UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

Essential Air Service at **DECATUR, ILLINOIS** (FAIN 69A3451860440)[1] under 49 U.S.C. 41731 *et seq.*	)	**DOT-OST-2006-23929**

PETITION FOR RECONSIDERATION, MOTION FOR STAY, AND MOTION FOR EXPEDITED TREATMENT

Communications with respect to this document should be addressed to:

Todd Emerson
General Counsel
SKYWEST AIRLINES, INC.
444 South River Road
St. George, Utah 84790
(435) 634-3530
temerson@skywest.com

January 8, 2018

NOTICE: SkyWest Airlines, Inc. has requested expedited treatment of this petition for reconsideration and motion for stay. Any person who wishes to support or oppose this petition and motion may file an answer on or before January 18, 2018.

[1] FAIN = Federal Award Identification Number

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

Essential Air Service at **DECATUR, ILLINOIS** (FAIN 69A3451860440) under 49 U.S.C. 41731 *et seq.*	))))))))))	**DOT-OST-2006-23929**

PETITION FOR RECONSIDERATION, MOTION FOR STAY, AND MOTION FOR EXPEDITED TREATMENT

Introduction and Summary

SkyWest Airlines, Inc. (SkyWest) respectfully submits this petition for reconsideration of Order 2017-12-20 (Order)[2] and moves to stay the effectiveness of the Order pursuant to the Department's Rules of Practice.[3]

SkyWest submits that the Department's selection of Hyannis Air Service, Inc. d/b/a Cape Air (Cape Air) to provide Essential Air Service (EAS) at Decatur, Illinois, for the two-year contract term from February 1, 2018, through January 31, 2020 should be reconsidered because the Order: disregarded the strong support of the local community for SkyWest service; failed to provide the views of elected officials the "substantial weight" required by statute; should have credited SkyWest for its marketing plan, which was similar in size and scope to others; overlooked SkyWest's significantly smaller subsidy per passenger; and failed to consider the community's desire for larger, more comfortable jet aircraft instead of smaller turboprop aircraft.

---

[2] Order Selecting Airlines and Establishing Annual Subsidy Rates, Order 2017-12-20, Docket DOT-OST-2006-23929 (Dec. 21, 2017).
[3] 14 C.F.R. §§ 302.14, 302.11.

Time is of the essence to allow enough time to prepare for service in February 2018, and therefore SkyWest respectfully requests expedited treatment of this petition and motion. SkyWest is and remains ready, willing, and able to provide such service and submits that the public interest supports selection of SkyWest for Decatur EAS. SkyWest respectfully requests that the Department stay the effectiveness of the Order, reconsider its decision in this proceeding and, upon reconsideration, select SkyWest to provide EAS in Decatur.

The Local Community Strongly Supports Award to SkyWest

Community support is a central pillar of the EAS program. Highlighting the important relationship between the community and the EAS provider, Congress directed the Department to "giv[e] substantial weight to the views of the elected officials representing the users."[4] No other factor is required, by statute, to be given "substantial weight."

SkyWest's proposal enjoys the significant support of the entire Decatur community. Most importantly, SkyWest received the approval of the Decatur Park Board of Commissioners (Board), which owns and operates the Decatur Airport. Bob Brilley II, the President of the Board, wrote a letter, dated November 15, 2017, reflecting the Board's vote in favor of SkyWest after full deliberation and the opportunity to hear the opinions of all stakeholders and constituents.[5] Mr. Brilley stated that the Board supports SkyWest, along with "Archer Daniels Midland, Decatur Memorial Hospital, Economic Development Corporation, and the mayor of Decatur, as well … additional local companies."[6]

Conversely, the docket shows that Cape Air has no support from Decatur—no support from the airport, the government of Decatur, individuals, or the business community. Mr. Brilley rescinded the original letter, which no longer carries any significance in the proceeding. The Order obfuscates Cape

---

[4] 49 U.S.C. § 41733(c)(1)(d).
[5] Letter from Bob Brilley II, Decatur Park Board of Commissioners, to Michael Martin, U.S. Department of Transportation (Nov. 15, 2017).
[6] *Id.*

Air's lack of support by quoting the original, rescinded letter, which was issued before community support for SkyWest became apparent.

By referencing the original (and rescinded) letter of support for Cape Air and ignoring the new support for SkyWest, the Department failed to give "substantial weight" to the community's strong preference of SkyWest.

SkyWest's Marketing Plan Was No Less Robust than the Other Applicants

Although the Department indicated that SkyWest did not submit a marketing plan,[7] a closer review of its application shows that it did address marketing in its proposal in a manner similar to Cape Air. Specifically, SkyWest indicated that it "will also work with the community and airport partners by dedicating marketing resources to market the flight, ensuring successful increased passenger traffic in the community."[8] This language is materially similar to other successful proposals.[9] SkyWest also pledged to spend $20,000 on marketing in bid meetings with the Board, which it will honor if selected on reconsideration.

By comparison, Air Choice One received the Department's approval for its marketing plan, which consists of buzzwords: "Community Involvement," "Technological Advancements," and "Website Management."[10] Cape Air's marketing plan is also similarly general: it includes three aspects: streaming radio ads; an in-flight magazine; and digital marketing.[11]

[7] One of the five factors in the Department's EAS consideration is "whether the carrier has included a plan in its proposal to market its service to the community. 49 U.S.C. § 41733(c)(1)(e).
[8] SkyWest Proposal at 2.
[9] See Proposal of SkyWest, Docket OST-1996-1715 (Sept. 12, 2017) (showing that SkyWest's successful EAS proposal at Kearney, NE is nearly identical to SkyWest's proposal at Decatur and includes the same language.
[10] Air Choice One Proposal at 4.
[11] Cape Air Proposal at 32.

The Department's decision was arbitrary and capricious because it failed to credit SkyWest for its marketing plan while crediting the similar plans of the other proposals.[12] The Department provides no explanation or clarity why SkyWest is deficient.

As a practical matter, the success of SkyWest's marketing plan is evident by the overflow of support from the community. SkyWest is already implementing meaningful outreach to community and employers, including the largest employer in Decatur, which is likely to utilize the EAS service. SkyWest's marketing actions speak loudly to show its commitment to making Decatur EAS well-known, popular, and successful.

SkyWest's Subsidy is Far Less Per Passenger than Cape Air at Decatur

Third, the Department erroneously determined that Cape Air's subsidy proposal was preferable, when, in actuality, SkyWest's proposal is more cost-effective per passenger.[13]

While Cape Air is offer more round trips, it can transport far fewer passengers, compared to SkyWest's larger jet aircraft. Cape Air is proposing 36 round trips per week, but only carries a maximum of nine passengers per trip.[14] SkyWest proposes 14 round trips per week carrying a maximum of 50 passengers per trip. In total, Cape Air can provide air service for 324 persons from Decatur to the nearby hubs per week, while SkyWest can provide air service for 700 passengers—more than twice as many. In a year, SkyWest can transport nearly 20,000 more passengers to nearby hubs.

By viewing the subsidy based on total outlay, the Department did not consider the impact of the EAS subsidy per passenger—an analysis that strongly favors SkyWest. Over 52 weeks, Cape Air requests a subsidy of roughly $176 for each possible passenger. SkyWest requested roughly $91 per

[12] Order at 6.
[13] In addition to inaccurately determining the subsidy per passenger, the Department overstated the importance of the subsidy altogether. The Consolidated Appropriations Act, 2016, Public Law No. 114-113, states that when selecting a carrier to provide EAS, the Department "may consider" the relative subsidy requirements. The Department is not required to do so, nor did Congress direct the Department to give this consideration any weight. This consideration is of lesser significance than the five factors required by 49 U.S.C. § 41733(c)(1), which the Department is required to consider, and in the case of elected official support, to give "substantial weight."
[14] Cape Air estimates an average of five passengers per trip. *See* Cape Air Proposal at 34.

passenger—nearly half the subsidy. The Department's precedent shows that per passenger subsidies are an important factor in EAS decisions.[15] Additionally, statute requires the Department to monitor per passenger costs and caps the EAS subsidy based on passengers, not on total outlay.[16]

The Department Should Stay the Current Order

SkyWest, pursuant to 14 CFR 302.11, respectfully requests a stay of this proceeding until the Department rules on the reconsideration. As the Department admitted, the Decatur decision was "not so straightforward."[17] And therefore, no party should take steps in detrimental reliance of the Order, should it be reversed.

The Department may consider the following factors when determining whether to grant the stay: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.[18]

Based on these factors, the Department should stay the Order's effectiveness: (1) The Department's failure to give "substantial weight" to the elected officials views, its arbitrary and capricious dismissal of SkyWest's marketing plan, and its inaccurate subsidy analysis indicates SkyWest's strong likelihood of success on the merits; (2) Absent a stay, SkyWest will be injured, because shifting reservations to Cape Air will significantly complicate moving reservations to SkyWest, should it succeed on its petition for reconsideration; (3) Cape Air will not be harmed because there is sufficient time for the Department to make a decision before the February 1st changeover; and (4) The

---

[15] *See, e.g.*, Order 2017-8-25, Docket DOT-OST-2003-14492, Cape Girardeau/Sikeston, MI and Quincy, IL and Hannibal, MI (stating that the choice of SkyWest, although with a higher subsidy request than other carriers' proposals, would increase passenger enplanements between communities); Order 2003-1-1, Docket DOT-OST-2002-11859, Decatur, IL (selecting Trans States' Option A with the highest overall subsidy rate because this option would best meet the EAS determination, taking into account the total number of Trans States passengers); and Order 2016-4-15, Docket DOT-OST-2001-10642, Thief River Falls, MN (selecting a carrier with a higher subsidy request justifying that the subsidy was reasonable for the "proposed service levels").

[16] *See* The Department of Transportation and Related Agencies Appropriations Act, 2000 Pub. L. 106–69, title III, §332, Oct. 9, 1999, 113 Stat. 1022 (providing that unless the community receiving EAS is located more than 210 miles from the nearest large or medium hub airport, the subsidy rate per passenger cannot exceed $200).

[17] Order at 6.

[18] *Nken v. Holder*, 556 U.S. ___ (2009) (citing *Hilton* v. *Braunskill*, 481 U.S. 770, 776 (1987)).

public interest lies with allowing SkyWest to have a fair consideration, as the public has strongly voiced its preference for SkyWest's proposal. Furthermore, the public will not be harmed because Air Choice One can continue service until the Department finalizes its determination in the current proceeding.

Conclusion

For the above reasons, the Department should stay the effectiveness of the Order and reconsider the Order based on the issues raised in this petition. Upon reconsideration, the Department should select SkyWest to provide EAS at Decatur.

Respectfully submitted,

/s/ Todd Emerson

Todd Emerson
General Counsel
SkyWest Airlines, Inc.
444 South River Road
St. George, Utah 84790
(435) 634-3530
temerson@skywest.com

January 8, 2018

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document on the following persons in accordance with the Department's Rules of Practice:

michael.martin@dot.gov
susan.mcdermott@dot.gov
todd.homan@dot.gov
dennis.devany@dot.gov
kevin.schlemmer@dot.gov
darnea@airchoiceone.com
andrew.bonney@capeair.com
kquinn@bakermckenzie.com
Jennifer.Trock@bakermckenzie.com
Chris.Leuchten@bakermckenzie.com

/s/ Philippine Dumoulin