

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

**Continuation of Certain Air Service
Under the Coronavirus Response and Relief
Supplemental Appropriations Act, 2021,
Public Law 116-260 § 407**

)
)
) Docket DOT-OST-2020-0037
)
)

COMMENTS OF AIRLINES FOR AMERICA

Airlines for America (“A4A”), on behalf of its Members,¹ submits these comments in response to the Department of Transportation’s (“Department” or “DOT”) Order to Show Cause (“Order”) concerning “Continuation of Certain Air Service”² in accordance with Section 407 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (“CRRSA Act” or “Act”)³ and implementing authority originally granted to the Secretary of Transportation (“Secretary”) by Sections 4005 and 4114(b) of the Coronavirus Aid, Recovery, and Economic Security Act (“CARES Act”).⁴

A4A and our members are grateful for the Administration and the U.S. Congress reaching agreement on bipartisan legislation to assist the U.S. airline industry once again continuing to make payroll and protect the jobs of hardworking men and women despite devastating impacts to the industry. We greatly appreciate DOT’s timely publication of the

¹ A4A’s members are Alaska Airlines, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corp.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

² “Continuation of Certain Air Service,” Department of Transportation Show Cause Order 2021-1-2, Docket No. DOT-OST-2020-0037, (January 8, 2021).

³ Public Law 116-260, (Dec. 27, 2021).

⁴ Public Law 116-136, (Mar 27, 2020).

Order, the opportunity to provide comments, and the flexibility afforded to carriers in the Order. We urge DOT to utilize the discretion provided to it in the Act and finalize this Order as soon as possible.

INTRODUCTION

The President signed the CRRSA Act into law on December 27, 2021. Section 407 of the Act authorizes the Secretary to require, “to the extent reasonable and practicable,” an air carrier receiving financial assistance under the CRRSA Act 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. The Department proposes that air carriers accepting financial assistance under Pub. L. No. 116-260 maintain minimum levels of air service on a nationwide basis, with some exceptions and some changes to the final Show Cause Order (Order 2020-4-2) issued on April 7, 2020 and expiring on September 30, 2020.

We very much appreciate the continued flexibility that the Department included in the Order, which includes generally maintaining the Service Obligations from Order 2020-4-2 but also exempting those locations that had a Department exemption in place on September 30, 2020.⁵ In addition, we are appreciative that the Order continues to permit mainline carriers to substitute regional carrier service to fulfill minimum service level requirements.⁶ The Order also maintains the flexibility built into Order 2020-4-2 that permits a covered carrier to choose from what location a required Service Obligation is served, as long as frequency requirements are met. The Order also permits a covered carrier to seek an exemption to the Order if certain procedural

⁵ See Order page 3, “The Department will also exempt from each Covered Carrier’s Service Obligation those points that had a Departmental exemption in place as of September 30, 2020.”

⁶ See Order page 4, “This proposal would not alter any flexibility that mainline carriers have in their contracts to allocate capacity within their networks.”

requirements are fulfilled.⁷ We welcome the flexibility that these conditions provide and encourage the Department to finalize them.

Congress rightfully provided the Department with significant discretion to determine conditions of receiving financial assistance that are “reasonable and practicable.” The Department has used that discretion in the Order in ways that will significantly benefit passengers and carriers. In the comments below, we suggest areas where the Department can clarify certain provisions to ensure a smoother implementation, save DOT resources and ultimately provide additional benefits to passengers and carriers.

RE-INITIATING SERVICE

The Order allows a government entity operating an airport to petition the Department for restoration of service when all scheduled service was discontinued since the expiration of Order 2020-4-2. We support this process but request that the Department clarify a few points.

The Order requires that for the Department to consider restoration of service, an airport must petition the Department within three business days of a final order with relevant information to inform a DOT decision. There is no definitive statement in the Order on the consequences of an airport that does not petition the Department for resumption of service. However, the Order states that the Department will exempt from each carrier’s Service Obligation any points at which the carrier has ceased service since September 30, 2020, unless the Covered Carrier was the only carrier providing service at the point at the time service was stopped, and there is currently no carrier serving the point. While resumption of service will not be considered unless an airport petitions the Department, a carrier cannot claim an exemption if there is no carrier serving the point at which they ceased service.

⁷ See Order page 6, “The Department has tentatively decided to provide the same exemption process established by Order 2020-4-2.”

We respectfully request that the Department clarify that there is no requirement for a carrier to reinstate service if an airport with discontinued service (listed in Appendix C of the Order) does not petition the Department. The Department strikes the right balance in the Order by providing a procedure for resumption of service but obligating those communities with information on the impact of discontinued service to initiate the proceeding. A carrier should not have to resume service if an airport that no longer has service does not petition the Department for resumption of service.

The Order is silent on when carriers would have to re-initiate service to points they exited after September 30, 2020 and which remain unserved (Appendix C locations). DOT should clarify in the final order that it will be reasonable and flexible with respect to the resumption of service deadline for these points, but in any event should not require resumption of service until at least 14 business days after receipt of CRRSA Act funds. The 2020-4-2 Order provided that service must be continued within 7 business days of receiving financial assistance under the CARES Act. However, currently carriers would be restarting service, which requires a substantial amount of time to dedicate resources, crew, airplanes and gates, and for passengers to acquire tickets. We respectfully request that the Department clarify that carriers have 14 business days from receipt of CRRSA funds to reinstitute service, given the additional resources necessary to restart service.

EXEMPTIONS

We greatly appreciate the Department allowing carriers to seek exemptions under the Order for unique circumstances. We encourage the Department to confirm that the industry-wide exemption for service to locations in which direct financial support arrangements between

communities and airlines cease, remains viable under this order.⁸ The Department rightfully determined that an industry-wide exemption is appropriate for circumstances in which direct financial support arrangements between communities and airlines have ceased after the Secretary of Health and Human Services declaration of a public health emergency under section 319 of the Public Health Services Act (42 U.S.C. § 247d), in response to COVID-19. As noted by commenters to Order 2020-4-2, in such instances it would not be equitable for the Department to impose a Service Obligation when the agreement has ceased. Direct support arrangements are limited to revenue guarantees or direct payments for flights that are funded, in part, by State, local, Tribal, Territorial, or private entities whether or not the Federal government is providing funding to the community with a grant. The exemption should require the same condition as Order 2020-4-2, a carrier may discontinue service when the covered carrier has a letter or agreement from the funding parties to the arrangement indicating that the direct financial support has ceased. The covered carrier must retain this letter and submit the letter and the revised service as part of the monthly reporting obligation.

We also respectfully request that the final order recognize existing and soon-to-take-effect Essential Air Service (EAS) exemptions and previously-noticed suspensions of EAS in determining carrier Service Obligation requirements. The Department states the Order does not affect the obligations of carriers providing EAS.⁹ The Department also states it will compare the published Service Obligation list to the week-ended January 9, 2021 OAG schedule to determine if service has ceased at a point.¹⁰ However, an approved EAS exemption or previously-noticed service suspension may not take effect until after the January 9 benchmark date. The

⁸ See Order 2020-4-2 page 10.

⁹ See Order page 5.

¹⁰ See Order page 4.

Department should recognize and incorporate all approved EAS exemptions and noticed service suspensions (including those with pending effective dates) into the final order.

We respectfully request that the final order remove from Appendix A certain service obligation points that were not served by carriers in 2020 because the carrier chose to operate a summer schedule. The Service Obligations in Order 2021-1-2 are based on the winter 2019-2020 schedule. As the Department is aware, carriers were given the choice in Order 2020-4-2 to choose a summer or winter schedule to set service obligation points.

For carriers that chose to operate a summer schedule for Order 2020-4-2, there are some carriers that serve airports in their winter schedule but not in their summer schedule, so the carrier did not operate to those “winter only” airports in 2020. Since Order 2021-1-2 is based on a carrier’s 2019-2020 winter schedule there are several airports included in Appendix A that were not serve in 2020 and this would require carriers to re-instate service to these airports. Restarting service at an airport at which the carrier did not serve in 2020 is extremely difficult because the carrier will have to negotiate and sign a new airport lease, acquire gates, ticket counter and/or order kiosk space, in addition to assigning aircraft, crews, and ground services.

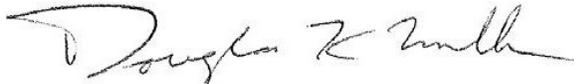
We therefor request that DOT exclude any points in Appendix A that did not have service in 2020 because a carrier operated a 2020 summer schedule. We have confirmed this situation applies to multiple carriers and can provide the Department with additional information.

Finally, we respectfully request that DOT provide Service Obligation flexibility for the time period of March 28, 2021 to March 31, 2021 because the winter scheduling season ends on March 27, 2021. We understand and support minimum service requirements through March 31, 2021 because carriers accepting financial assistance under Pub. L. No. 116-260 must maintain certain levels of employment until that date in exchange for financial assistance. However, the

Order requires that carriers serve a winter schedule, which concludes on March 27, 2021, leaving a four-day gap where carriers must serve winter schedule points during the summer 2021 season. We request that the Department consider this change in season schedules during this Order when determining whether carriers have met service obligations for March 2021.

We greatly appreciate the Department's efforts to quickly provide information on compliance with the CRRSA Act and look forward to working together to ensure compliance with the Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas K. Mullen". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Douglas K. Mullen
Vice President & Deputy General Counsel
AIRLINES FOR AMERICA

CERTIFICATE OF SERVICE

I certify that on January 12, 2021 a copy of the foregoing Response of Airlines for America is served upon all parties served with Order 2021-1-2 via email.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas K. Mullen". The signature is fluid and cursive, with a large initial "D" and a stylized "K".

Douglas K. Mullen
Vice President & Deputy General Counsel
AIRLINES FOR AMERICA