

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

Docket DOT-OST-2020-0011

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

Communications with respect to this document should be addressed to:

Laura Overton
General Counsel & Vice President of
Legal Affairs
(702) 830-8717
Laura.overton@allegiantair.com
Counsel for Allegiant Air, LLC

Joanna Hufhand
Manager, Charter Sales
(702) 830-8627
Joanna.hufhand@allegiantair.com

Allegiant Air, LLC
1201 N. Town Center Drive
Las Vegas, NV 89144

August 11, 2020

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

| | | |
|--|---|--------------------------|
| Application of |) | |
| |) | |
| ALLEGIANT 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”), Allegiant Air, LLC (“Allegiant”) 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 Allegiant is providing the Department with a copy of its charter contract, which contains confidential, proprietary, and commercially sensitive information. Allegiant 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, Allegiant is submitting a copy of the charter contract between Allegiant and Anmart Superior Travel LLC d/b/a/ Anmart Air, 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 Allegiant’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 Allegiant. Allegiant 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

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).

from individuals in the future.⁴

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

Dated: August 11, 2020

Respectfully submitted,



Laura Overton
General Counsel & Vice President of Legal Affairs
1201 N. Town Center Drive
Las Vegas, NV 89131
(702) 820-8513
Laura.overton@allegiantair.com

Counsel for Allegiant 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 Allegiant Air, LLC was served this 11th day of August, 2020 via email transmission on the following:

| Air Carrier/Operator | Name | Email Address |
|---|---------------------|--|
| Aerocuba, Cubazul | Jason E. Maddux | jmaddux@ggh-airlaw.com |
| Swift Air d/b/a iAero | Parker Erkmann | perkmann@cooley.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 |
| ta Group Services, Inc. d/b/a Invicta Air, JetBlue | Drew M. Derco | dderco@eckertseamans.com |
| ta 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/ Laura Overton