

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC**

CONTINUATION OF CERTAIN AIR
SERVICE

Under Public Law 116-136 §§ 4005 and
4114(b)

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) Docket DOT-OST-2020-0037
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OBJECTIONS AND COMMENTS OF FRONTIER AIRLINES, INC.

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Frontier Airlines, Inc. (“Frontier”) respectfully objects to, and comments on, DOT Show Cause Order 2020-3-10 (“Show Cause Order” or “SCO”) proposing to impose minimum air service continuation requirements on CARES Act¹ recipients. Frontier’s owner, Indigo Partners, fully supports these Objections and Comments.

The proposed requirements would be unduly and unnecessarily burdensome on Frontier and other ultra-low cost carriers (“ULCCs”) and would not be in the interest of public health during a public health crisis. Indeed, the proposed requirements encourage the public to behave in contravention of numerous federal, state, and local orders not to travel. For the reasons discussed below, Frontier urges the Department to modify the proposed requirements.

Frontier appreciates the extraordinary efforts of this Administration and the Congress to enact the CARES Act expeditiously, and likewise acknowledges the

¹ The Coronavirus Aid, Recovery, and Economic Security Act.

Department's efforts to assist the airline industry during these unprecedented times. Frontier also recognizes that Department staff worked under significant time-pressure to issue this Show Cause Order on March 30 pursuant to the CARES Act, which the President signed on March 27.

However, if these proposed requirements are finalized, the result would be a disaster for Frontier and other ULCCs. The imposition of minimum service standards as proposed would be fundamentally inconsistent with the policy and objectives of the CARES Act. It ignores the seasonal nature of Frontier's and other ULCCs' schedules and the efforts of federal, state, and local governments to mitigate the COVID-19 pandemic by banning all but essential travel and ordering people to shelter in place or stay at home.

Moreover, by establishing the week of February 29 as the benchmark for determining minimum service requirements and suggesting that the requirements would be effective for a particular carrier when it signs the applicable grant or loan agreement, the SCO ignores the rapidly changing, unprecedented, and precipitous drop in passenger traffic resulting from the COVID-19 pandemic and the state, city, and local travel prohibitions and shelter-in-place orders. The consequence of the SCO would be to compel airlines to operate empty flights regardless of passenger demand, imposing unnecessary stress on their financial position. The SCO also fails to take into account post-February 29 schedule service reductions that have **already** been loaded for effect in April, as well as the seasonal nature of Frontier's and other ULCCs' scheduling. At a minimum, given the unprecedented and precipitous decline in passenger traffic in March and now April, the

Department should benchmark the Service Obligation based on originally published reduced schedules for April 2020 and should not begin to impose the Service Obligation until June 2020 at the earliest, when hopefully some – albeit likely very limited – passenger demand returns, rather than April 2020, when grant or loan agreements are finalized and passenger demand is non-existent.

The proposed requirements would also undermine the efforts of airlines to preserve cash during this unprecedented time by requiring the provision of empty flights for no reasonable public benefit. Carriers that are struggling to survive and unable to comply with DOT's service requirements would be unable to obtain desperately needed grant and loan assistance. Frontier is absolutely willing to use the grant to continue employment levels as provided for in Section 4113 of the CARES Act. But to continue such employment levels while at the same time being required to operate empty flights makes no sense and would not serve the public interest.

II. The Department's One-Size-Fits-All Show Cause Order Does Not Account for Frontier's ULCC-Type Network and Operations.

The Department's one-size-fits-all SCO does not properly account for the particular types of operations that ULCCs like Frontier provide, which significantly differ from larger mainline network airlines. Frontier operates highly seasonal and multi-variable service patterns. Depending on the size and characteristics of each market, it offers varying levels of weekly frequencies that follow the distinct customer demand profiles of its leisure travelers on mostly point-to-point services.

For many cities, it operates only a few frequencies a week to a few destinations and/or offers service only on a seasonal basis. Such a service pattern is very different from the traditional daily or more frequent, year-round, and highly predictable service patterns operated by larger, major airlines, with many destinations aimed at business travelers. These differences are crucial. Yet they are not accounted for in the one-size-fits-all Show Cause Order.

The “continuation of air service” sections in the CARES Act state that the DOT Secretary “is authorized to require, *to the extent reasonable and practicable*, an air carrier provided [financial relief] to maintain scheduled air transportation service, as the Secretary . . . deems necessary, to ensure services to any point served by that carrier before March 1, 2020.”² As explained below, the continuing air service requirements proposed in the SCO are *neither* reasonable *nor* practicable. In fact, the SCO requirements would turn the CARES Act on its head. Absent certain modifications, the proposed requirements will adversely affect and unduly burden Frontier and its employees in significant ways with no public benefit, and will completely undermine what the CARES Act is trying to accomplish.

III. Carriers Should Not Be Required to Operate Winter Seasonal Service During the Summer Season.

The Show Cause Order proposes to base the “Service Obligation” on “week-ended February 29, 2020 OAG schedule data as the primary source and

² CARES Act, §§ 4005, 4114(b) (emphasis added).

year-ended December 31, 2019 T100 data combined with year-ended December 31, 2019 OAG data as a supplementary source to determine the list of points served by covered carriers.”³ If finalized, this provision would require Frontier to continue operating its peak winter season schedule into the summer season when Frontier had no plans to operate such service even before the advent of the COVID-19 pandemic. In effect, the Department would compel Frontier (and other carriers that offer seasonal service) to fly routes during a season for which Frontier had never scheduled those routes in the first place because there was insufficient demand (and, given the current pandemic and lack of travel demand, the insufficient demand would now be exponentially exacerbated). Such a result is not “reasonable” or “practicable”, nor can it be sufficiently justified given the current environment. Accordingly, the Final Order should make clear that, regardless of the data set used by the Department, carriers are not required to operate any service that was not scheduled for the 2020 summer season in and through that off (summer) season.

IV. The Service Obligation for a Carrier Should Not Apply to Any State or City That is Subject to a Shelter-in-Place or Stay-at-Home Order or If the CDC Guidelines Discourage Interstate Travel.

A large number of states and localities have issued shelter-in-place or stay-at-home orders in an effort to mitigate the spread of COVID-19. Indeed, some of these impose criminal penalties for violations. For example, among the states and cities where Frontier operates, the following have issued shut-down directives:

³ SCO at 2.

Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, Vermont, Washington, Wisconsin, Houston, Dallas, San Antonio, El Paso, Austin, St. Louis, Kansas City, Oklahoma City, Tulsa, Charleston (SC), and Salt Lake City.

Although the specific restrictions of these orders vary, the basic thrust is that people are required to stay at home other than for essential activities and to socially distance themselves. Operating air service with a crew and perhaps few or no passengers into a state or city under such an order undermines the very objectives those orders seek to accomplish to limit significantly people's movements and interactions with others in order to mitigate the spread of COVID-19.

Frontier's principal priority is the safety of its passengers and crew members. The Department should not impose requirements on carriers during this unprecedented pandemic that would be at odds with the greater public interest of containing and defeating COVID-19. But compelling carriers and their crews to fly into states or cities that have issued such stay-at-home or shelter-in-place orders does just that. Therefore, the Final Order should make clear that the Service Obligation does not apply to states and cities that have mandatory stay-at-home or shelter-in-place orders without an exception for leisure or unnecessary travel.

Along those lines and for the same reasons, if the CDC issues guidance discouraging travel to/from certain areas (as it did recently with respect to New York, New Jersey, and Connecticut⁴), the Service Obligation should not apply to those areas.

V. The Minimum Service Requirement for Any Point Should Be No More Than The Lesser of 25% of a Carrier's Published Operations or Five Flights Per Week.

The proposed minimum service requirement disproportionately burdens Frontier and other similarly situated ULCCs that generally operate less than daily service on varying days of the week from a given city to just one or a few destinations. The Show Cause Order proposes that “[f]or points that a covered carrier served with at least one flight at least five days per week, the covered carrier would need to provide at least one flight per day, five days per week, for that point” (“5 days/week requirement”).⁵ The Department provides no justification for this threshold, other than suggesting in footnote 4 of the SCO that this threshold offers significant relief to carriers that operated “seven flights per day, seven days per week to a given point.” That may be true for large network carriers, but it is certainly not the case for ULCCs like Frontier that operate highly seasonal and multi-variable service patterns typically less than seven days per

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> : “The CDC urges residents of New York, New Jersey, and Connecticut to refrain from non-essential domestic travel for 14 days effective immediately. This Domestic Travel Advisory does not apply to employees of critical infrastructure industries, including but not limited to trucking, public health professionals, financial services, and food supply. These employees of critical infrastructure, as defined by the Department of Homeland Security . . . , have a special responsibility to maintain normal work schedule. The Governors of New York, New Jersey, and Connecticut will have full discretion to implement this Domestic Travel Advisory.”

⁵ SCO at 3.

week, with varying levels of weekly frequencies and few destinations for many cities. The lack of any reasonable justification for the 5 days/week requirement is further reflected in the SCO's provision that allows a carrier operating fewer than five days per week to a destination to provide only one flight per week.⁶ It makes no sense to require a carrier operating five days per week to a point to continue to maintain 100% of its schedule, but a carrier operating four days per week is only required to operate one flight per week—or 25% of its schedule.

In many markets served by Frontier, the service reduction provided for in the SCO gives little to no relief for Frontier. For example, using the DOT benchmark of the week of February 29, 2020, at four points, Frontier operated five flights per week (Washington (Dulles), Greenville/Spartanburg, Columbus, and Spokane), and thus the DOT proposal provides no relief and **requires Frontier to provide 100%** of the current service. At an additional ten cities, the reduction provides very little relief – less than 50% – in contrast to the demand which has **declined by over 90%**.

The SCO's minimum service requirement bears no realistic relationship to current reduced passenger demand. There is virtually no demand in almost all of Frontier's markets in light of travel bans and shelter-in-place requirements. In fact, in light of the precipitous decline in passenger traffic and to stem enormous losses and preserve resources, Frontier's originally published schedules for April had a substantial service reduction – selling 193 weekly departures serving 33 airports. Frontier would need to add 460 weekly departures to its originally published April

⁶ SCO at 3.

schedule in order to meet the Department's proposed 5 days/week minimum service requirement – a nearly **240% increase** with no traffic demand to justify it. In this respect, the SCO amounts to a government edict to operate more flights with the attendant costs and burdens regardless whether those flights are empty or have load factors in the single digits or teens. That does not make sense.

Frontier recommends that the Department set the minimum “continuation of air service” requirement or Service Obligation at no more than the lesser of 25% of a carrier's operations or five flights per week for a given city. This would more appropriately balance the different service patterns and networks of carriers, from ULCCs to LCCs to legacy carriers. If traffic demand increases, a carrier can always operate more than the 25% or five flights per week minimum based on market demand.

VI. Carriers Should Be Permitted to Reduce Service Below The Service Obligation If Service at a Particular City Fails To Generate An Average 25% Load Factor.

Many carriers will be seeking grants and/or loans and loan guarantees under the CARES Act and will be preserving cash and resources to weather the COVID-19 pandemic storm. It is therefore illogical for the Department to require carriers to operate routes that generate little to no revenue, much less make no money, as the Show Cause Order proposes. In order to avoid such a result, the Final Order should permit carriers to reduce service below the Service Obligation at a particular city for a period of at least ninety days if the service at a particular

city does not yield an average load factor of 25% or more during any seven-day period.

VII. The Opportunity to Seek Exceptions on a Case-by-Case Basis Is Not Sufficient.

Frontier appreciates that the Show Cause Order provides carriers with an opportunity to be relieved of the Service Obligation on a case-by-case basis subject to Department review.

“The Department recognizes that even with these reduced service levels, it may not be practicable for covered carriers to serve all points previously served in the prevailing operating environment. . . . Therefore, the Department tentatively determines to allow covered carriers, at any time for the duration of their Service Obligation, to request that points be exempted from their Service Obligation. Covered carriers should submit a list of points that they believe are not reasonable or practicable to serve and explain why service is not reasonable or practicable. The Department will inform covered carriers of its decision in a timely manner.”⁷

This case-by-case opportunity, however, is not sufficient. As explained above, the Department should make well-grounded and fully justified modifications in its Final Order that would obviate the need for extensive case-by-case applications and Department consideration which will likely impose huge burdens on the airlines and DOT staff. During this unprecedented time when carriers are scrambling to preserve resources, have other company-critical activities underway, and reducing staffing levels, now is not the time to add another process and burden on the airlines and the Department to handle clear cases which could be simply addressed by making the modifications proposed herein. That would significantly

⁷ SCO at 3.

reduce the number of cases that would need to be presented to the Department under this provision, and thereby reduce the associated burdens on the carriers and the Department. Simply put, the opportunity for carriers to present individual cases for exemption from the Service Obligation to the Department does not obviate the need to make the modifications outlined by Frontier in these Objections and Comments.

VIII. Flights Not Operated Due to Force Majeure or Safety Reasons Beyond the Carrier's Control Should Count as Fulfilling the Service Obligation.

As noted above, safety is Frontier's top priority. If a carrier is unable to operate a scheduled flight as part of its Service Obligation for safety, weather, maintenance or other force majeure conditions, the Department should give credit for that flight with respect to meeting the carrier's Service Obligation even though it did not in fact operate.

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Frontier Airlines appreciates the Department's effort to assist the industry and implement the CARES Act. However, Frontier (and its owner Indigo Partners) strongly believes that the requirements set out in the Show Cause Order are fundamentally inconsistent with the objectives of the CARES Act, the efforts of state and local governments to contain the COVID-19 pandemic, and the efforts of airlines to preserve cash during this unprecedented time for no reasonable public benefit, and fail to appreciate fully the unprecedented and precipitous drop in

passenger traffic resulting from the COVID-19 pandemic. In order to address those issues, the Department should make the modifications urged by Frontier in its Final Order on the continuation of air services under the CARES Act.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objections and Comments of Frontier Airlines was served this April 2, 2020, via e-mail transmission on the following persons:

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