



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on April 25, 2020

NOTICE OF ACTION TAKEN -- DOCKET DOT-OST-2020-0037

On March 27, 2020, the President signed the Coronavirus Aid, Recovery, and Economic Security Act (the CARES Act) into law. Sections 4005 and 4114(b) of the CARES Act authorize the Secretary of the U.S. Department of Transportation (Secretary) to require, “to the extent reasonable and practicable,” an air carrier receiving financial assistance under the act to maintain scheduled air transportation service as the Secretary deems necessary to ensure services to any point served by that air carrier before March 1, 2020 (Service Obligation). By Order 2020-4-2, the U.S. Department of Transportation established the parameters for implementation of the authority granted to the Secretary under the CARES Act, including an exemption process as described at pages 9 – 10 and in Appendix D of that order. This serves as notice to the public of an action taken by a Department official with regard to exemption(s) from Order 2020-4-2. No additional confirming order will be issued in this matter.

Applicant: **Frontier Airlines, Inc.**¹

Date Filed: **April 10, 2020, as supplemented April 20, 2020**²

XX Service Level Exemption (a) – Frontier Airlines, Inc. requests that the Department approve temporary suspension of service, from April 13 through June 10, 2020, to the following covered points from its Service Obligation under the provisions of Order 2020-4-2:

- | | |
|---|---------------------------------------|
| (1) ALB – Albany, NY | (18) GSP – Greenville/Spartanburg, SC |
| (2) BMI – Bloomington, IL | (19) HRL – Harlingen, TX |
| (3) BOS/PVD – Boston, MA/Providence, RI | (20) HSV – Huntsville, AL |
| (4) BTV – Burlington, VT | (21) ICT – Wichita, KS |
| (5) BUF – Buffalo, NY | (22) JAX – Jacksonville, FL |
| (6) BZN – Bozeman, MT | (23) MSN – Madison, WI |
| (7) CID – Cedar Rapids, IA | (24) ORF – Norfolk, VA |
| (8) CLT – Charlotte, NC | (25) PBI – West Palm Beach, FL |
| (9) CMH – Columbus, OH | (26) PIT – Pittsburgh, PA |
| (10) COS – Colorado Springs, CO | (27) PSP – Palm Springs, CA |
| (11) DTW – Detroit, MI | (28) PWM – Portland, ME |
| (12) ELP – El Paso, TX | (29) RDU – Raleigh/Durham, NC |
| (13) FAR – Fargo, ND | (30) SDF – Louisville, KY |
| (14) FSD – Sioux Falls, SD | (31) SYR – Syracuse, NY |
| (15) GEG – Spokane, WA | (32) TYR – Tyler, TX |
| (16) GRB – Green Bay, WI | (33) TYS – Knoxville, TN |
| (17) GRR – Grand Rapids, MI | |

Frontier states that operations to these points would represent a significant burden to the carrier, that there is near-zero demand for the services, and that in any event, were its exemption request to be granted, each point would still receive service from another air carrier.

¹ A copy of Frontier’s application and the basis for its exemption request can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0055>, and its supplement at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-0085>.

² The applicant has requested confidential treatment of certain demand and cost data, under the provisions of 14 CFR §302.12. Good cause having been shown, we will grant this request.

XX Service Level Exemption (b) - to delete from its Service Obligation one covered point that the carrier states it ceased serving in July, 2019, and that its inclusion in its Service Obligation was in error:

(34) PSM – Portsmouth, NH

XX Seasonal Exemption - to delay operations at a covered point beyond the required seven business days of receiving financial assistance under the CARES Act from the U.S. Department of the Treasury as prescribed in Order 2020-4-2.

(35) PSP – Palm Springs International Airport

Frontier states that it has selected, under the provisions of Order 2020-4-2, the Winter 2020 schedule to serve as the basis for its Service Obligations, but that it only serves Palm Springs in the winter months, warranting an exemption.

XX Waiver from the 10-business day advance filing requirement for exemptions under Order 2020-4-2.

Responsive pleadings: On April 20, 2020, Frontier filed a letter from the Bloomington Normal Airport Authority (BNAA), owner/operator of the Central Illinois Regional Airport at Bloomington-Normal, Illinois.³ BNAA states that it supports the request of Frontier to the extent that the carrier seeks exemption from providing required service at that airport, noting the current circumstances faced by the country and airline industry, and its desire to support the viability of Frontier going forward.

DISPOSITION

XX **Granted, in part, dismissed in part (see below)**

XX **Balance, denied (see below)**

Action date: **April 25, 2020**

Effective dates of exemption authority granted:

Boston, MA/Providence, RI: **April 25, 2020 through June 10, 2020**

Charlotte, NC: **April 25, 2020 through June 10, 2020**

Detroit, MI: **April 25, 2020 through June 10, 2020**⁴

This authority is subject to the terms, conditions, and limitations indicated:

XX **Holder's certificate(s) of public convenience and necessity**

XX **Standard exemption conditions (attached)**

Basis for approval:

We find that a partial grant of Frontier's request for exemption through June 10, 2020, is warranted with respect to service to the following three points:

BOS/PVD - Boston, MA/Providence, RI⁵

³ A copy of BNAA's letter can be found at: <https://www.regulations.gov/document?D=DOT-OST-2020-0037-00089>.

⁴ The effectiveness of this authority will terminate on the date specified above. Should the air carrier wish to extend the date of effectiveness, it must file another request for an exemption in accordance with the exemption process as described in Appendix D of Order 2020-4-2.

⁵ As reflected in Order 2020-4-2, Providence (PVD) is part of the Boston Metropolitan Region.

CLT - Charlotte, NC
DTW - Detroit, MI

The Department has, since the issuance of Order 2020-4-2, continued to monitor air carriers' operations under the Service Obligations set forth in that order, with particular emphasis on the impact of service obligations on small air carriers relative to the public interest benefits of requiring service. Order 2020-4-2 had identified proportionality of schedule impacts as an important factor in establishing minimum service obligations that were reasonable and practicable, as required by the CARES Act.⁶

We find that the grant of this portion of Frontier's request provides well-justified and narrowly tailored relief for a small carrier, while being consistent with the objective of Order 2020-4-2, which is to require airlines receiving financial assistance under the CARES Act to continue serving the points on their network to the extent reasonable and practicable.

In this case, our action exempting Frontier from serving through June 10, 2020, the large hubs at Boston/Providence, Charlotte, and Detroit, which have abundant service from other carriers, would relieve Frontier from an undue economic and operational burden. Our action granting Frontier this exemption in part in no way relieves the applicant from its obligation to provide service to any other covered point in its Service Obligation. No points lose access to the national air transportation system. The Department finds this action to be reasonable and practicable because, at a minimum, the requesting airline (a) is a small carrier with 10% or less share of the domestic market and (b) is seeking relief from serving large hubs or focus city airports that have abundant service by large operators using the airports in question to provide connecting services.⁷

Granting the request enables the Department to implement the CARES Act in a way that continues to balance the needs of communities appropriately to retain at least minimal connections to the national air transportation system during the current public health emergency, as required by the CARES Act, and the economic needs of certain segments of the industry. In these circumstances, we find that grant of this exemption to Frontier, to the extent described above, is warranted, and that it would not be reasonable or practicable to require Frontier to serve these points under the terms of Order 2020-4-2.⁸

With respect to Portsmouth, NH (PSM), we find that granting the request is warranted, as the carrier notes that it ceased operations to that point in July 2019, and the point is therefore not subject to the provisions of that order. Under these circumstances, it would not be reasonable or practicable to require Frontier to serve Portsmouth under the terms of Order 2020-4-2.

For the remaining covered points, we deny Frontier's request. The Department is authorized to require air carriers receiving financial assistance under sections 4005 and 4114 of the CARES Act to maintain scheduled air transportation service as the Secretary deems necessary. By Order 2020-4-2, the Department modified its original methodology to address concerns raised by interested parties and to balance the needs of communities appropriately to retain at least minimal connections to the national air transportation system during the public health emergency, as required by the CARES Act, and the economic needs of certain segments of the industry. Frontier has not persuaded

⁶ Order 2020-4-2 at 7.

⁷ For these purposes, the Department is applying the same metric applied in Order 2020-4-2, namely carriers below a 10% share of total industry domestic capacity in calendar year 2019, as measured in available seat miles (ASMs). The Department defines a large hub as those airports that are listed on the FAA's most recent (calendar year 2018) "large hub" classification, as defined by 49 U.S.C. § 47102(11), including airports within the broader metropolitan areas defined by Order 2020-4-2, as well as additional points where the Department observes carriers connecting a high percentage of traffic. Those points are: Atlanta, Boston, Charlotte, Chicago, Dallas/Ft. Worth, Denver, Detroit, Honolulu, Houston, Las Vegas, Los Angeles, Miami, Minneapolis/St. Paul, Nashville, New York City, Orlando, Philadelphia, Phoenix, Portland, Salt Lake City, San Diego, San Francisco, Seattle, St. Louis, Tampa, and Washington, DC.

⁸ We followed a similar practice in our action on the application of Hyannis Air Service d/b/a Cape Air for exemption in this Docket. See Notice of Action taken dated April 24, 2020, in Docket DOT-OST-2020-0037.

the Department that we must strike a different balance with respect to the remaining covered points in Frontier's request. Order 2020-4-2 provides substantial flexibilities to covered carriers.⁹

We also deny Frontier's request for a seasonal exemption for covered point 35 above, Palm Springs International Airport (PSP). Order 2020-4-2 afforded carriers the option of serving either their winter or summer seasonal points. Frontier chose its winter 2020 base line schedule, which includes Palm Springs, and therefore is committed to serving all points from that baseline. Palm Springs (PSP) is part of this baseline and must therefore be maintained as a Point of Minimum Service Obligation for Frontier.

Finally, Frontier requested a waiver of the 10-business day advance filing requirement for exemptions under Order 2020-4-2 so that its proposed schedule changes could be implemented promptly. In view of our action in this proceeding, that request is now moot and we dismiss it.

We may amend, modify, or revoke this exemption at any time without hearing at our discretion.

Persons entitled to petition the Department for reconsideration of the action set forth in this Notice under the Department's regulations, 14 CFR § 302.14, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for reconsideration will not alter such effectiveness.

Action taken by: David Short
Deputy Assistant Secretary
Aviation and International Affairs

An electronic version of this document is available at: <http://www.regulations.gov>

⁹ We also find that the arguments raised by BNAA in its pleading do not raise any unique or special circumstances with respect to services to Bloomington, IL which would cause us to reach a different result with respect to services to that city.

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with consumer protection and civil rights requirements, including, but not limited, to requirements contained in 14 CFR Parts 250, 254, 257, 259, 374, 382 and 399;
- (3) Comply with the requirements for reporting data to the Department, including, but not limited, to requirements contained in 14 CFR Parts 234, 241, and 244;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.