

Order 2008-7-35
Served: July 31, 2008



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

Issued by the Department of Transportation
on the 31st day of July, 2008

Essential air service at

ROCKLAND, MAINE

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

Docket DOT-OST-1997-2784

ORDER SELECTING CARRIER

Summary

By this order, the Department is selecting Hyannis Air Service, Inc. d/b/a Cape Air (Cape Air) to provide subsidized EAS at Rockland, Maine, at an annual subsidy of \$1,522,770, for a two-year period beginning when Cape Air inaugurates full EAS, through the end of the 24th month thereafter. (See Appendix A for a map.)

Background

In anticipation of the end of Colgan Air's current contract on October 31, 2008, the Department issued Order 2008-4-25, April 15, 2008, to solicit proposals from all interested air carriers to provide EAS at Augusta/Waterville, Bar Harbor,¹ and Rockland, Maine, for a new two-year term.

Proposals

We received proposals from two carriers: Hyannis Air Service, Inc. d/b/a Cape Air (Cape Air), and Colgan Air, Inc. d/b/a US Airways Express (Colgan), the incumbent carrier.

Each carrier's complete proposal may be accessed online at <http://www.regulations.gov/> by doing a "search" on "DOT-OST-1997-2784."

¹ We will deal with the carrier selection at Augusta/Waterville and Bar Harbor in a separate order.

Cape Air proposes three nonstop round trips per day from October through May (21 per week), four nonstop round trips per day for June and September (28 per week) and five nonstop round trips per day for July and August (35 per week). All service would operate to and from Boston's Logan International Airport. The annual subsidy amount for a two-year period is \$1,522,770.

Colgan proposes several options under two scenarios. The first group of proposals includes additional funding to support the respective airports' additional expenses as they upgrade to and maintain Part 139 compliance. The second group of proposals is contingent upon Colgan's receiving authorization from the Federal Aviation Administration to utilize 30-seat Saab 340, and thus be exempt from some of the Part 139 requirements and obviate the need for additional funding to upgrade the airports, as required in the first group of proposals. All service would operate to and from Boston's Logan International Airport. The proposals that involve Rockland are listed below.

Colgan's 34-seat Saab 340 proposals and Part 139 compliance, with annual subsidy amounts

#1 - Augusta-Rockland – 24 nonstop and one-stop round trips per week (\$4,241,491)

#2 – Augusta-Rockland – 19 nonstop and one-stop round trips per week (\$3,380,680)

Colgan's 30-seat Saab 340 proposals assuming FAA exemption from Part 139 compliance, with annual subsidy amounts

#1 - Augusta-Rockland – 24 nonstop and one-stop round trips per week (\$3,576,796)

#2 – Augusta-Rockland – 19 nonstop and one-stop round trips per week (\$2,715,985)

Community Comments

By letters dated June 6, 2008, we notified the Town of Rockland and the manager of Knox County Airport of the proposals and solicited any comments they wished to submit. We received a letter from Thomas Hall, the City Manager of the City of Rockland. It states that the City of Rockland does not have any ownership or operational responsibility regarding the Knox County Regional Airport. Nonetheless, Mr. Hall states he reviewed the proposals and participated in an informational meeting, hosted by the Knox County Commission. Written comments he has received from the public are evenly split in their support for Colgan and Cape Air. He states that although "Colgan's proposal to use larger aircraft may provide greater comfort for passengers and economic development opportunities, the reduced frequency of flights, the reduced actual numbers of available seats and the higher fares makes the Colgan proposal undesirable." He further states that if "Colgan proposals are further considered, we only consider those options contingent on Colgan receiving authorization from the FAA to utilize 30-seat aircraft, thereby not requiring Part 139 compliance for the airport as this would place an undue hardship on local taxpayers." He recommends the service be awarded to Cape Air. "[T]he increased number of flights, particularly during the peak time of year, and their ability to modify flight plans to accommodate market demand, coupled with much lower fares and aggressive marketing efforts, are the basis for this recommendation."

We also received a letter from Jeffrey Northgraves, Manager at the Knox County Regional Airport. It states that the three elected Knox County Commissioners voted (3-0) to endorse

Cape Air's proposal and the Airport Public Advisory Committee (APAC) voted (8-0), also to recommend the endorsement of the Cape Air proposal. He further recommends "not to accept any option that would require substantial initial investments and continued annual maintenance costs on the part of taxpayers" to upgrade the airport from Part 139, Class III status to Class I status. He does not believe that it is a realistic option for Colgan to operate its Saab 340 aircraft at the 30-seat passenger configuration, because "the cost to modify the aircraft to meet the requirement is too high and the FAA will not waive the requirement without the modification." He also states that the flight frequencies presented by Colgan will not meet summer demands. He further states that the County Commission understands it is waiving the community's right to 15-seat or larger aircraft, but only for this two-year carrier selection.

We received comments from a number of citizens, with more than half supporting Cape Air's proposal.

Decision

This case is very straightforward. Cape Air's proposal is supported by the City of Rockland, and the elected Knox County Commissioners, the owner and operator of the Knox County Regional Airport. The proposal requires only slightly more subsidy than Colgan's least expensive proposal, which requires modification of aircraft and an exemption from the Federal Aviation Administration to operate at the airport. The community has expressed its desire not to be burdened with the high cost of upgrading the airport to handle Colgan's Saab 340 aircraft and the increased ongoing maintenance costs as a result of the upgrade. Cape Air's proposal does not require an upgrade of airport facilities. In addition, Cape Air's code-share arrangement with JetBlue will provide for seamless connections throughout its system. Therefore, we will select Cape Air to provide subsidized EAS at Rockland. By endorsing Cape Air, Rockland waives its right to 15-seat aircraft, which we consider only in effect for the two-year term after Cape Air inaugurates service.

Cape Air is a well-established carrier and provides a significant amount of subsidized EAS throughout the country. Moreover, we find that the subsidy levels are reasonable for the service levels to be provided.

Thus, we will select the proposal as described above, to provide subsidized EAS at Rockland, beginning when Cape Air inaugurates its full service pattern.

Carrier Fitness

49 U.S.C. 41737(b) requires that we find an air carrier fit, willing, and able to provide reliable service before we may subsidize it to provide essential air service. Cape Air is subject to the Department's continuing fitness requirements, and no information has come to our attention that would cause us to question the carrier's fitness at this time. We have contacted the Federal Aviation Administration, and it has raised no concerns that would negatively affect our fitness finding. We therefore conclude that the carrier remains fit to conduct the operations proposed here.

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

ACCORDINGLY,

1. The Department selects Hyannis Air Service, Inc. d/b/a Cape Air to provide essential air service at Rockland, Maine, and establishes the subsidy rates, as detailed in Appendix B, for a two-year period beginning when Cape Air inaugurates full EAS, through the end of the 24th month thereafter;
2. The Department directs Hyannis Air Service, Inc. d/b/a Cape Air 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 the 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, whichever is earlier. 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;
3. We find that Hyannis Air Service, Inc. d/b/a Cape Air continues to be fit, willing and able to operate as a commuter air carrier and capable of providing reliable essential air service at Rockland, Maine;
4. This docket will remain open until further order of the Department; and
5. We will serve copies of this order on community officials and the airport managers of Rockland, Maine, Hyannis Air Service, Inc. d/b/a Cape Air, and Colgan Air, Inc.

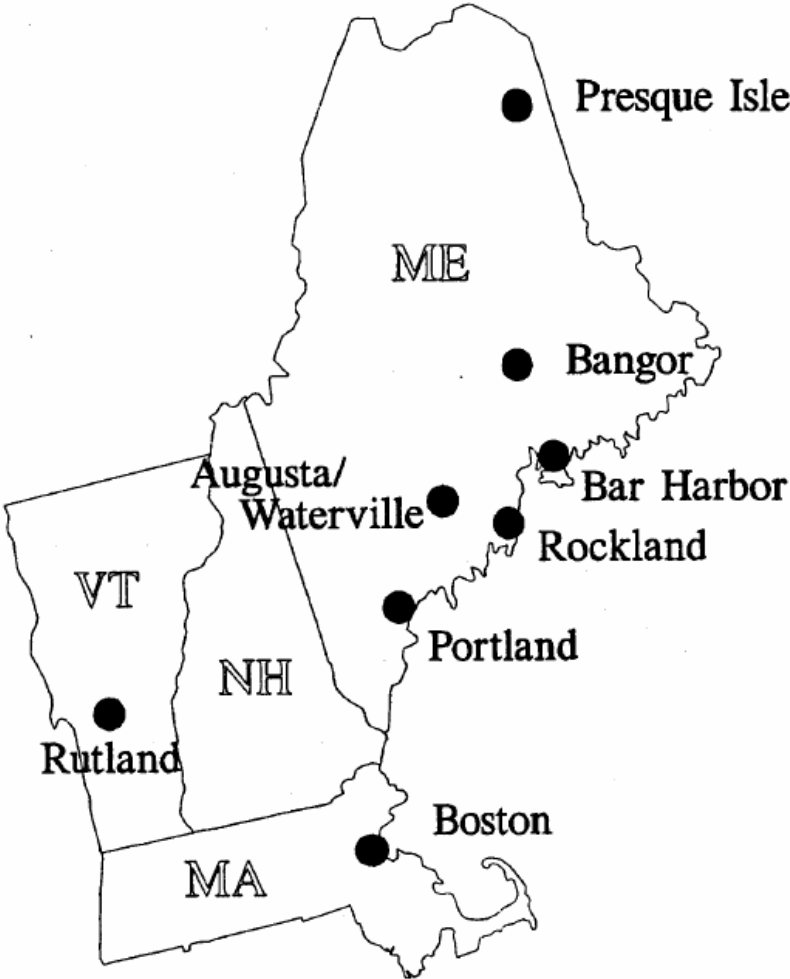
By:

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

(SEAL)

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

AREA MAP



**Hyannis Air Service, Inc. d/b/a Cape Air
Essential Air Service To Be Provided at Rockland, Maine**

<u>Effective Period:</u>	From the date of inauguration through the end of the 24 th month thereafter.
<u>Scheduled Service:</u>	21 weekly nonstop round trips to Boston (October – May), 28 weekly nonstop round trips to Boston (June and September), 35 weekly nonstop round trips to Boston (July and August).
<u>Intermediate stops and upline service:</u>	Service must be nonstop.
<u>Aircraft type:</u>	Cessna 402 (9 passenger seats).
<u>Timing of flights:</u>	Flights must be well-timed and well-spaced in order to ensure full compensation.
<u>Annual compensation:</u>	\$1,522,770. This rate assumes an annual completion factor of 97 percent. A compensation ceiling is to be applied per calendar week such that service above that ceiling in one week cannot make up for service shortfalls in another week.
<u>Subsidy Rate per Flight:</u>	\$612.78 ¹
<u>Weekly Compensation Ceiling²:</u>	\$42,894.60 (July and August) \$34,315.68 (June and September) \$25,736.76 (October through May)

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.

Funds are not presently available for performance under this Order beyond September 30, 2008. The Government's obligation for performance under this Order beyond September 30, 2008, is contingent upon the availability of appropriated funds from which payment for services can be made. No legal liability on the part of the Government for any payment may arise for performance under this Order beyond September 30, 2008, until funds are made available to the Department for performance. If funds are not made available for performance beyond September 30, 2008, the carrier will receive notice in writing by the Department.

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.

¹ \$1,522,770 divided by 2,485 annual departures (9 weeks x 70 deps (July/August) + 9 weeks x 56 deps (June/September) + 34 weeks x 42 deps (October through May) x 97% completion).

² 70 eligible arrivals and departures per week (July/August) or 56 eligible arrivals and departures per week (June/September) or 42 eligible arrivals and departures per week (October through May) multiplied by \$612.78 per flight.