

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

_____	)	
Application of	)	
	)	
SWIFT AIR LLC	)	Docket DOT-OST-2020-0011
d/b/a iAero Airways	)	
	)	
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:

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June 18, 2020

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Pursuant to Order 2020-5-7 (the “Final Order”)<sup>1</sup> of the Department of Transportation (“DOT” or the “Department”), Swift Air LLC d/b/a iAero Airways (“iAero”) is filing a Notice (the “Notice”) informing the Department of its firm plans to operate certain round-trip public charter flights between the United States and José Martí International Airport (“HAV”) in Havana, Cuba. As noted in the Final Order,<sup>2</sup> iAero is providing the Department with copies of its charter contracts, which contain 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 contracts included with this Motion.

The Department has granted similar requests for confidential treatment and should do the same here.<sup>3</sup> As will be explained below, the charter contracts include proprietary and commercially-sensitive information that is kept strictly confidential and not shared with outside

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<sup>1</sup> U.S.-Havana Public Charter Authorizations, Docket DOT-OST-2020-0011, Final Order 2020-5-7 (May 28, 2020).

<sup>2</sup> Final Order at 12 (“A copy of the charter contract would also be required.”).

<sup>3</sup> 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).

parties.

1. As noted in the Notice, iAero is submitting a copies of its charter contracts with Aerocuba, Cubazul, Havana Air and Xael respectively, which contain highly confidential and proprietary business information.

2. The charter contracts are confidential and proprietary, and are 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 contracts clearly satisfy this standard. If disclosed, the 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 contracts also clearly satisfy this standard. They contain commercial or financial information, are not available to the public and were obtained from a private citizen, and are deemed privileged or confidential by iAero. iAero also submits that public disclosure of the confidential 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.<sup>4</sup>

4. In addition, the Department granted Rule 12 protection to similar contracts submitted earlier in this proceeding.<sup>5</sup>

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

Dated: June 18, 2020

Respectfully submitted,



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<sup>4</sup> 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).

<sup>5</sup> Order 2020-5-7 at 19.

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Confidential Treatment of iAero was served this 18th day of June, 2020 via email transmission on the following:

<b>Air Carrier/Operator</b>	<b>Name</b>	<b>Email Address</b>
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/s/ Erin Combs  
Erin Combs