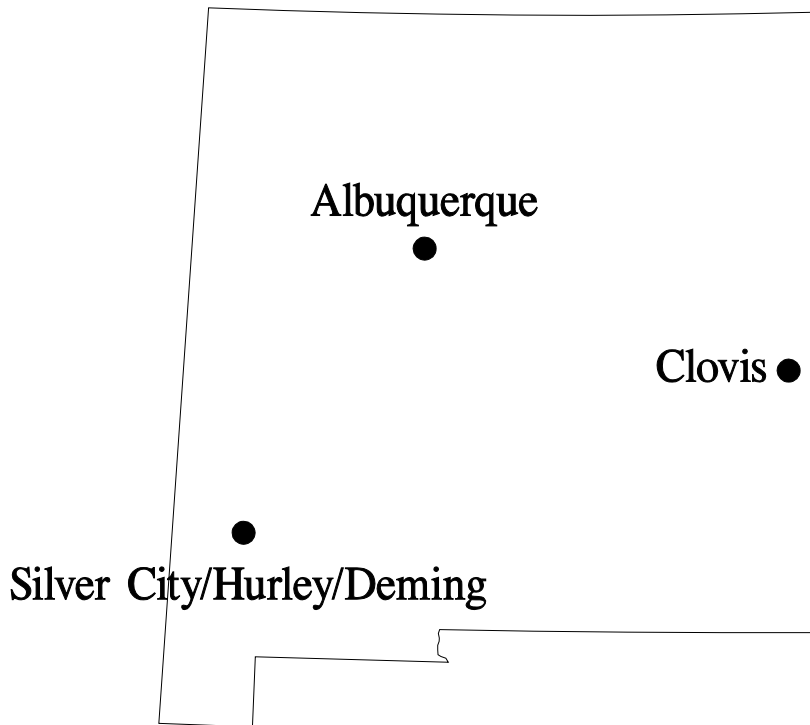
(SEAL)

*An electronic version of this document is available
on the World Wide Web at <http://dms.dot.gov>²*

¹ Questions regarding filings in response to this order may be directed to Kevin Schlemmer via e-mail to kevin.schlemmer@dot.gov.

² Click on "Simple Search" and enter "1902" or "1903" in the space provided for the docket number.

AREA MAP



Historical Origin-Destination Passenger Traffic¹

Clovis, New Mexico

<u>Quarter</u>	<u>Total enplanements and deplanements</u>	<u>Average daily enplanements</u> ²
2Q2005	933	6.1
3Q2005	968	6.3
4Q2005	1,107	7.2
1Q2006	949	6.2
2Q2006	1,155	7.5
3Q2006	1,112	7.2
4Q2006	1,152	7.5

Silver City/Hurley/Deming, New Mexico

<u>Quarter</u>	<u>Total enplanements and deplanements</u>	<u>Average daily enplanements</u>
2Q2005	855	5.6
3Q2005	1,017	6.6
4Q2005	1,110	7.2
1Q2006	927	6.0
2Q2006	1,317	8.6
3Q2006	1,253	8.1
4Q2006	1,132	7.4

¹ Source: USDOT Bureau of Transportation Statistics, TransStats Intermodal Database, Schedule T-100 and Great Lakes Airlines.

² Average enplanements are calculated by dividing total enplanements and deplanements by 77 service days then by 2.

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.

All claims for payment must be submitted within 60 days of the last day of service provided under this order.

Service List for the State of New Mexico

ACT International Airlines, Inc.	Great Lakes Aviation, Ltd.
Aero Freight, Inc.	Mesa Airlines, Inc.
Air Midwest, Inc.	Metro Express II, Inc.
Air Transport, Inc.	Midwest Express Airlines, Inc.
Alpine Air Express	Redtail Aviation
Amerijet International, Inc.	Rio Grande Air
Arizona Express Airlines	Rocky Mountain Helicopters, Inc.
Arizona Pacific Airlines, Inc.	SkyVantage Corporation
Barken International, Inc.	SkyWest Airlines, Inc.
Conquest Airlines Corporation	Texas National Airlines, Inc.
Corporate Airlines, Inc.	Westward Airways, Inc.
Delta Connection	Wings West Airlines, Inc.
Exec Express II, Inc.	
Ken Bannon	Colleen O'Day
Rick Bauer	Lee Mason
Nathaniel P. Breed	Andy Pike
Doug Franklin	Cory Robin
E.B. Freeman	William C. Seigler
Douglas Gumula	Andrew Spinks
Ben Harrison	Larry Tiffin
A. Edward Jenner	Tim Wooldridge
Keith Kahle	