Order 2008-9-7
Served: September 5, 2008

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

Issued by the Department of Transportation
on the 5th day of September, 2008

Essential air service at **AUGUSTA/WATERVILLE, MAINE** **BAR HARBOR, MAINE** under 49 U.S.C. 41731 *et seq.*	**Docket DOT-OST-1997-2784**

ORDER SELECTING CARRIER

Summary
By this order, the Department is reselecting Colgan Air, Inc. d/b/a US Airways Express (Colgan) to provide subsidized essential air service (EAS) at Augusta/Waterville and Bar Harbor, Maine, at an annual subsidy of $4,172,501, from November 1, 2008, through October 31, 2010. (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, and Rockland, for a new two-year term. We previously selected Hyannis Air Service, Inc. d/b/a Cape Air (Cape Air) to serve Rockland, Maine, in Order 2008-7-35, July 31, 2008.

Proposals
We received proposals from two carriers: Cape Air and 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."

Cape Air proposes to serve Augusta only by offering three round trips per day year-round (21 per week) to Boston Logan International Airport, using Cessna 402 aircraft, for an annual subsidy of $1,322,017, for a two-year period.

Colgan proposes options under two scenarios. The first group of proposals includes additional funding to support both 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 the associated expenses, as required in the first group of proposals. All service would operate to and from Boston Logan International Airport.

- Colgan's 34-seat Saab 340 proposals and Part 139 compliance:

Augusta-Bar Harbor – 19 nonstop and one-stop round trips per week ($4,172,501)

- Colgan's 30-seat Saab 340 proposals assuming FAA exemption from Part 139 compliance:

Augusta-Bar Harbor – 19 nonstop and one-stop round trips per week ($3,520,849)

Community Comments

By letters dated June 6, 2008, we notified community officials and airport managers of both communities of the proposals and solicited any comments they wished to submit. On June 19, the manager of Augusta State Airport requested a two-week extension for comments. We granted the extension for comments at all communities to July 14.

We received letters from the Mayor of the City of Augusta and the Airport Manager of Augusta State Airport. The Mayor of Augusta fully supports Colgan Air to provide 19 round trips to Boston per week. The letter from Augusta State Airport states, "Mayor Katz of the City of Augusta along with the Augusta City Manager and the Augusta State Airport and the Augusta State Airport Board members all recommend that the USDOT award the EAS contract to Colgan Air." It also states, "Colgan Air has been a very welcome corporate entity in the City of Augusta." Further, Colgan's proposal "will bring cabin class air service with a Saab 340 to the central Maine area which has always been a primary goal of the airport." We also received many comments from the community, all in support of Colgan.

From the Bar Harbor community, we received letters from the Town of Bar Harbor and the Hancock County Commissioners. Both supported the Colgan options predicated on obtaining an FAA exemption for Part 139 compliance. Dana J. Reed, Town Manager, stated that "[c]onsideration should be given to Colgan Air's second option as it continues essential air service to Bar Harbor while not imposing unnecessarily costly airport upgrades. These higher costs would impact our municipality and would threaten the airport's survival." Kenneth R. Shea, Chairman of the Board of County Commissioners, said that any of the alternatives that are contingent upon Colgan receiving an authorization to utilize 30-seat Saab 340 aircraft are "acceptable to the airport."

Decision
The carrier selection portion of this case is straightforward. Colgan was the only applicant at Bar Harbor and the communities of Bar Harbor and Augusta recommended Colgan. In addition, Augusta did not waive its right to 15-seat aircraft.

However, Colgan submitted two subsidy amounts in its proposal: a lower subsidy, $3,520,849 annually for both communities, which would require FAA exemption from certain rules that govern the operation of greater than 30 seat-aircraft, and a higher subsidy, which passes along some of the operating costs of the airport upgrades to the EAS program. The FAA has not granted an exemption that would allow the airports to operate the Saab 340 aircraft to operate into each airport without upgrading its firefighting and safety equipment. Each community will have to ensure that its facilities are fully staffed to meet the required safety regulations for the service proposed. Therefore, we will select Colgan to provide subsidized EAS at Augusta/Waterville and Bar Harbor for an annual subsidy of $4,172,501, the amount that includes funds for compliance with FAA regulations dictated by the size of the aircraft proposed here. Colgan 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, considering the upgrades that must occur for Colgan to operate its Saab 340 aircraft at each community.

Thus, we will select the proposals as described above, to provide subsidized EAS at each community for the two-year period beginning November 1, 2008, through October 31, 2010.

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. Colgan 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 Colgan Air, Inc. to provide essential air service at Augusta/Waterville and Bar Harbor, Maine, and establishes the subsidy rates, as detailed in Appendix B, from November 1, 2008, through October 31, 2010;

2. The Department directs Colgan Air, Inc. 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 Colgan Air, Inc. continues to be fit, willing and able to operate as a certificated air carrier and capable of providing reliable essential air service at Augusta/Waterville and Bar Harbor, 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 Augusta/Waterville and Bar Harbor, Maine, Hyannis Air Service, Inc. d/b/a Cape Air, and Colgan Air, Inc.

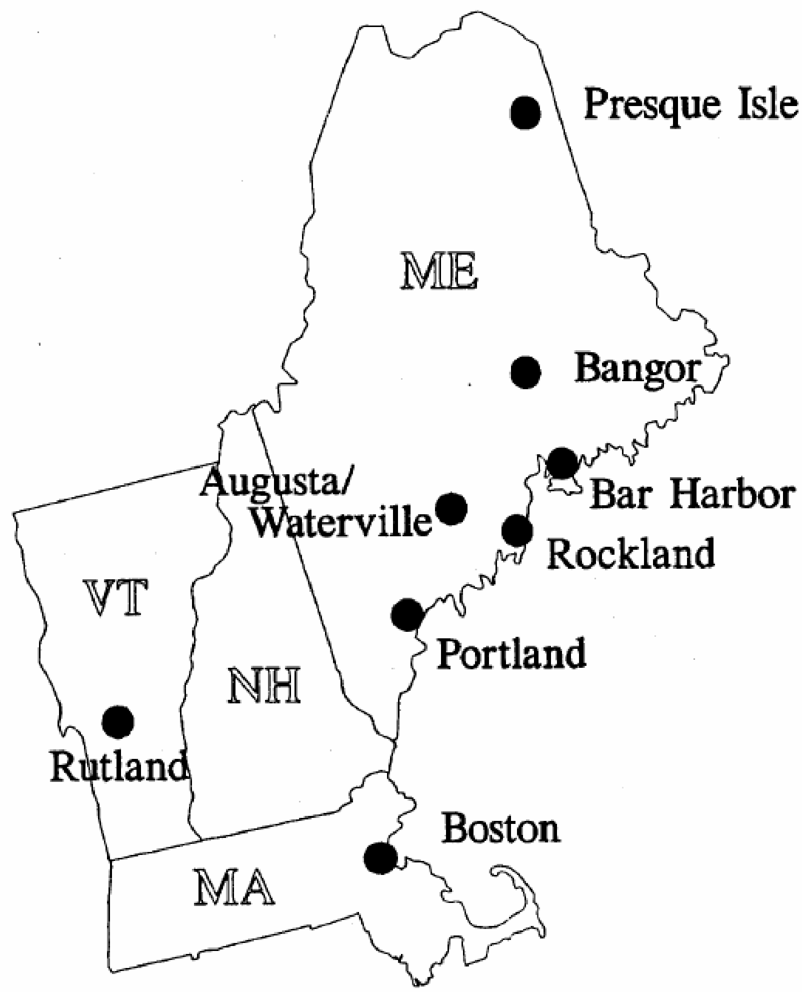
By:

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


Presque Isle
ME
Bangor
Bar Harbor
Augusta/
Waterville
Rockland
VT
Portland
NH
Rutland
Boston
MA

Colgan Air, Inc. d/b/a US Airways Express
Essential Air Service To Be Provided at Augusta/Waterville and Bar Harbor, Maine

Effective Period:	November 1, 2008, through October 31, 2010.
Scheduled Service:	19 weekly nonstop or one-stop round trips to Boston.
Intermediate stops and upline service:	Service may be nonstop or routed via Augusta/Waterville or Bar Harbor.
Aircraft type:	Saab 340 (34 passenger seats).
Timing of flights:	Flights must be well-timed and well-spaced in order to ensure full compensation.
Annual compensation:	$4,172,501. 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.
Subsidy Rate per Flight:	$1,088.57[1]
Weekly Compensation Ceiling per community:	$41,365.66[2]

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 parities 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] $4,172,501 divided by 3,833 annual departures (38 weekly flights x 2 communities x 52 weeks x 97%).
[2] 38 arrivals and departures per week multiplied by $1,088.57 per flight.