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VIA REGULATIONS.GOV AND EMAIL

brett.kruger@dot.gov

Brett Kruger
Chief, U.S. Carrier Licensing Division
U.S. Department of Transportation
1200 New Jersey Ave SE
Washington, DC 20590

NOTICE OF OBJECTION

RE: Objection of Motion for iAero Airways for a Modification of US-Havana
Roundtrip Charter Flight Allotment Procedures

Docket DOT-OST-2020-0011

Dear Mr. Kruger:

This firm represents Global Crossings Airlines Group, Inc. d/b/a/ GlobalX ("GlobalX") with regard to Swift Air, LLC d/b/a iAero Airways' ("iAero") Motion for a Modification of U.S. Havana Roundtrip Charter Flight Allotment Procedures. iAero's Motion requests the U.S. Department of Transportation ("Department") to modify Final Order 2020-5-7 2020 titled "U.S. Havana Public Charter Authorizations" served May 28, 2020 ("Final Order"). The Final Order was precipitated by a letter dated January 7, 2020 from then Secretary of State, Michael R. Pompeo to Elaine L. Chao, Secretary of Transportation. In summary, the Final Order restricted all public charter flights between the United States and all airports in Cuba except José Marti International Airport (HAV) in Havana, Cuba.

Order 2020-5-7

FINAL ORDER (“Order”) – The Economies of Scale and Fairness¹

In order to further the policy goals of the administration in its application of economic pressure as it relates to the Cuban regime,² in response to Secretary of State Pompeo, the Department determined that a system must be developed for a *fair and equitable* allocation of permissible flights to HAV to both assist Direct Air Carriers who currently were offering scheduled and ad/hoc service to Cuba, while making allowances for other carriers who were either in process, or capable of providing future service. It would be a fallacy to believe that any Direct Air Carrier offering service to HAV prior to entry of the Order would necessarily be continuing that service indefinitely. The vagaries of reliable and scheduled transport are controlled by the economic realities of a free market. The Department considered responses for a number of Direct Air Carriers, such as iAero and World Atlantic, and Public Charters including ViajeHoy Charters, LLC d/b/a Havana Air (“Havana Air”), an operator with the largest passenger count to Cuba – via iAero.

In its Response set forth in the Final Order, iAero’s primary concern was maintaining its 2,240 allocations to effectively create its own monopoly over all competitors since it supported 4 public charter operators, Havana Air, Aerocuba, Cubazul and Xael. At the time, iAero also objected to World Atlantic’s allocation since it had ceased operating flights with Superior. As the single largest Direct Air Carrier to Cuba, iAero’s position is consistent with maintaining its economic advantage over the market.

World Atlantic in its filed response, also vying to maintain a viable presence in Cuba and not lose its market position, lobbied against a pool allotment system asserting that future requests could not fairly be met on a first come, first-served system. However, World Atlantic failed to provide any substantive analytics in support of its proposal to effectively remove all competition, other than iAero for the Cuba route.

Subsequent to reviewing the input from all parties concerned, the Department decided in its Final Order, “an appropriate level for the public charter cap would be one

¹ The Economies of Scale is viewed as a paradigm whereby a cost advantage is reaped by, in this instance, an air carrier when their allocation is predicated upon prior service and hence, allegedly predetermines that carrier is more economically efficient – but in a free market system, removes the element of cost incentives since competition is removed from the equation. In reality, the Department can achieve more efficiency and serve the public interest better and still preserve the Economies of Scale by increasing the number of service providers and thereby lowering costs.

² To alter foreign policy of the Obama Administration as it related to Cuba, Trump and Secretary of State Pompeo directed the Secretary of Transportation to exert economic pressure upon the Cuban regime to respect all human rights and fundamental freedoms, and for the unconscionable support for the illegitimate and totalitarian regime of President Mudoro in Venezuela. The change in policy curtailed the number of scheduled flights to Cuba by eliminating all flights other than to HAV.

corresponding to current levels of service, based upon public charter prospectuses accepted during the calendar year 2019.” The Department further stated:

“The order specifically proposed a combination of advance allotments of charter flights for incumbent carriers, *and a first come, first served charter pool for the remainder of the available charters.*³ Under this arrangement, the initial charter year for the department would limit the number of public charters between the United States and Havana to 3,600 round-trip flights, beginning with the first day of the month following the issuance of the final order.

[emphasis added]

In furtherance of its new policy objectives, the Department granted an initial allocation to iAero and World Atlantic to provide the continuation of existing public charter services. iAero was granted 3000 round-trip public charter flights and World Atlantic was granted 256 flights.

It should be noted that this Final Order was entered on May 28, 2020, at a period when COVID-19 was wrecking havoc on world economies and U.S. airlines were downsizing their operations and parking a majority of their aircraft in long-term storage.

ORDER MODIFICATION – Order 2020-12-10

On October 27, 2020 iAero filed a motion requesting modification of the procedures determining advance allotment of public charter flights between MIA and HAV for the 2020/2022 charter year. iAero argued that US-Havana charter flights had been shut down from March 30 through at least November 1, 2020. The prohibited flights did not provide a meaningful measure of iAero’s service levels to determine the 2021/2022 allotments. With only a response from World Atlantic in opposition, the Department concurred with iAero’s Motion and on December 11, 2020 the Department entered Order 2020-12-10 Granting Motion and stated therein that the “public interest is best served by granting the motion which will place a greater emphasis on advanced planning over the ad-hoc allocation from the charter pool.”

iAERO’S PENDING MOTION

The current Motion being proffered is on the surface different from the relief sought in Order 1010-12-10. However, GlobalX would state that in reality, when garlanded together, the relief sought represents a continuing and interlinked sequence of

³ Without being specifically stated, it is inferred that the Department recognized that an air carrier such as iAero would be given certain preferences predicated upon its prior flight history to Cuba, while also recognizing that the balance of allocations in the pool would be on a first come first serve basis, thereby preserving and serving the Economies of Scale and fairness.

events intended to eliminate competition to iAero's sole advantage. This Motion is an attempt to limit free market conditions – which does not serve the public interest. If there is any doubt to iAero's true intent, one need not look further than page 3, ¶ 1 where iAero states that the “charter pool has created an opening for *opportunistic charter carriers* seeking to deploy excess capacity to US-Havana routes.” iAero goes on to state that “air carriers are applying for round trips originally allocated to iAero.” GlobalX would challenge this assertion. On September 9, 2021 in response by Havana Air to a request by World Atlantic for an allocation from the pool, World Atlantic canceled Havana Air's previously booked flights and returned 218 allocations to the pool. Simultaneously, World Atlantic immediately sought the return of these allocations for its own new public charter. While it's not the Department's place to intercede in these local contractual disputes, it is an inescapable conclusion that this maneuvering sets forth a pattern that several Direct Air Carriers are attempting to corner the entire market. GlobalX would further state, once these flights are returned to the pool, they do not have a Direct Air Carrier's identifying mark on them – hence the reason it's called a “pool”.

Further, iAero states that the “pent up demand for U.S. Cuba travel have created a “gold rush” for iAero's slot allocation. *See* page 6, ¶ 2. While there may be an initial high demand for seats to Cuba due to the prior sixteen (16) months of very limited flights, there is no data in support of any longer term demand exceeding previous pre-COVID-19 pandemic levels, or any data that supports the economics of its allegation, and as earlier stated, allocations in the pool are not a poker chip with iAero's name on it.⁴ Once the allocation is returned, it is given to those who have made proper requests and are then allocated on a first come, first served basis.

GLOBALX APPLICATION FOR ALLOCATIONS

On September 7, 2021 GlobalX filed its Application for Global Crossings Airlines, Inc. for Allocation from US-Havana Charter Pool (“Application”). GlobalX is entering numerous markets – not just HAV. In its Application, GlobalX referenced it had contracted with Havana Air to operate 781 round-trip charter flights from November 1, 2021 to May 31, 2022. The aircraft being used are Airbus A320 and A321, 180 and 183 useable seats on this itinerary respectively. Upon polling the interested parties, the only party indicating it was filing a response was iAero. While GlobalX does not challenge the sound reasoning in its Modified Order of 2020-12-10, it only modifies the base line for the upcoming year's flight allocations. What iAero is trying to do not is not only revise

⁴ GlobalX does not dispute that there may be an increase in passengers traveling to Cuba, or that there are economic benefits attached to this increase. However, as presented in context to iAero's Motion, it is being used as a sword to slice away the competition. If iAero is going to present this as part of its argument that the flight allocation will take a substantial portion of the business of iAero, and the allotment should be modified to its advantage, then at a minimum, iAero should support its argument with data analytics in order to draw their inductive references - not merely conclusory, and how those analytics further the public interest – not solely the interest of iAero.

the methodology for the allotment, but do so in a manner that quashes its competition, and its former largest customer – Havana Air.

GLOBALX AIRLINES

GlobalX was founded in 2019 by a team of senior airline executives with over 185 years of combined airline experience in the CEO and 14 C.F.R. Part 119 positions. On August 4, 2021, after successfully completing all of the rigorous requirements of 14 C.F.R Part 121, it became the newest U.S. FAA Aircraft Operating Certificate (AOC) holder authorizing it as a U.S. 121 Flag and Supplemental carrier. A ceremony was held at its home base at MIA with dignitaries from Miami, the FAA, and US DOT celebrating this monumental accomplishment. Considering a substantial part of the work effort was undertaken in the midst of a COVID-19 pandemic, it has been heralded by others in the industry and serves as a testament to the professionalism and talent of its leadership team. GlobalX now flies an Airbus A320-200 and A321-200. A third aircraft has been delivered and is currently being placed on the certificate with more in the pipeline. GlobalX is also in the process of acquiring up to fifteen (15) A321-200 (P2F) freighters and hence, will add cargo operations to its current op-specs. GlobalX, as a publicly traded company⁵ has undertaken a significant financial investment to both become certified and also grow its operations.

By way of experience, its Director of Operations, Chief Pilot and both cockpit and cabin crews have logged significant flight hours to HAV over the past 20 years. Its Senior Management team has worked with U.S. and Cuban authorities at prior airlines and understands the operational and legal requirements of this route.

GlobalX is fit and able to conduct the Cuba flights and is committed to flying the HAV route with a modern Airbus fleet, and with a strong commitment to aircraft reliability. It understands that unscheduled maintenance and inclement weather can cause schedule delays, and to counter these delays, in addition to spare aircraft to support the HAV route, it has in place reciprocal agreements for sub-service with other scheduled airlines that operate to and from S. Florida airports. GlobalX has its own ground handling operation at MIA (referenced as the GLOBALX Ground Team) which gives it full operational control over the aircraft - both above and below the wing which is essential for the Cuban operations which necessarily entail very full flights and baggage and personal cargo. Flying the Airbus A320/321 has substantial passenger and cargo capacity that rivals, and in-fact exceeds that of the traditional Boeing aircraft.

Further, GlobalX has acquired a third aircraft, an A320 that arrived on September 22, and a fourth will arrive mid-October, and a fifth at the end of December. GlobalX intends to keep one (1) A320 as a spare with crews on standby at MIA.

⁵ Stock Ticker: TXSV: JET and OTCQB: JETMF.

It is the intent of GlobalX and Havana Air to use the A321 for the route. The additional cargo capacity of the A321 will help ensure no bags are left behind, and during the early months of the re-launch of HAV flights, the additional cargo capacity will aid in the backlog of medicines, and other relief items needed in Cuba as a result of the pandemic.

In summary, competition in the airline industry on key routes such as MIA-HAV is essential to ensure the highest levels of customer service, and the lowest cost to the customer. Competition – the economic stalwart of the free market system forces airlines to be efficient, on-time, and reliable when other airlines fly similar routes due to the threat of loss of market share and customer confidence. This is in the public's best interest and has been an essential component of every DOT decision since the Deregulation Act of 1978.⁶

Based upon all the above, GlobalX **OBJECTS** to iAero's Motion to Modify the Roundtrip Charter Flight Allotment Procedures.

Very truly yours,

/s/ Mark A. Schneider, for the firm of,

MARK A. SCHNEIDER, P.A.

MAS/ce

⁶ The stated goals of the Deregulation Act included the following:

- the maintenance of safety as the highest priority in air commerce;
- placing maximum reliance on competition in providing air transportation services;
- the encouragement of air service at major urban areas through secondary (non primary) or satellite airports;
- the avoidance of unreasonable industry concentration which would tend to allow-one or more air carriers to unreasonably increase prices, reduce services, or exclude competition; and
- the encouragement of entry into air transportation markets by new air carriers, the encouragement of entry into additional markets by existing air carriers, and the continued strengthening of small air carriers.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September 2021, a copy of the foregoing application has been served by electronic mail on the parties named below.

/s/ Mark A. Schneider

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