



# Manistee County Blacker Airport Authority

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DRAFT

## MINUTES

Wednesday, October 20, 2010  
12:00 Noon

Manistee County Blacker Airport  
Conference Room

Members Present: Ervin Kowalski, Chairperson; Paul Schulert, Vice-Chairperson; Ross Spencer; Ed Haik; and Dale Picardat

Members Absent: Glenn Lottie; and Bob Wilson

Others Present: Barry Lind, Airport Manager; George Saylor, Airport Legal Counsel; Ken Grabowski, Manistee News Advocate; and Jeri Lyn Prielipp, Acting Secretary

Ervin Kowalski, Chairperson, called the meeting to order at 12:00 P.M. Roll was taken by the Secretary.

Mr. Kowalski announced that the purpose of this special meeting was to allow Mr. Lind an opportunity to explain what Frontier Airlines has to offer and how they relate to service, etc.

Mr. Lind provided the following chronological outline:

10/11/10 - At the last Airport Authority meeting, the Board authorized the Airport Manager to join with Ironwood, MI and Charter Air Transport in a Petition for Reconsideration of Order 2010-9-26 rejecting the bid of Charter Air Transport.

10/15/10 - Mr. Lind received a request from the DOT to approve an extension of the bidding deadline from 10/18/10 to 10/25/10 so that Seaport Airlines had time to submit a bid for EAS service to our community. He responded that he had no objection to such an extension.

10/15/10 - Mr. Lind received a phone call from Daniel Shurz, Vice President, Strategy and Planning for Frontier Airlines. Mr. Shurz stated that Frontier Airlines was considering placing a bid for service with a 37 seat ERJ-135 regional jet aircraft. He requested information about our runway weight limits, which Mr. Lind told him he would get to him over the weekend. Mr. Lind also explained the extension in the deadline for bids, which he did not know about.

10/17/10 - Mr. Lind finished drafting a letter of support for the Petition of Reconsideration that Charter Air Transport is authoring (APPENDIX A).

10/17/10 - Mr. Lind emailed the draft to Airport Counsel, George Saylor, for review. Mr. Lind informed him about the conversation with Frontier Airlines, and expressed his concern that the options are considered so that the community gets the best service possible.

10/18/10 - Mr. Saylor responded that perhaps these issues should be raised to the Board in a Special Meeting to ensure that both the Board is aware of the events and that the desires of the Board are being followed.

10/18/10 - Mr. Lind spoke with Ervin Kowalski about these issues and he concurred that a Special Meeting was in order. After additional conversations with Tom Kaminski about open meeting requirements and Mr. Saylor about the Airport Authority by-laws requirements, it was determined that the earliest a meeting could be held was Wednesday, October 20, 2010, if notice of the

meeting was posted at the Courthouse and sent to the Board members on Monday, October 18, 2010.

10/20/10 - This is the deadline for a Petition for Reconsideration of Order 2010-9-26. If the Board wishes to change anything regarding the direction they laid out at the 10/11/10 meeting, it needs to be done by the end of the day as it relates to the petition.

Mr. Lind stated that the FAA published weight limits on the runway are 31,000 lbs. for dual gear aircraft, however, the engineering firm says the runway was designed for 60,000 lbs. for dual aircraft. The typical weight of the aircraft that Frontier would be using is 36,000 lbs. It is unknown what the details of a bid from Frontier would look like, and there's no guarantee that they will bid. The deadline is unknown for the DOT to make a decision on the Petition for Reconsideration, however, it was noted that the petition could probably be withdrawn depending on the situation.

**There was a motion by Mr. Haik, supported by Mr. Kowalski to support the Petition for Reconsideration of Order 2010-9-26.**

**A roll call vote was taken:**

**Yeas: 5 (Kowalski; Schulert; Picardat; Spencer; Haik)**

**Nays: 0**

**Absent: 2 (Lottie; Wilson)**

**Motion carried.**

With there being no further business to come before the Authority, the meeting was adjourned at approximately 12:30 P.M.

Respectfully submitted,

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Jeri Lyn Prielipp, Acting Secretary

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# APPENDIX A

At the regularly scheduled meeting of the Manistee County Blacker Airport Authority held October 11, 2010 the Authority voted to support the Petition for Re-Consideration of Order 2010-09-26 filed by Charter Air Transport, Inc.

We understand that Order 2010-09-26 has addressed the issue that Charter Air Transport does not meet the criteria for Basic Essential Air Service as specified in 49 U.S.C. §41732. Specifically that public charter operations as defined by 14 CFR Part 380 do not meet the definition of "Scheduled Air Transportation."

However, we feel that Order 2010-09-26 has not addressed the issue as to whether or not air transportation provided by an air carrier conducting public charter operations could be awarded an Essential Air Service contract via a waiver with the support of the impacted communities.

The Essential Air Service (EAS) program was enacted by Congress in 1978 to ensure that small communities retained connectivity to the national air transportation system after airline deregulation. Congress has demonstrated its continued support of small communities and rural America by its continued support of the Essential Air Service program over the last 32 years. It is also clear that Congress views highly the preferences of the local communities receiving air service as the preferences of the communities are important factors as seen in §41732(b)(1)(B), §41732(b)(3)(B) and §41733(c)(1)(D).

## Explicit Waivers

§41732(b)(3)(B) explicitly establishes the concept of a community being able to waive its right to a minimum level of basic essential air service, specifically the right to service with 15 seat or greater aircraft. In addition to this explicitly defined waiver criteria established by Congress, the Secretary has also granted explicit waivers for other criteria. Specifically the two criteria specified in §41732(b)(5) of twin engine aircraft and two pilot operations have been waived by communities in order to acquire service viewed by the community as in their best interests. And recently the community of Joplin, MO requested a waiver of the hold-in requirements of §41733 which was granted in Order 2010-9-9.

## Implicit Waivers

In addition to the above situations where the communities have explicitly waived some of their rights to certain attributes of essential air service, the Secretary has also allowed implicit waivers from various conditions of essential air service. For example §41732(c)(1)(A) directs the Secretary to consider the reliability of the air carrier in the decision to award compensation under EAS. There are many examples where in spite of the carrier showing poor reliability the Secretary has still awarded compensation for a new EAS contract. Examples of this include:

May 27<sup>th</sup>, 2010 in DOT-OST-1997-2960-0053 the community of Alamosa, CO comments: "Unfortunately, their commitment to their customers has been lacking, as flights are either cancelled or delayed on a regular basis." Manager, SLV Regional Airport

June 10<sup>th</sup>, 2010 in DOT-OST-1998-3508-0036 the community of Cortez, CO comments: "The City of Cortez recently has experienced an increase of complaints from air travelers. Specifically, mechanical delays, crew availability, and flight stops to/from other communities have been concerns of the traveling public." Mayor, City of Cortez.

June 25<sup>th</sup>, 2010 in DOT-OST-1998-3521-0156 the community of Merced, CA comments: "From January 1, 2010 up to today, 23.6 percent of scheduled flights have been cancelled." Chair, Merced Regional Airport Authority

July 14<sup>th</sup>, 2010 in DOT-OST-2000-7138-0052 the community of Huron, SD comments: "However, lately the concept of "service" seems to have been removed from what we are seeing with this carrier. When you only have two flights per day reliability is critical and if someone's whole day is based on making a connection at the hub and the carrier is consistently late or doesn't fly at all you have basically lost the ability to claim air "service" exists at your community. Likewise, if the carrier seems to not care whether or not they fly passengers from your community you have again lost the ability to claim that you have air "service"." Mayor, City of Huron

July 21<sup>st</sup>, 2010 in DOT-OST-1997-2958-0060 the community of Laramie, WY comments: "As we have stated before, in our letter dated to you June 23, 2008, the service that ... is provid[ed] has continued to be unsatisfactory due to the lack of consistent service and dependability." City Manager, City of Laramie

July 21<sup>st</sup>, 2010 in DOT-OST-1997-2981-0062 the community of Worland, WY comments: "The main issue I have with [the carrier] is with their inconsistency. On average, twenty percent or more of the flights are late, cancelled or early. ... At this time I am not please with the service we are receiving" Mayor, City of Worland

In a period of two months six different communities raised the issue of the reliability of the service they were receiving. All of these complaints arose from the service of the same air carrier. And in all of these cases the poorly performing incumbent carrier was reselected to provide service for another two years.

Another example of an implicit waiver of EAS requirements is §41732(b)(2) which specifies a requirement of "flights at reasonable times considering the needs of passengers with connecting flights." The community of Ironwood, MI has for the last two years been receiving air service whose flights they believe are not being offered at reasonable times. While the definition of a reasonable schedule may be subjective, it can objectively be shown that the current schedule for Ironwood has resulted in a decrease in enplanements of over 50% during the last two years, while at Manistee, MI enplanements have actually increased during that same period. Given that these two cities are being served by the same carrier, to the same hub, with similar pricing structures and even with the same aircraft, the one factor that is significantly different is their respective schedules; Manistee has a schedule that is timed well with connecting flights while Ironwood's schedule is not. Therefore it is reasonable to say that much of the difference between these two communities performance over the last two years can be attributed to the schedule.

In both the 'reliability case' and the 'reasonable timed flight case' the communities did ultimately support the selection of the air carrier providing this less than required level of service. The Secretary made implicit waivers or exceptions from the statutory requirements in the best interests of the community, since the alternatives were either no service at all, or an uncertain path to selecting a different carrier (i.e. no other qualified carriers were bidding).

Limited Number of EAS Carriers

The 2009 GAO report titled "Options and Analytical Tools to Strengthen DOT's Approach to

Supporting Communities' Access to the System" raised the issue of the shrinking number of air carriers providing Essential Air Service:

A DOT official noted that while the number of communities that experienced carrier turnover in 2008 was unprecedented, the number of carriers providing air service to communities under the EAS program has actually been declining over many years. The number of carriers providing EAS service has declined from 34 as of February 1987 to 10 in 2009. In addition, as the number of carriers has declined, the percentage of EAS routes served by just a few carriers has increased. In February 1987, the largest number of routes served by any one carrier was 13, and the four carriers that served the most communities accounted for 33 percent of the EAS routes. At present, four carriers serve about 85 percent of the routes in the EAS program, with a single carrier serving nearly half of the EAS routes.

This limited pool of EAS participants reduces competition which therefore increases the program costs. It also increases the exposure should any of the remaining carriers cease operations. Therefore it is in the public interest to have a large pool of air carriers competing with each other to provide service at each EAS community.

Exemption Authority

49 U.S.C. §40109(c) states "the Secretary may exempt to the extent the Secretary considers necessary a person or class of persons from a provision of ... chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714) ... of this title, or a regulation or term prescribed under any of those provisions, when the Secretary decides that the exemption is consistent with the public interest." This is the authority cited in Order 2010-9-9 where the hold-in requirements of §41733 were waived.

Summary

- 1) Given the authority given to the Secretary in 49 U.S.C. §40109(c) to grant waivers or exceptions
- 2) Given the intent of Congress to consider the interests of the communities as voiced by the communities themselves
- 3) Given the public interest in having a larger number of air carriers participating in the EAS program
- 4) Given the explicit waivers granted in the past by the Secretary based on the preferences of the communities
- 5) Given the implicit waivers or exceptions granted in the past by the Secretary based on the best interest of the communities and of the program
- 6) Given an air carrier which has obtained both economic authority to operate as a commuter and operational authority from the FAA to operate public charter flights on a regular schedule of 12 or more times a week.
- 7) Therefore we the community of Manistee, MI request the opportunity to submit a request to waive of our right to scheduled air transportation, and acceptance of air service operated under public charter rules as was denied by Order 2010-9-26.

sincerely,  
Barry Lind  
Airport Manager  
on behalf of the Manistee County Blacker Airport Authority