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August 18, 2020

VIA EMAIL

Mr. Brett Kruger
Division Chief,
U.S. Air Carrier Licensing/Special Authorities
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Re: Request to Expedite (Docket No.: OST-2020-0011)

Dear Mr. Kruger:

Invicta Group Services, Inc. (“Invicta”) respectfully submits this Request to Expedite the Department’s ruling on Swift Air d/b/a iAero Airways’ (“iAero”) July 23rd and August 4th Applications for Allocations from the U.S.-Havana Charter Pool.¹ Invicta is one of several public charter operators working with iAero, but it is the only new entrant to the MIA-HAV market, and the only operator that was not issued frequencies during the advance allocation process. *See* Order 2020-5-7. Rather, Invicta is entirely reliant upon gathering frequencies from the charter pool to build out its schedule for the 2020/2021 charter year.

As background, on January 29, 2020, the Department issued an Order to Show Cause (Order 2020-1-6) with its intent to cap the number of public charter operations to Jose Marti International Airport (HAV) Havana, Cuba at 3,600, and grant an initial allocation of frequencies to iAero and World Atlantic Airlines (WAA), based on their prior year’s operations. It was clear from the outset that the frequency allocation would be heavily in favor of incumbent direct air carriers and public charter operators. Nonetheless, the Department sought to establish a “first-come, first-served” policy to ensure any unused frequencies are properly allocated to public charter operators that would be able to use them. *Id.* at 5.

After receiving comments on the Order to Show Cause, the Department issued its Final Order (2020-5-7) on May 28, 2020, initially allocating frequencies and establishing the rules that would govern the allocation and operation of frequencies for the charter year, June 1, 2020 to May 31, 2021. The Department was persuaded to assign over 90% of the available 3,600 frequencies to incumbent direct air carriers and public charter operators, thereby disadvantaging

¹ Invicta submits this request pursuant to 14 CFR 302.11(e) of the Department’s Procedural Regulations as a party of interest.

new entrants to the market by leaving less than 10% of available frequencies in the pool. *See* Order 2020-5-7 at 13.²

Following the first allocation of charter frequencies from the charter pool, Invicta was only able to acquire 129 of the 260 frequencies it needed to conduct a six (6) rotations per week flight schedule during the 2020/2021 charter year. As discussed above, this has led Invicta to rely on obtaining additional frequencies from the charter pool to remain viable in the U.S.-Havana market.

iAero submitted two allocation applications on behalf of Invicta for a total of 86 frequencies: The first on July 23, 2020 for 68, and the second on August 4, 2020 for 18. Both of the seven (7) days answer periods passed for the applications without any Answer or Objection being filed.

Currently, Invicta only has frequencies for a five (5) rotations per week flight schedule through February 28, 2020, but needs 105 additional frequencies to complete its desired six (6) rotation per week seasonal schedule through May 31, 2021. Invicta has been and continues to be harmed by the Department's lack of action on the pending iAero applications, as it cannot advertise or sell seats on its intended schedule to maintain its minor foothold in the market. The 86 frequencies requested in iAero's applications are clearly not the 105 it needs, but they would allow Invicta to begin marketing and selling seats on an expanded schedule. Further, the Department's allocation of the frequencies would be in the public interest, allowing Invicta to provide critical competition to the incumbent public charter operators.

When initiating the rules of charter allocations the Department implemented the use-or-lose policy to prevent carriers from warehousing frequencies "without plans to use them and thereby preclude the opportunity for other parties to participate in the market." *Id.* at 14. However, by not ruling on iAero's pending allocation applications, the Department is itself "precluding the opportunity" for Invicta, the only new entrant to have applied for frequencies, to have greater participation in the market.

Thank you for your consideration of this request.

Respectfully,



Evelyn D. Sahr
Alexander T. Marriott
Counsel to Invicta Group Services, Inc.

² Even after allocating more than 90% of the charter frequencies to incumbent carriers and operators, the Department still found "that the public interest warrants the retention of some charters in the first-come, first-served pool to provide an opportunity for other interested parties to participate in the U.S.-Havana public charter market." *See* Order 2020-5-7 at 13. The Department therefore recognized the need to allocate unused frequencies to new entrants.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail this 18th day of August 2020 on the following:

<i>Air Carrier/Operator</i>	<i>Name</i>	<i>Email Address</i>
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