

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

**CONTINUATION OF CERTAIN AIR SERVICE**

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

**Docket DOT-OST-2020-0037**

**REQUEST OF DELTA AIR LINES, INC. FOR  
EXEMPTION FROM SERVICE OBLIGATION**

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**April 10, 2020**

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**SUMMARY**

In Order 2020-4-2, the Department appropriately balanced the twin goals of ensuring minimum air services are maintained during the COVID-19 public health emergency while avoiding unreasonable service obligations. Delta shares these goals and is committed to providing continued access to its network to all U.S. communities that it reasonably can during this crisis. There are, however, a few aspects of the Order which would impose unreasonable requirements on Delta unless modified. Delta respectfully requests the following exemptions from Order 2020-4-2.<sup>1</sup>

**1. Seasonal Service**

Delta appreciates the Department's efforts to address concerns Delta and other carriers expressed concerning seasonal service. Because summer is approaching, Delta will operate its summer seasonal services as permitted in the Order. However, Delta requires an exemption allowing it to begin that service when it is scheduled to begin (in May and June), and to discontinue those services on the dates previously planned (at the end of August for most and in early September for the rest).

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<sup>1</sup> In addition, to the extent necessary, Delta requests a waiver of the requirement in Order 2020-4-2 that exemption requests be filed at least 10 business days in advance of a proposed service change. As explained in this pleading, ample good cause exists in support of this request.

Delta cannot start its summer seasonal services within seven business days. Delta does not have year-round local airport stations in place for these summer-only markets. Requiring Delta to start seasonal services earlier than planned or extend them beyond the dates they are scheduled to end would create severe operational and staffing challenges. Nor could Delta operate its winter seasonal services instead. The winter services have already ended (and were always scheduled to end on April 5). The winter stations are also not maintained year round and reopening them would create the same challenges. It would be contrary to the intent of the CARES Act to force carriers to operate seasonal services – winter or summer – during any time period other than when the carriers had planned to operate those services before the crisis. Delta therefore requests an exemption permitting it to start its summer seasonal services as previously planned. This exemption request applies to the following Service Obligation points:

- Cody, WY (COD)
- Juneau, AK (JNU)
- Ketchikan, AK (KTN)
- Martha's Vineyard, MA (MVY)
- Nantucket, MA (ACK)
- Sitka, AK (SIT)
- West Yellowstone, MT (WYS)

## **2. U.S. Virgin Islands**

Delta has temporarily suspended service to the U.S. Virgin Islands due to severe government-imposed travel restrictions. The Governor of the U.S. Virgin Islands essentially banned all tourist travel to the islands to slow the spread of COVID-19. The restrictions are set to expire April 30 and Delta plans to restart service on May 2 unless they are extended. Delta requests an exemption permitting it to delay the restart of its U.S. Virgin Islands service until May 2, and further requests that if the restrictions are extended beyond April 30,

this exemption will be automatically extended and remain in effect as long as the restrictions do. This request applies to the following two Delta Service Obligation points:

- Christiansted, VI (STX)
- Charlotte Amalie, VI (STT)

### **3. Cedar City, Utah**

Finally, Delta wishes to confirm that the Department will not consider Delta or SkyWest to be out of compliance with Order 2020-4-2 with respect to Cedar City, UT (CDC) during SkyWest's temporary suspension of services from March through July 2020 due to a runway construction project that makes commercial jet service impossible.

## **ARGUMENT AND AUTHORITIES**

The grounds for these exemption requests are set forth in further detail below.

### **I. THE DEPARTMENT SHOULD NOT REQUIRE CARRIERS TO OPERATE SEASONAL SERVICE BEYOND THE SEASONAL SERVICE PERIODS THAT CARRIERS INTENDED TO OFFER PRIOR TO THE CRISIS.**

The Department correctly observed in the Show Cause order that Sections 4005 and 4114(b) of the CARES Act authorize the Secretary to require carriers to maintain service they were offering before March 1, 2020, only “to the extent reasonable and practicable.”<sup>2</sup> It would be contrary to the intent of the CARES Act and unreasonable to require carriers to operate service that was always intended to be seasonal beyond the originally intended service period.

Delta appreciates that the Department recognized “the significant operational and financial challenges that would be imposed on carriers operating seasonal services should they be required to operate them year-round.”<sup>3</sup> The Department seeks in the

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<sup>2</sup> Order 2020-4-2, at 1.

<sup>3</sup> Order 2020-4-2, at 5.

Order to avoid that result by creating a new category of summer and winter seasonal Service Obligation points and allowing each carrier to choose which seasonal service it will offer.<sup>4</sup> However, the Order appears to require that carriers operate either their full winter or full summer seasonal service obligation in each reporting month beginning within seven business days of accepting any financial assistance under the CARES Act. If this were the outcome, it would continue to impose the “significant operational and financial challenges” that the Department sought to avoid. The “seasonal” service periods for these specialized markets do not neatly start and stop at the same time. Seasonal service to winter ski destinations like Steamboat Springs, Montrose, and Eagle ends with the end of ski season, not the IATA season. Delta’s seasonal services to these markets were always scheduled to end on April 5. Similarly, Delta’s seasonal service to Harlingen was targeted to serve South Padre Island Spring Break travelers and was also always scheduled to end on April 5.<sup>5</sup>

Delta’s summer seasonal services, on the other hand, were never intended to start on April 6, nor to extend through the end of September. To the contrary, most were not scheduled to begin operating until June, and most were scheduled to end at the end of August or during the first week in September. The planned seasonal start dates for these summer markets as published in Delta’s schedules are as follows:

- West Yellowstone, MT (WYS) – May 7
- Cody, WY (COD) – May 22
- Ketchikan, AK (KTN) – June 8
- Juneau, AK (JNU) – June 8
- Sitka, AK (SIT) – June 8
- Martha's Vineyard, MA (MVY) – June 26
- Nantucket, MA (ACK) – June 26

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<sup>4</sup> *Id.*

<sup>5</sup> See OAG schedules.

It would be extremely difficult and, in some cases, impossible for Delta to start these seasonal summer services earlier than the planned seasonal start dates. Delta does not maintain a station presence at these airports on a year-round basis. It has no airport staff in place, it has no contracted gate space, and it has not been selling tickets for these summer services before their intended start dates. Launching these services requires significant lead time to hire agents and contractors, adjust signage, and set up facilities and computer terminals. The month of May has already gone to crew bid, so staffing the flights on short notice could also present challenges. Delta needs at least eight weeks to make all the necessary preparations, which means that it would not be practicable for Delta to begin operating these services sooner than Delta is currently scheduled to do so.

An early start up of the planned summer service to Nantucket and Martha's Vineyard would present unique additional challenges. Local staffing is particularly difficult and affordable summer housing for staff is scarce at these premium summer vacation destinations. It must be reserved months in advance. Shifting the start date of these services to any date earlier than the currently planned service beginning June 26 for Nantucket and Martha's Vineyard is simply not feasible.

For similar reasons, Delta cannot extend the summer seasonal service for several of these markets beyond the currently scheduled service termination dates. Delta's seasonal summer service to Nantucket and Martha's Vineyard is scheduled to end on September 7. Its summer seasonal service to Juneau, Ketchikan, and Sitka, are all scheduled to end on August 31. Delta cannot extend these seasonal services through the end of the September as contemplated by Order 2020-4-2 because it depends upon a seasonal workforce which disappears after the month of August, when schools and universities go back into session.

As the Order is currently drafted, it appears that Delta must operate either its winter or its summer seasonal service within seven business days of accepting financial assistance under the CARES Act to comply with its Service Obligation. This requirement is not reasonable nor practicable. Delta cannot start its summer seasonal services immediately for the reasons described above, and it cannot restart its winter service either. Both Spring Break and ski season are over, and Delta never intended to offer those services after April 5. The winter seasonal stations are not maintained year-round, so restarting these services after the planned service period has ended would raise the same operational and staffing challenges as extending the summer season. Accordingly, Delta respectfully requests an exemption from its Service Obligation for each of these summer seasonal markets until the regularly scheduled start-up dates listed above, and after the regularly scheduled end dates of August 31 for the services to Juneau, Ketchikan, and Sitka; and after September 7 for Nantucket and Martha's Vineyard.

**II. THE DEPARTMENT SHOULD GRANT AN EXEMPTION PERMITTING DELTA TO SUSPEND ITS U.S. VIRGIN ISLANDS SERVICE WHILE THE GOVERNMENT-IMPOSED TRAVEL BAN REMAINS IN EFFECT.**

Prior to the crisis, Delta was operating 12 flights per week from its Atlanta hub and daily service from New York (JFK) to Charlotte Amalie airport in St. Thomas, plus twice weekly (Saturday and Monday) service from Atlanta to Christiansted, St. Croix (STX).<sup>6</sup> The demand for Delta's services in both markets was composed almost entirely of tourist traffic to these vacation destinations. On March 23, 2020, the Governor of the U.S. Virgin Islands issued an Executive Order declaring a State of Emergency. Among other public health measures, his Order effectively banned all tourist travel to the U.S. Virgin Islands for

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<sup>6</sup> OAG, February 2020 schedule.

at least 30 days. The Order prohibited “all hotels, guest-houses, villas, bed and breakfasts, shared economy hospitality bookings, AirBnBs, any temporary vacation housing, charter vessels, or any similar business known by any other terminology” from “recev[ing], check[ing] in, or register[ing] any new guest for a period of thirty (30) days, except emergency personnel, flight crews, and government guests.”<sup>7</sup> In other words, the U.S. Virgin Islands “close[d] its doors to all visitors for 30 days, joining other destinations in global efforts to help stop the spread of Coronavirus 2019 (COVID-19).”<sup>8</sup> On March 30, 2020, the Governor issued a supplemental Executive Order extending these travel restrictions through at least April 30.<sup>9</sup>

Even before these Executive Orders were issued, Delta’s load factors had fallen to less than 30% for the STX service and less than 20% for the JFK-STT service. The government-imposed ban on tourist travel eliminated virtually all of what demand there was left, so Delta suspended all services to STX and STT for the month of April. Delta plans to resume 1x/week ATL-STX service and daily ATL-STT service on May 2, unless the Governor extends the tourist travel ban again.

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<sup>7</sup> “Supplemental Executive Order and Proclamation by the Governor of the United States Virgin Islands Establishing Prohibitions and Restrictions to Movement, Gatherings, and Operations of Businesses, Government and Schools, and Suspending Certain VI Code Sections to Limit the Spread of COVID-19,” March 23, 2020, p. 3, § I.B.ii.3 (<https://www.vi.gov/wp-content/uploads/2020/03/2020-03.23-12-54pm-Order-Suppl-Exec-Order-re-Restrictions-to-Movement-Gatherings-Operations-of-Business-Govt.-and-Schools-fully-signed.pdf> : accessed 10 Apr 2020)

<sup>8</sup> “U.S. Virgin Islands Enacts Tourism Restrictions to Address COVID-19 Pandemic,” March 23, 2020, (<https://usviupdate.com/2020/03/u-s-virgin-islands-enacts-tourism-restrictions-to-address-covid-19-pandemic/> : accessed 10 Apr 2020).

<sup>9</sup> “Third Supplemental Executive Order and Proclamation by the Governor of the United States Virgin Islands Renewing the State of Emergency, Extending the Stay-at-Home Order, Suspending the Virgin Islands Plant Closing Act, Allowing for Temporary Mooring and Anchoring Areas, and Amending Previous Executive Orders in Response to COVID-19 State of Emergency,” March 30, 2020, p. 3, § 2.C (<https://www.vi.gov/wp-content/uploads/2020/03/3rd-Supplemental-COVID-19-Exec-Order-002.pdf> : accessed 10 Apr 2020)



It would not serve the public interest to force Delta to continue operating empty or near-empty flights designed to accommodate tourist traffic to the U.S. Virgin Islands when the Governor has prohibited tourists from coming. These flights are not required to ensure continued minimum essential access to the domestic air transportation network for residents of the U.S. Virgin Islands or to support the health care and pharmaceutical supply chain. As Order 2020-4-2 reflects, both STX and STT will continue to receive service that is more than sufficient to accommodate the minimal passenger demand that may exist during the pendency of this tourist travel ban, including 5x/week service from St. Thomas and 3x/week service from St. Croix operated by American Airlines to its Miami hub.<sup>10</sup> Nor are empty scheduled passenger flights necessary to ensure sufficient cargo capacity for critical medical and pharmaceutical supplies. As the Department noted in the context of international services, carriers (including Delta) are already voluntarily responding to the emergency with all-cargo and cargo charter services where necessary to meet such demand.<sup>11</sup>

For these reasons, Delta requests an exemption from its Service Obligations allowing it to suspend services to Christiansted and Charlotte Amalie until May 2, 2020; and Delta further requests that this exemption be automatically extended for a corresponding period if the Governor's travel restrictions are extended beyond April 30.

**III. DELTA SEEKS CONFIRMATION THAT THE TEMPORARY SUSPENSION OF CEDAR CITY SERVICES DUE TO THE AIRPORT CLOSURE WILL NOT RESULT IN NONCOMPLIANCE BY DELTA OR SKYWEST.**

Finally, the SkyWest-operated Delta Connection service to Cedar City, Utah (CDC) has been suspended from March-July 2020 due to airport closure. As the advisory on the Cedar City airport website explains, the airport is undergoing a major runway construction

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<sup>10</sup> Order 2020-4-2, Appendix B, at 8 and 9.

<sup>11</sup> Order 2020-4-2, at 3 & n. 8.

project that would make it impossible for SkyWest to resume its commercial operations at the airport before the scheduled resumption date this summer:

Cedar City Regional Airport will not be offering commercial service flights through Delta Air Lines from March 16 through July 18 to and from Salt Lake International Airport. This commercial flight closure is due to a major runway reconstruction project that will replace the current runways to bring the infrastructure up to Federal Aviation Administration (FAA) standards and correct current infrastructure issues.

The project is designed to reconstruct the runways one-half at a time, leaving the other half open for use, allowing the airport to remain open for small aircraft landings including aircraft from the SUU Aviation Flight School, FedEx, UPS, and many more of our valued tenants and customers.

We understand the inconveniences that come with this commercial service closure and hope we can make this up to you the best we can. Commercial service will continue July 19, 2020 with the completion of the project. Please visit Delta.com to book your flights after the runways reopen!<sup>12</sup>

The Order provides that “the Department will not consider it as noncompliance when operations are cancelled because of an airport closure...”<sup>13</sup> Based on this language, it is Delta’s understanding that the Department will not consider Delta or SkyWest to be out of compliance with Order 2020-4-2 as a result of this temporary suspension. If this understanding is incorrect, Delta seeks an exemption from its Service Obligation at CDC until the project is completed. Delta notes that the temporary suspension in service to CDC due to the airport closure will not result in the loss of reasonable access to Delta’s domestic air transportation network for this local community because Delta currently intends to continue offering daily Delta Connection service to nearby St. George airport (SGU), which is just a one-hour drive via Interstate I-15 from Cedar City.

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<sup>12</sup> “Airport Runway Construction Project : March 16, 2020, through July 18, 2020,” Cedar City Airport website, (<https://www.cedarcity.org/76/Airport> : accessed 10 Apr 2020).

<sup>13</sup> Order 2020-4-2, at 11.

## **CONCLUSION**

For these reasons, Delta respectfully requests that the Department grant the Delta exemption requests described above. The current crisis is dynamic, and Delta reserves the right to seek additional exemptions as conditions change. Delta would like to express again its grateful appreciation for the Department's leadership and support during this difficult time.

Respectfully submitted,



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J. Scott McClain

## CERTIFICATE OF SERVICE

A copy of the foregoing document has been served this 10th day of April 2020, upon the following persons via email:

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