



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

Issued by the Department of Transportation
on the 12th day of February, 2013

Essential Air Service at

ELY, NEVADA

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

Docket DOT-OST-1995-361

**FINAL ORDER TERMINATING ELIGIBILITY
AND ALLOWING SUSPENSION OF SERVICE**

Summary

By this Order, the Department is: (1) terminating the eligibility of Ely, Nevada, under the Essential Air Service ("EAS") program; and (2) allowing Great Lakes Aviation Ltd. ("Great Lakes"), to suspend service at the community, if it chooses. An area map is attached as Appendix A.

Background

By Order 2012-12-8, issued on December 14, 2012, the Department tentatively determined to terminate the eligibility of Ely under the EAS program. Our tentative decision was based on the statutory requirement that the average subsidy per passenger must be less than \$1,000 during the most recent fiscal year.¹ Great Lakes has served the community since March 2008. Historical traffic and annual subsidy rates are detailed in Appendix B. For the most recent fiscal year (FY 2012), Great Lakes transported 1,070 total passengers at an annual subsidy rate of \$1,752,067. Thus, the corresponding average per passenger subsidy for FY 2012 was \$1,637. Order 2012-12-8 directed all interested parties to show cause by January 3, 2013, as to why the Department should not make final its tentative

¹ The Federal Aviation Administration ("FAA") Modernization and Reform Act of 2012 (Public Law 112-95), signed into law on February 14, 2012, amended the definition of "eligible place" for the purpose of receiving EAS. The amendment, among other things, states that to be eligible, a community must have had an average subsidy per passenger of less than \$1,000 during the most recent fiscal year, as determined by the Secretary of Transportation.

findings and conclusions. However, at the request of the community, the Department extended the due date for objections to January 23, 2013.

Objections

Multiple members of the White Pine County Board of County Commissioners (representing Ely) filed comments in response to the Department's tentative determination. Their comments are summarized below. The complete public file for EAS at Ely may be accessed online through the Federal Dockets Managements System ("FDMS") at <http://www.regulations.gov> by using a keyword or ID search on: DOT-OST-1995-361.

By letter dated December 26, 2012, Mr. John S. Lampros, Chairman of the White Pine County Board of County Commissioners, objected to the Department's tentative decision on the grounds that Ely is "the most remote airport in the United States." Additionally, Mr. Lampros explained that enplanements have steadily increased over the last few years, thereby driving down the subsidy per passenger.

Additionally, the Department received a letter dated January 18, 2013, from Ms. Laurie L. Carson, Vice Chairman of the White Pine County Commission, and Airport Advisory Board Member. In the letter, Ms. Carson noted that Ely is very remote and contrasted Ely to other EAS communities that are located within 75 miles of a hub airport. That letter also suggested that the subsidy per passenger is not accurate because Ely has not been receiving the minimum statutory obligation of two round trips per day in accordance with 49 U.S.C. § 41732(b)(2). The result, according to that letter, has hindered ridership and increased the subsidy per passenger.

Finally, the Department received a letter from White Pine County Commissioner, Mr. Mike Lemich, which stated that the termination of EAS eligibility at Ely would have a detrimental effect on the entire airport. The letter claimed that air-med and fire suppression support, which are operated out of Ely's airport, would be negatively impacted as a result of the loss of EAS.

Decision

The objecting parties have not disputed our tentative determination that the community's average subsidy per passenger for FY 2012 was \$1,637 – above the \$1,000 limit. As stated above, Public Law 112-95 amended the definition of "eligible place" to include the requirement that during the most recent fiscal year, a community must have had an average subsidy per passenger of less than \$1,000. The statute does not allow the Department to look prospectively when determining whether the community meets the eligibility requirement. Rather, the statute requires the Department to look back to the most recent *prior* fiscal year.

In regards to Ely receiving less than two round trips per service day, the Department notes that during the carrier-selection case of 2001, Ely supported the proposal submitted by Scenic Airlines with one round trip per service day to Las Vegas. The community preferred this option over the proposal submitted by Salmon Air, which proposed to operate two round trips per service day to Salt Lake City. At that time, the community

advised the Department that they preferred the one-round-trip-a-day service to Las Vegas over any service to Salt Lake City. Additionally, the parties at that time stated that Las Vegas service was so much more attractive than Salt Lake City service that they were willing to waive the requirement of two round trips per service day in favor of one round trip a service day to Las Vegas. By letter dated July 19, 2001, the Mayor of Ely at that time, Mr. Robert Miller, explained to the Department that the Ely City Council voted to waive the requirement of two round trips per service day. As a result of that waiver, Ely received one round trip per service day to Las Vegas on Scenic Airlines.

We acknowledge that by letter dated June 29, 2010, the County Commission of Ely supported one round trip per service day to Denver by Great Lakes but requested the Department to consider a return to a schedule of two round trips per service day. However, the community did not support the proposal submitted by McCall Aviation which would have provided two round trips per service day to Salt Lake City. Instead, the community preferred Great Lakes' proposal of one round trip per service day to Las Vegas.

Given the totality of the circumstances, the Department hereby finalizes its tentative findings in Order 2012-12-8, and allows Great Lakes to terminate service.² In order to allow for an orderly shutdown, we will continue to authorize subsidy through March 31, 2013, and allow Great lakes to suspend service at that time. If Great Lakes does decide to suspend service at Ely, the Department expects it to contact all passengers who hold reservations for flights that will be suspended to inform them of the suspension, and to assist them in arranging alternative transportation or to provide them with a refund of their ticket price, without penalty, if requested.

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

ACCORDINGLY,

1. We terminate the eligibility of Ely, Nevada, under the Essential Air Service program, effective March 31, 2013;
2. We will continue to pay Great Lakes Aviation, Ltd. for the provision of EAS at Ely, Nevada, as described in Appendix A of Order 2012-11-18, through March 31, 2013;
3. We allow Great Lakes Aviation, Ltd., to suspend service at Ely, Nevada, on or after March 31, 2013, if it chooses;
4. We will close this docket; and

² We take this action pursuant to 49 U.S.C. §§ 40101(a)(7), (11), and (16), and 41731-42; *see also* 14 CFR Parts 271, 323, 325.

5. We will serve copies of this Order on the parties listed in Appendix C.

By:

SUSAN L. KURLAND

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



Appendix B

Passenger Traffic and Annual Essential Air Service Subsidy at Ely, Nevada

Year Ended	Enplaned Passengers	Deplaned Passengers	Enplaned + Deplaned Passengers	Annual Federal Subsidy	Subsidy Per Passenger
9/30/2010	204	222	426	\$1,864,717	\$4,377
9/30/2011	433	418	851	\$1,752,067	\$2,058
9/30/2012	540	530	1,070	\$1,752,067	\$1,637
Source: BTS T-100 Market					

SERVICE LIST

Great Lakes, Chuck Howell
Great Lakes, Michael Matthews
Ely Airport, Patrice Lytle