

BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Application of)	
)	
SWIFT AIR, LLC)	Docket DOT-OST-2020-0011
)	
In the matter of 2020 U.S.-Havana)	
Public Charter Authorizations Proceeding)	
)	

MOTION FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12

Communications with respect to this document should be addressed to:

Jeff Conry
Chief Executive Officer

Joe Lazaga
Vice President, Florida, Latin America
& Caribbean

Swift Air, LLC
2406 South 24th Street, Suite E-101
Phoenix, AZ 85034

J. Parker Erkmann
Julia Brinton
Cooley LLP
1299 Pennsylvania Ave., NW
Suite 700
Washington, DC 20004
(202) 842-7800
(202) 842-7899 (fax)
perkmann@cooley.com
jbrinton@cooley.com

Counsel for Swift Air, LLC

June 16, 2020

BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Application of)	
)	
)	
SWIFT AIR, LLC)	Docket DOT-OST-2020-0011
)	
In the matter of 2020 U.S.-Havana)	
Public Charter Authorizations Proceeding)	
)	

MOTION FOR CONFIDENTIAL TREATMENT UNDER 14 C.F.R. § 302.12

Pursuant to Order 2020-1-16 (the “Show Cause Order”) and Order 2020-5-7 (the “Final Order”)¹ of the Department of Transportation (“DOT” or the “Department”), Swift Air, LLC d/b/a iAero Airways (“iAero”) is filing an application (the “Application”) regarding the Department’s procedures to distribute the available round-trip public charter flights between the United States and José Martí International Airport (“HAV”) in Havana, Cuba. As noted in the Final Order,² iAero is providing the Department with a copy of its charter contract, which contains confidential, proprietary, and commercially sensitive information. iAero hereby requests pursuant to 14 C.F.R. § 302.12 that the Department withhold from public disclosure the charter contract included with this Motion.

The Department has granted similar requests for confidential treatment and should do

¹ 2020 U.S.-Havana Public Charter Authorizations, Docket DOT-OST-2020-0011, Order to Show Cause 2020-1-16 (Jan. 29, 2020); U.S.-Havana Public Charter Authorizations, Docket DOT-OST-2020-0011, Final Order 2020-5-7 (May 28, 2020).

² Show Cause Order at 5; Final Order at 12 (“A copy of the charter contract would also be required.”).

the same here.³ As will be explained below, the charter contract includes proprietary and commercially sensitive information that is kept strictly confidential and not shared with outside parties.

1. As noted in the Show Cause Order and Final Order, iAero is submitting a copy of the charter contract between iAero and Cuba Charter Services, LLC d/b/a Aerocuba, which contains highly confidential and proprietary business information.

2. The charter contract is confidential and proprietary, and is protected from public disclosure under various exemptions under the Freedom of Information Act, including 5 U.S.C. § 552(b)(3) and (b)(4). Exemption 3 protects from disclosure information specifically protected by another federal statute. Here, that statute is 49 U.S.C. § 40115, which states that the Department “shall” withhold from public disclosure, among other things, information that would “have an adverse effect on the competitive position of an air carrier in foreign air transportation.” The charter contract clearly satisfies this standard. If disclosed, these highly sensitive negotiated contractual terms and other sensitive commercial information could be used by competitors to their strategic advantage, and to iAero’s disadvantage, in making competitive decisions.

3. Exemption 4 protects from public disclosure information that is (1) commercial or financial, (2) obtained from a person outside the government, and (3) privileged or confidential. The charter contract also clearly satisfies this standard. It contains commercial or financial information, is not available to the public and was obtained from a private citizen, and is deemed privileged or confidential by iAero. iAero also submits that public disclosure of the confidential

³ See, e.g., Applications of Atlas Air, Inc., Docket DOT-OST-2009-0267, Order to Show Cause 2010-4-8 at 13-15 (Apr. 15, 2010); Applications of Swift Air, LLC, Docket DOT-OST-2005-22880, Order to Show Cause 2006-9-10 at 7-8 (Sept. 13, 2006).

information it is providing would cause substantial harm to its competitive position, and could impair the government's ability to obtain similar information on a voluntary basis from individuals in the future.⁴

WHEREFORE, for the foregoing reasons, iAero respectfully requests that the Department grant its motion for confidential treatment and withhold from public disclosure the charter contract iAero has filed under seal with this Motion.

Dated: June 16, 2020

Respectfully submitted,



J. Parker Erkmann
Julia Brinton
Cooley LLP
1299 Pennsylvania Ave., NW, Suite 700
Washington, DC 20004
(202) 842-7800
(202) 842-7899 (fax)
perkmann@cooley.com
jbrinton@cooley.com

Counsel for Swift Air, LLC

⁴ See, e.g., *Gulf & Western Indus., Inc. v. United States*, 615 F.2d 527,529 (D.C. Cir. 1980); *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Confidential Treatment of Swift Air, LLC was served this 16th day of June, 2020 via email transmission on the following:

Air Carrier/Operator	Name	Email Address
Aerocuba, Cubazul	Jason E. Maddux	jmaddux@ggh-airlaw.com
American Airlines	Robert Wirick	robert.wirick@aa.com
American Airlines	John Williams	john.b.williams@aa.com
Caribbean Sun Airlines, Inc. d/b/a World Atlantic Airlines	John R. Mietus, Jr.	john@mietuslaw.com
Cuba Travel Services	Lonnie Anne Pera	lpera@kmazuckert.com
Delta Air Lines	Christopher Walker	chris.walker@delta.com
Delta Air Lines	Steven Seiden	steven.seiden@delta.com
Delta Air Lines	Alex Krulic	Alex.krulic@delta.com
HavanaAir	Mark Elias	mark@havanaair.com
JetBlue	Reese Davidson	reese.davidson@jetblue.com
JetBlue	Robert Land	robert.land@jetblue.com
Invicta Group Services d/b/a Invicta Air, JetBlue	Evelyn Sahr	esahr@eckertseamans.com
Invicta Group Services d/b/a Invicta Air, JetBlue	Drew Derco	dderco@eckertseamans.com
Southwest	Robert Kneisley	bob.kneisley@wnco.com
Southwest	Leslie Abbott	leslie.abbott@wnco.com
Superior Air	Superior Air	anmartsuperiortravel@yahoo.com
United Airlines	Steve Morrissey	steve.morrissey@united.com
United Airlines	Daniel Weiss	dan.weiss@united.com
Xael Charters	Josh Romanow	romanow@pillsburylaw.com
DOT	Brett Kruger	brett.kruger@dot.gov
	Info	info@airlineinfo.com

/s/ Erin Combs _____
Erin Combs