



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

Issued by the Department of Transportation
on the 3rd day of June, 2020

**CONTINUATION OF CERTAIN AIR
SERVICE**

Docket DOT-OST-2020-0037

Under Public Law 116-136 §§ 4005 and 4114

FINAL ORDER ON ADJUSTMENTS TO SERVICE OBLIGATIONS

I. SUMMARY

By this Order, the U.S. Department of Transportation (Department) finalizes its tentative findings in Order 2020-5-5 and grants point exemptions to 15 Covered Carriers¹ from their Service Obligations as determined by Order 2020-4-2 (April 7, 2020).²

II. BACKGROUND

By Order 2020-5-5 (Show Cause Order), issued May 22, 2020, the Department tentatively granted point exemptions from Service Obligations for points as described in Appendix A of that order. The Covered Carriers are: Alaska Airlines, Allegiant Air, American Airlines, Delta Air Lines, Elite Airways, Frontier Airlines, Cape Air, JetBlue Airways, Ravn Alaska, Seaborne Virgin Islands, Silver Airways, Southern Airways Express, Spirit Airlines, Sun Country Airlines, and United Airlines.³ Interested parties were given until 5:00 PM (EDT) on May 28, 2020 to file comments or objections to the Department's tentative findings.

III. COMMENTS & DISPOSITION

In response to the Show Cause Order, the Department received comments and objections from 14 individuals and organizations, which are discussed below. The complete record of the proceeding, including all public comments and objections filed, can be found by searching for docket DOT-OST-2020-0037 at www.regulations.gov.

¹ For purposes of the Notice, the Department considered carriers that have applied for CARES Act assistance, but not yet received it, as Covered Carriers.

² The Service Obligation points were updated on May 12, 2020 and filed together with the Notice in the Docket.

³ Common names of the carriers are used throughout this Order.

Comments from Individuals

The Department received a comment from an individual arguing that the proposed exemptions for Frontier and Cape Air would result in significant job losses at the Portland International Jetport (PWM).⁴ The commenter further notes that the service provided by these carriers is important to the Maine economy, particularly during the summer tourist season. The commenter also praises Cape Air's interline connections at Boston that provide easy connections for travelers.

The Department received a comment from an individual objecting to our tentative grant of an exemption to Frontier at Greenville-Spartanburg International Airport (GSP).⁵ The commenter argues that airfares at GSP would increase if Frontier were to terminate service. The commenter also notes that, as a Frontier flight attendant, they are reliant on Frontier's service to commute to work. Finally, the commenter notes that a sibling also uses Frontier's service to get to Orlando for medical treatment. The commenter requests that the Department deny Frontier's request for an exemption at GSP.

The Department received comments from several individuals objecting to our tentative grant of an exemption for United at Rochester, Minnesota.⁶ The commenters argue that the exemption should be reconsidered given the demand created by the Mayo Clinic's presence in Rochester. The commenters argue that United's service to Rochester provides convenience for patients as well as physicians and others traveling to and from the Mayo Clinic.

The Department received a comment from an individual arguing against granting exemptions to Allegiant, JetBlue, and Frontier at Palm Springs, California.⁷ The commenter argues that these carriers accepted tax-payer funding and should be held to the original obligations associated with that assistance and should each be required to provide at least one flight per week.

Disposition: The Department declines to modify our tentative findings with regard to Portland, Maine; Greenville-Spartanburg, South Carolina; Rochester, Minnesota; and Palm Springs, California. Consistent with our commitment in the Notice, these points will continue to receive air service from other Covered Carriers, ensuring that they retain air service through at least September 30, 2020. The Department believes, consistent with the Notice, that the remaining service by Covered Carriers at these points provides sufficient capacity and connectivity to serve the points, consistent with the standards of the CARES Act. Currently, the remaining Covered Carriers at each of these points have scheduled service significantly in excess of their minimum service obligations under the Order 2020-4-2. At Rochester, Minnesota, where commenters

⁴ See "Comment from Anonymous", DOT-OST-2020-0037-0177.

⁵ See "Comment from Anonymous", DOT-OST-2020-0037-0178.

⁶ See "Comment from Hakan Demirsar"; "Comment from Kady Greiner"; and "Comment from Lisette Nunez", DOT-OST-2020-0037-0181, 0182, 0183.

⁷ See "Comment from Anonymous", DOT-OST-2020-0037-0184.

raised issues of access to medical care at a facility that receives many inbound visitors, the Department notes that two large carriers will remain in the market with currently scheduled frequencies in excess of the minimums required by the Department. These carriers will continue to provide the traveling public with access to Rochester from multiple large hubs including Minneapolis, Atlanta, and Chicago. The Department will continue to monitor the industry, including for signs of improved passenger volume during the phased re-opening of the economy and may amend, revoke, or alter this relief at any time, without hearing.

Comments from Organizations

Virgin Islands Port Authority⁸

The Virgin Islands Port Authority (VIPA) filed a comment on the Department's tentative decision to grant exemptions to Seaborne, Spirit, and Silver. The VIPA argues that the U.S. Virgin Islands depend on tourism, trade, and other services for approximately 60 percent of the Virgin Islands' GDP and about 50 percent of civilian employment. The VIPA also states that residents and visitors rely on air service to connect the islands with each other and the mainland. The VIPA strongly supports airlines maintaining their existing levels of air service to the U.S. Virgin Islands and requests that the Department not grant further air service exemptions.

Disposition: The Department recognizes the importance of air service to the U.S. Virgin Islands' economy. However, the Department declines to modify its tentative grant of exemptions to Seaborne, Spirit, and Silver, for their U.S. Virgin Islands services. Drawing upon the standards set forth in the CARES Act, the Department believes the remaining Covered Carrier service at St. Thomas and St. Croix is sufficient to meet the existing and near-term demand for travel. The U.S. Virgin Islands may notify the Department if at any time it believes that air service is insufficient to meet critical needs as defined by the CARES Act. The Department will continue to monitor air service there.

Williston Basin International Airport⁹

The Department received a comment from Anthony Dudas, Airport Director of the Williston Basin International Airport (XWA), regarding our tentative grant of an exemption for Delta at XWA. Mr. Dudas argues that the loss of Delta service at XWA would be detrimental to the local and national economies. Mr. Dudas states that load factors at XWA have risen from 23 percent in April to more than 35 percent in the first three weeks of May. Mr. Dudas also states that the region's energy industry is poised to resume gradual operations over the course of the summer and that the resumption of activity at the Bakken oilfield depends on air service at XWA. The comment also included letters of support from the North Dakota congressional delegation, the Governor of North Dakota, and the President of the North Dakota Petroleum Council.

⁸ See "Virgin Islands Port Authority (Correspondence)", DOT-OST-2020-0037-0186.

⁹ See "City of Williston, North Dakota (Objection to Request of Delta Air Lines, Inc. for Exemption from Service Obligation)", DOT-OST-2020-0037-0185.

Disposition: The Department recognizes the importance of air service to North Dakota and to the energy sector. However, we do not find a basis in the comments to modify our tentative findings with regards to XWA. The CARES Act requires the Department to balance the needs of communities to maintain at least minimal connections to the national air transportation system with the needs of carriers to conserve resources prior to the expiration of the Service Obligations. XWA will continue to be served by United, which is currently providing service in excess of its minimum service obligations at XWA. This decision does not prevent Delta, or any other carrier, from providing service to XWA as conditions improve and demand returns.

Mobile Airport Authority¹⁰

The Department received an objection from the Mobile Airport Authority (MAA) regarding our tentative grant of an exemption to Frontier for its service at Mobile Downtown Airport (BFM). MAA argues that as a result of Frontier's Mobile-Orlando service, the airport has hired two full-time and 11 part-time employees to provide ground support. MAA has also waived landing fees and terminal rent for Frontier. MAA notes that the Transportation Security Administration has also added 10 positions and purchased passenger and baggage screening equipment at BFM as a result of Frontier's Mobile-Orlando service. MAA argues that these and other related jobs could be lost if the exemption is granted. MAA believes that demand will rebound as Orlando theme parks and other attractions gradually reopen over the coming months.

Frontier filed a motion for leave to file a reply.¹¹ Frontier argues that the Department was correct to determine that it is not reasonable or practicable for Frontier to continue service at Mobile, with very few passengers, while the point will continue to receive substantial scheduled service from other major airlines. Additionally, Frontier argues that its Mobile-Orlando service had only a three percent booked-load factor for June and this underperformance was the reason for its exemption request.

MAA filed a response to Frontier's reply.¹² MAA contends that Frontier did not make a good faith effort to operate out of Mobile, requests that the Department require Frontier to continue service from Mobile to Orlando through September 30, 2020 or to repay MAA for the costs incurred to assist Frontier in operating out of Mobile.

Disposition: The Department has decided not to modify its tentative grant of an exemption for Frontier at Mobile. Based upon the standards set forth in the CARES Act, the Department believes Mobile will be sufficiently served by the remaining Covered Carriers (American, Delta, and United) who are all, at present, providing service above their minimum service obligation levels at Mobile. The Department believes that its tentative decision, which we are here

¹⁰ See "Mobile Airport Authority (Objection to Request of Frontier Airlines for Exemption from Service Obligation)", DOT-OST-2020-0037-0187.

¹¹ See "Motion for Leave and Reply of Frontier Airlines", DOT-OST-2020-0037-0190.

¹² See "Response of Mobile Airport Authority to Motion for Leave and Reply of Frontier Airlines", DOT-OST-2020-0037-0191.

finalizing, balances the need of the community to maintain its links to the national air transportation system, with the goals of the CARES Act to ensure air carrier financial viability. To MAA's final point, the Department is not aware of any statute that would authorize it to require the repayment of any funds by Frontier, nor has MAA cited any.

Lincoln Airport Authority¹³

The Department received a comment from David S. Haring, Executive Director of the Lincoln Airport Authority. Mr. Haring states that prior to the COVID-19 public health emergency, Delta's services from Lincoln to Minneapolis and Atlanta were operating at 85 to 90 percent load factors and that many individuals and businesses in the Lincoln community have an ongoing need for these services. Mr. Haring urges the Department to identify metrics or benchmarks that would trigger a requirement for carriers to return service to exempted markets.

Disposition: The Department declines to modify its tentative decision at Lincoln. Lincoln will continue to receive service from United, which is currently providing service in excess of its minimum service obligation at Lincoln. The Department will not prescribe specific metrics that would prompt us to require carriers to return service to specific markets in this Order. The CARES Act requires us to balance the dual goals of ensuring that communities maintain a minimum level of connectivity to the national air transportation system and that air carriers remain financially solvent such that they can participate in and aid the economic recovery. We believe the procedures we have established in this docket, and our decision here with regard to Lincoln, have properly balanced those goals.

Huntsville -Madison County Airport Authority¹⁴

The Department received a comment from Richard Tucker, CEO of the Huntsville-Madison County Airport Authority, regarding our tentative grant of an exemption to Silver at Huntsville. Mr. Tucker requests that, if Silver is granted an exemption, the Department condition it on requiring Silver to resume its minimum service level at Huntsville should government and/or military travel grow beyond its current level in the Huntsville region, prior to September 30, 2020.

Disposition: The Department declines to modify its tentative decision with regard to Huntsville. As we have noted here and elsewhere, the Department will continue to monitor the industry as the economy begins to recover and may amend, modify, or revoke the exemptions granted here should conditions warrant. If demand from government or military travel grows before September 30, the carrier will have commercial incentives to restart these services.

IV. CONCLUSION

For the reasons described above, the Department finalizes, without modification, our tentative findings in Order 2020-5-5. The Department recognizes the challenges faced by communities

¹³ See "Lincoln Airport Authority (Correspondence)", DOT-OST-2020-0037-0188.

¹⁴ See "Huntsville International Airport (Correspondence)", DOT-OST-2020-0037-0189.

resulting from the loss of certain air services. However, the Department believes that the process we are finalizing here strikes an appropriate balance between the needs of communities to maintain at least minimal access to the national air transportation system during the public health emergency, and the needs of carriers to conserve financial resources to weather this time of unprecedented loss of demand. We also note that nothing in this Order prevents any carrier from serving any point that it wishes to serve as the economy recovers and market conditions improve. The Department expects that Covered Carriers will provide the option of refunds or credits to any passenger already booked on the flights that do not operate as a result of the exemptions. The Department will continue to rely, to the extent practicable in the given conditions, on market forces to determine carrier service decisions.¹⁵

ACCORDINGLY:

1. The Department makes final its tentative findings and conclusions as described in Order 2020-5-5, and awards exemptions to 15 Covered Carriers allowing them to suspend service through September 30, 2020, to the points listed in Appendix A, subject to the standard conditions contained in Appendix B. This grant of exemptions will not eliminate the point from the Covered Carrier's underlying Service Obligations;
2. The Department may amend, modify, or revoke these exemptions at any time without hearing at our discretion;
3. The Department grants all motions filed in this docket to date seeking leave to file unauthorized or late pleadings in response to Order 2020-5-5;
4. The Department will not entertain petitions for reconsideration of this order; and

¹⁵ 49 U.S.C. § 40101(a)(6).

5. The Department will serve this Order on all parties on the service list for this docket.

By:

JOEL SZABAT
Assistant Secretary
Aviation and International Affairs

(SEAL)

An electronic version of this document is available at: <http://www.regulations.gov>

Granted Exemptions

Carrier	City
Alaska Airlines Inc.	Charleston, SC Columbus, OH El Paso, TX New Orleans, LA San Antonio, TX
Allegiant Air	New Orleans, LA Ogdensburg, NY Palm Springs, CA San Antonio, TX Springfield, IL Tucson, AZ
American Airlines Inc.	Aspen, CO Eagle, CO Montrose/Delta, CO Worcester, MA
Cape Air	Portland, ME
Corvus Airlines, Inc d/b/a Era Aviation d/b/a Ravn Alaska ¹⁶	Goodnews Bay, AK Kodiak, AK Napakiak, AK Napaskiak, AK Platinum, AK
Delta Air Lines Inc.	Aspen, CO Bangor, ME Erie, PA Flint, MI Fort Smith, AR Lincoln, NE New Bern/Morehead/Beaufort, NC Peoria, IL Santa Barbara, CA Scranton/Wilkes-Barre, PA Williston, ND
Elite Airways LLC	Sarasota/Bradenton, FL
Frontier Airlines Inc.	Greenville/Spartanburg, SC Mobile, AL Palm Springs, CA Portland, ME

¹⁶ As of the publication of this Order, Ravn has applied for, but not yet received, CARES Act assistance. The carrier is also undergoing Chapter 11 bankruptcy restructuring and is not currently operating. At such time as it does receive CARES Act assistance and resumes operations, the exemptions granted here will be effective. Our granting of these exemptions to Ravn did not prejudice any other Covered Carrier's exemption requests in this proceeding.

JetBlue Airways	Tyler, TX Albuquerque, NM Palm Springs, CA Sacramento, CA Sarasota/Bradenton, FL Worcester, MA
Seaborne Virgin Islands, Inc.	Charlotte Amalie, VI Christiansted, VI Culebra, PR San Juan, PR Vieques, PR
Silver Airways	Charlotte Amalie, VI Huntsville, AL Key West, FL Tallahassee, FL Tampa, FL (Metropolitan Area)
Spirit Air Lines	Asheville, NC Charlotte Amalie, VI Christiansted, VI Greensboro/High Point, NC Plattsburgh, NY
Sun Air Express LLC dba Sun Air International / Southern¹⁷	Nashville, TN
Sun Country Airlines d/b/a MN Airlines	Madison, WI Philadelphia, PA Portland, OR Sacramento, CA St. Louis, MO
United Air Lines Inc.	Allentown/Bethlehem/Easton, PA Charlotte Amalie, VI Chattanooga, TN Fairbanks, AK Hilton Head, SC Ithaca/Cortland, NY Kalamazoo, MI Key West, FL Lansing, MI Myrtle Beach, SC Rochester, MN

¹⁷ As of the publication of this Order, Southern has applied for, but not yet received, CARES Act assistance. At such time as it does receive CARES Act assistance, the exemptions granted here will be effective. Our granting of these exemptions to Southern did not prejudice any other Covered Carrier's exemption requests in this proceeding.

U.S. Carrier Standard Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with consumer protection and civil rights requirements, including, but not limited, to requirements contained in 14 CFR Parts 250, 254, 257, 259, 374, 382 and 399;
- (3) Comply with the requirements for reporting data to the Department, including, but not limited, to requirements contained in 14 CFR Parts 234, 241, and 244;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To ensure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.