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via Regulation.gov & Email

July 23, 2020

Mr. Brett Kruger  
Chief, Special Authorities Division, X-46  
Office of International Aviation  
Department of Transportation  
1200 New Jersey Avenue, SE, 8<sup>th</sup> Floor  
Room W86-445  
Washington, DC 20590  
Brett.Kruger@dot.gov

Re: DOT-OST-2020-0011 Opposition of Swift Air, LLC d/b/a iAero Airways (“iAero”) to Interim Cancellation of WAA

Dear Mr. Kruger:

iAero submits this letter in opposition to the pleading styled an “Interim Cancellation” submitted by Caribbean Sun Airlines, Inc. d/b/a World Atlantic Airlines (“WAA”).<sup>1</sup> In its Interim Cancellation, WAA cancelled its Miami-Havana charter operations scheduled for August 1-14, 2020 but claimed it was not returning these 12 flights to the charter pool. WAA’s purported action has no support in the language of the Order 2020-5-7 (the “Order”), is contrary to guidance given by the Department and is contrary to the Department’s policy against warehousing limited charter authorities reflected in the Order.

First, WAA’s attempt to retain the 12 cancelled charter allocations is inconsistent with the Order. WAA makes the conclusory assertion that the “interim cancellation does not require WAA to return the twelve (12) charter allocations affected to the charter pool under ordering paragraph 10 of the Order.”<sup>2</sup> In contrast, the Order directs the return of cancelled flights to the charter pool:

The Department also shares the concerns raised by parties about a potential lack of transparency in the charter pool process, particularly as they relate to cancelled charters that are returned to the charter pool. To address these concerns, we will require that all cancellation notices and applications be served on interested parties, and that applications for reallocation of any charters that are returned to

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<sup>1</sup> DOT-OST-2020-0011-0038.

<sup>2</sup> *Id.*



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the pool may be filed beginning one business day after the cancellation notice is submitted.

Order at 14. The Order contemplates that carriers may apply for a charter following the submission of a notice of cancellation.

Second, WAA's position is inconsistent with informal guidance issued by the Department. To gain clarity regarding whether charters that are rescheduled must be cancelled and returned to the charter pool, iAero submitted a request for guidance to the Department. The answer provided directly contradicts WAA's position in its Interim Cancellation.<sup>3</sup> DOT stated unequivocally that cancelled charters must be returned to the charter pool:

Note that under the terms of the order, a carrier *must return an allocated charter* in writing within two business days of the determination that an allocated flight will not operate, and the notification must be filed in the docket and served on interested parties.

Exhibit 1 (emphasis added). The Department never contemplated that a carrier could play keep away with cancelled charters without exposing them to the charter pool for potential reallocation to other carriers.

Third, WAA's proposal is inconsistent with the Order's policy against warehousing frequencies. The Order states that the Department does not want carriers to hold frequencies without definitive plans to use them:

We remain concerned, however, that carriers could seek to warehouse valuable charter allocations without plans to use them and thereby preclude the opportunity for other parties to participate in the market.

Order at 14. Here, WAA's plan is to warehouse the frequencies. It has cancelled the charters but has not submitted a schedule stating when those charters will be used, undermining the transparent process the Department sought to implement in the Order.

For the foregoing reasons, iAero respectfully requests that the 12 charter flights cancelled by WAA be returned immediately to the charter pool for reallocation.

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<sup>3</sup> Email from B. Kruger to Parker Erkmann, Re: Cuba Charters Guidance (Jun. 10, 2020), attached as Exhibit 1.



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Sincerely,

A handwritten signature in black ink, reading "J. Parker Erkmann". The signature is written in a cursive, flowing style.

J. Parker Erkmann

Attachments



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Letter Opposition to WAA Interim Cancellation was served this 23rd day of July, 2020 via email transmission on the following:

<b>Air Carrier/Operator</b>	<b>Name</b>	<b>Email Address</b>
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
Invicta Group Services, Inc. d/b/a Invicta Air, JetBlue	Drew M. Derco	dderco@eckertseamans.com
Invicta Group Services, Inc. d/b/a Invicta Air, JetBlue	Evelyn D. Sahr	esahr@eckertseamans.com
JetBlue	Reese Davidson	reese.davidson@jetblue.com
JetBlue	Robert Land	robert.land@jetblue.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/ Hilarie Laing

# **EXHIBIT 1**

**From:** Kruger, Brett (OST) <brett.kruger@dot.gov>  
**Sent:** Wednesday, June 10, 2020 2:42 PM  
**To:** Erkmann, Parker  
**Cc:** Gaynes, Jeffrey (OST); Taylor, Benjamin (OST); Kubrin, Tricia (OST)  
**Subject:** RE: Cuba Charters Guidance

[External]

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Parker,

I've copied your questions and added our responses below. I hope this information is helpful, and we're happy to address any additional questions as necessary.

Regards,  
Brett

1. Is a change in the date of a flight a "cancellation" requiring the return of a flight to the charter pool?

We would be open to considering a change in flight dates of up to 48 hours on a case-by-case basis, without requiring the return of the flights to the charter pool. The Department has typically afforded flexibility to carriers in those limited instances, and we would expect to act consistently with that practice in the context of Havana public charters.

We would likely regard longer-term date changes as cancellations. Note that under the terms of the order, a carrier must return an allocated charter in writing within two business days of the determination that an allocated flight will not operate, and the notification must be filed in the docket and served on interested parties. A carrier could seek to facilitate a date change by returning an allocated frequency and applying for a new allocation under the procedures described in the order. Recall that under the terms of the charter pool application procedures, the carrier could apply for the returned charter no earlier than one business day after the notification of that charter flight's return.

In all cases, the public charter operator would need to submit the necessary documents required by 14 CFR 380.25.

2. How is the use-or-lose condition going to be applied?

In general, we agree with your interpretation. We recall, however, that the order reminded carriers that it is not the Department's policy to allow limited opportunities to go unused, and the Department specifically reserved the right to take any action necessary in the public interest to ensure the integrity of the charter pool. See Order at 16.

3. Can iAero use one blanket Rule 12 motion for the entire proceeding?

We would consider the merits of any motion for confidentiality, along with any responsive pleadings, at the time of filing, and in the context of 14 CFR 302.12 and our usual decisional factors.

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**From:** Erkmann, Parker [mailto:perkmann@cooley.com]  
**Sent:** Monday, June 08, 2020 12:00 PM

**To:** Kruger, Brett (OST) <brett.kruger@dot.gov>

**Subject:** Cuba Charters Guidance

Brett,

iAero (and a number of its customers) are seeking guidance about the interpretation of the Department's Cuba Charter Order. I know a number of interested parties have the same questions. It might be useful for the Department to have a call among interested parties or publish an FAQ so all parties have the same understanding.

1. Is a change in the date of a flight a "cancellation" requiring the return of a flight to the charter pool? This question has come up in the context of the charter operators preparing their schedules for submission by iAero. In a high-demand period such as the Christmas holidays, the charter operators want to add more flights. But there's uncertainty about precisely when the peak demand will occur. Suppose, for example, iAero submits a schedule for Xael scheduling six flights for December 28 and four flights for December 30. Due to demand if Xael wants to move one of the December 28 flights to December 30, would that be considered a "cancellation?" Part 380 suggests it would not be. Part 380.25(c) states when an amendment to a filed prospectus may be made, listing "the addition or cancellation of any flight" and "a change in any flight, date, origin city or destination city." Can the Department provide clarity on this point?
2. How is the use-or-lose condition going to be applied? This question arises from the use of the phrase "used or committed for use by contract during the first six months of the charter year." Order at 16. I interpret this to mean that an air carrier will have fulfilled its obligation with respect to the use-or-lose rule if at the six-month mark of the charter year (November 30, 2020), it has either flown 40% of the flights or submitted contracts to the Department indicating an agreement to operate the flights in the remainder of the charter year. Some charter operators have expressed the view that at least 40% would need to have been flown by the six-month mark. That could be problematic this year because the charter year is already getting off to a slow start due to COVID-19, and the high-demand periods (Christmas and Easter) always will occur in the second half of the charter year.
3. Can iAero use one blanket Rule 12 motion for the entire proceeding? We've been submitting one with each filing, and it would be more efficient to refer back to a previously-filed one. The confidential documents would still be submitted under seal.

Let me know if any of my questions are not clear or if helpful to discuss. The charter operators are struggling with the first question as we work on the responses to the Order.

Thanks,

Parker

**J. Parker Erkmann**

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