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May 8, 2020

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Mr. Robert Finamore  
Chief, Foreign Air Carrier Licensing Division  
U.S. Department of Transportation  
1200 New Jersey Ave., SE  
Washington, D.C. 20590  
[robert.finamore@dot.gov](mailto:robert.finamore@dot.gov)

**Re: Application of Caribbean Airlines Limited;  
Docket DOT-OST-2006-26586**

Dear Mr. Finamore:

We write further to correspondence filed in the above-captioned docket by Seaborne Virgin Islands, Inc. d/b/a Seaborne Airlines, Inc. ("Seaborne") on April 16, 2020, regarding Caribbean Airlines Limited's ("CAL") pending application for a reinstatement and expansion of certain exemption authority to engage in the foreign air transportation of persons, property and mail. On May 4, 2020, CAL filed a reply (the "Reply") to both Seaborne's correspondence and objections from U.S. air carrier Hyannis Air Service, Inc. d/b/a Cape Air ("Cape Air"). Seaborne submits this brief letter to address various statements made in the CAL Reply regarding competition in the air service markets at issue.<sup>1</sup>

In the Reply, CAL goes to great lengths to argue that its request for expanded exemption authority, if granted, would have little to no impact on U.S. air carrier services. As with its April 16<sup>th</sup> correspondence, Seaborne will not pass on the availability of the expanded traffic rights requested by CAL under the applicable bilateral air transport agreement.<sup>2</sup> However, as CAL has chosen to prosecute its application by extensively relying on such "lack of impact" arguments, Seaborne is compelled to submit the following points for the Department's consideration.

First, CAL maintains in its Reply that the expanded traffic rights it seeks from the Department are dissimilar to those of Seaborne. This is not true, as Seaborne's routes

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<sup>1</sup> To the extent necessary, Seaborne requests that the Department accept this letter for filing under 14 CFR § 302.6(c). Good cause exists for granting this request, as the information provided herein will ensure the Department has a thorough administrative record upon which to render a decision in this matter.

<sup>2</sup> Air Transport Agreement between the Government of the United States of America and the Government of the Republic of Trinidad and Tobago (done at Port of Spain, on May 22, 2010).

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between San Juan and each of Dominica and Tortola directly overlap with CAL's contemplated service. CAL's argument that its planned flights between those points would be part of multi-island routes do not change the analysis; there is nothing to prevent CAL from selling seats and cargo space in these local markets on a 5<sup>th</sup> freedom basis.

Second, so far as Seaborne can determine, no U.S. air carrier presently can avail itself of established scheduled traffic rights, under bilateral air transport agreements currently being applied, in order to operate the same multi-island route for which CAL seeks expanded exemption authority. Air service between the U.S. and each of Dominica and the British Virgin Islands (the "BVI") presently is governed by the Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, concerning Air Services, and exchange of letters (done at Bermuda, July 23, 1977) ("Bermuda II").<sup>3</sup> Annex 1, Section 1, Route 6 of Bermuda II, which sets forth routes for U.S. air carriers, does not authorize any 5<sup>th</sup> freedom service beyond Dominica or the BVI. Yet, if granted its expanded exemption request, CAL will be able to exercise such rights, with Dominica and the BVI serving as intermediate traffic points as part of its planned multi-island service to and from its homeland. Thus, it can hardly be asserted that CAL's proposed service has no significant impact on U.S. air carriers when the operation by such carriers of the very same multi-island routing identified by CAL would be extra-bilateral in nature.

Third and as noted above, CAL repeatedly asserts throughout the Reply that its proposed service expansion would have no significant impact to U.S. air carriers, but then goes on to paradoxically argue that CAL's service would provide "greater cargo space" than currently provided by either Seaborne or Cape Air at Dominica and Tortola, "furthering a compelling need for larger cargo capacity, which is currently not met by U.S. carriers in the two city-pair markets at issue."<sup>4</sup> Regardless, Seaborne's parent, Silver Airways LLC ("Silver"), was recently granted exemption authority to engage in foreign air transportation of persons, property and mail, with large aircraft, between the United States and each of Dominica and the BVI. Silver's fleet of large aircraft includes the ATR-72, the same aircraft type that CAL would operate under the expanded exemption authority it seeks. Upon receipt of FAA authorization to conduct cargo operations, Silver will be able to easily deploy the ATR-72, in

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<sup>3</sup> Dominica upon its independence acceded to Bermuda II. Seaborne recognizes that the British Virgin Islands, due to their status as an Overseas Territories, will be governed by the Air Transport Agreement Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland (done at Washington, D.C., on Nov. 28, 2018), when that agreement eventually enters into force.

<sup>4</sup> CAL Reply at 3.



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addition to ATR-42 aircraft, in the air service markets at issue, should demand by shippers warrant.<sup>5</sup>

Finally, and as noted in Seaborne's April 16<sup>th</sup> correspondence, the public benefits CAL claims will flow from its service are, under the present COVID-19 public health emergency, questionable, as the pandemic has drastically reduced air travel demand and resulted in a near-negligible revenue environment. Indeed, recent forecasts prepared by the International Air Transport Association ("IATA") indicate that the pandemic will see airline passenger revenues drop by as much at \$314 billion in 2020, a 55% decline versus 2019.<sup>6</sup> This is in addition to a disastrous March for worldwide passenger traffic, which IATA estimates declined nearly 53% year-over-year.<sup>7</sup>

Respectfully submitted,

A handwritten signature in blue ink that reads "Jonathon H. Foglia".

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Counsel to Seaborne Virgin Islands, Inc.

cc: All parties served with CAL's Reply

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<sup>5</sup> Additionally, Seaborne anticipates obtaining approval from the FAA in the next few weeks for the carriage of mail and small packages.

<sup>6</sup> "COVID-19 Puts Over Half of 2020 Passenger Revenues at Risk," IATA Press Release (April 14, 2020), available at <https://www.iata.org/en/pressroom/pr/2020-04-14-01/>.

<sup>7</sup> "Passenger Demand Plunges in March as Travel Restrictions Take Hold," IATA Press Release (April 29, 2020), available at <https://www.iata.org/en/pressroom/pr/2020-04-29-01/>.