

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

Application of

FRONTIER AIRLINES, INC.

**In the 2016 U.S.-Cuba Frequency Allocation
Proceeding (Order 2016-2-12)**

Docket DOT-OST-2016-0021-_____

OBJECTION

Communications with respect to this document should be sent to:

Howard Diamond
SVP, General Counsel and Secretary
7001 Tower Road
Denver, CO 80249
Tel. 720-374-4367
Fax. 720-374-9297
E-mail: Howard.Diamond@flyfrontier.com

Brian E. Foont
The Foont Law Firm, LLC
11727 Gainsborough Road
Potomac, MD 20854
Tel. 202-236-4851
Fax. 202-318-9195
E-Mail: Foont@FoontLaw.com

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

Application of

FRONTIER AIRLINES, INC.

**In the 2016 U.S.-Cuba Frequency Allocation
Proceeding (Order 2016-2-12)**

Docket DOT-OST-2016-0021-_____

OBJECTION

Frontier Airlines, Inc. (“Frontier”) respectfully submits this Objection in the captioned proceeding.

I. Introduction

By order issued February 16, 2016 the Department of Transportation (the “Department”) instituted the U.S.-Cuba Frequency Allocation Proceeding (“Order”).¹ The purpose of the proceeding under the Order is to allocate frequencies to U.S. carriers to operate between the United States and Cuba. Specifically:

to allocate the 20 daily round-trip frequencies that may be used for scheduled combination or all-cargo services between the United States and Havana, Cuba to the carrier or carriers selected, and to allocate the 10 daily round-trip frequencies that are available for scheduled combination or all-cargo service at each other point in Cuba to the carrier or carriers selected.²

The applications for those frequency allocations were due by March 2, 2016. Those carriers that applied were then permitted to file answers by March 14, 2016. The applicants were then permitted to file replies by March 21, 2016.

¹ Order 2016-2-12.

² Order at 1.

By an order issued June 10, 2016 the Department allocated the frequencies to all of the international airports in Cuba, except José Martí International Airport (HAV). Noting that fewer frequencies were sought than are available, all of the carriers qualified to operate them were granted what they requested. Further, exemptions authority required to operate those frequencies, if required, were granted.

On July 7, 2016 the Department issued an Order to Show Cause indicating its tentative allocation of the HAV frequencies and directing interested parties having objections thereto to file their objections with the Department within fifteen (15) days (“Order to Show Cause”).

II. Objection to Allocation as Between FLL and MIA

Frontier respectfully thanks the Department for its efforts in this matter. With almost three times the number of HAV frequencies requested than are available, this was certainly not an easy task.

We note that the Department asserts (emphasis added):

The U.S.-Cuba market has been without scheduled air services for more than 50 years. Prior to the new U.S.-Cuba arrangement, air services between the two countries have been limited to charter flights.

The new arrangement represents a significant expansion in the opportunities available to U.S. air carriers, U.S. travelers and shippers. Opening the market to scheduled services will provide opportunities for reliable daily access to Cuba, and a greater variety of choice for consumers across the United States. At the same time, significant limitations and requirements remain in place concerning the types of travel that are authorized to Cuba. This new arrangement will greatly facilitate visits for travelers that fall under one of the 12 categories authorized by the U.S. Department of the Treasury’s Office of Foreign Assets Control. It is important to note, however, that the statutory ban on travel to Cuba for tourist activities remains in place.

In that regard, the Department tentatively concludes that the record of this proceeding strongly suggests that, with the existing restrictions in place, Cuban Americans travelling to visit relatives will generate the majority of U.S.-Cuba travel demand. . .³

³ Order to Show Cause at 5.

Frontier very much agrees with that last assertion and has stated so in its prior filings in this proceeding.⁴ Thus, in allocating the Havana frequencies, the Department proposes to allocate the lion's share of the frequencies – fourteen of the available twenty (70%) – to airports in Florida.⁵ That is logical given that Florida is home to approximately seventy-seven percent (77%) of the 1.12 million Cuban immigrants living in the United States.⁶

More specifically, the Department tentatively intends to allocate one HAV frequency to be operated from Orlando International Airport (MCO) by JetBlue Airways (“JetBlue”) and one to be operated from Tampa International Airport (TPA) by Southwest Airlines (“Southwest”). It further intends to allocate six each to Fort Lauderdale Hollywood International Airport (FLL) and Miami International Airport (MIA). For those at FLL, the Department indicates that it intends to allocate two (2) each to JetBlue (except only 1 on Saturday), Southwest, and Spirit Airlines. For those at MIA, the Department indicates that it intends to allocate four (4) to American Airlines (“American”), and one (1) each to Delta Airlines (“Delta”) and Frontier.

Frontier respectfully objects to that allocation as between FLL and MIA.

As logical as it is to allocate a substantial portion of the HAV frequencies to Florida given that such a substantial majority of the Cuban-American population lives in Florida, the Department did not continue on that path in the distribution of those frequencies among the airports in Florida. The disparity as between FLL and MIA is particularly stark.

⁴ Request of Frontier Airlines at § IV (March 2, 2016), Answer of Frontier Airlines at § II.b (March 14, 2016) and Reply of Frontier Airlines at § IV (March 21, 2016).

⁵ For these purposes, we have disregarded the one Saturday HAV frequency that is proposed to be allocated to United Airlines for operations to George Bush Intercontinental Airport (IAH) that is allocated for the other six days each week to JetBlue for operations at Fort Lauderdale Hollywood International Airport (FLL).

⁶ Migration Policy Institute tabulation of data from the U.S. Census Bureau's pooled 2009-2014 American Community Surveys (<http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county>).

Of the Cuban immigrant population living in Florida, seventy-three percent (73%) live in Miami-Dade County⁷ – almost half of the Cuban American population of the entire United States.⁸ The distribution of the Cuban American population in Southeast Florida is well illustrated by Figure 1.⁹ MIA is effectively at the center of that population, with a majority to the south of its location. Consequently, MIA is the most convenient airport for serving the vast majority of the population the Department indicates “will generate the majority of U.S.-Cuba travel demand.”

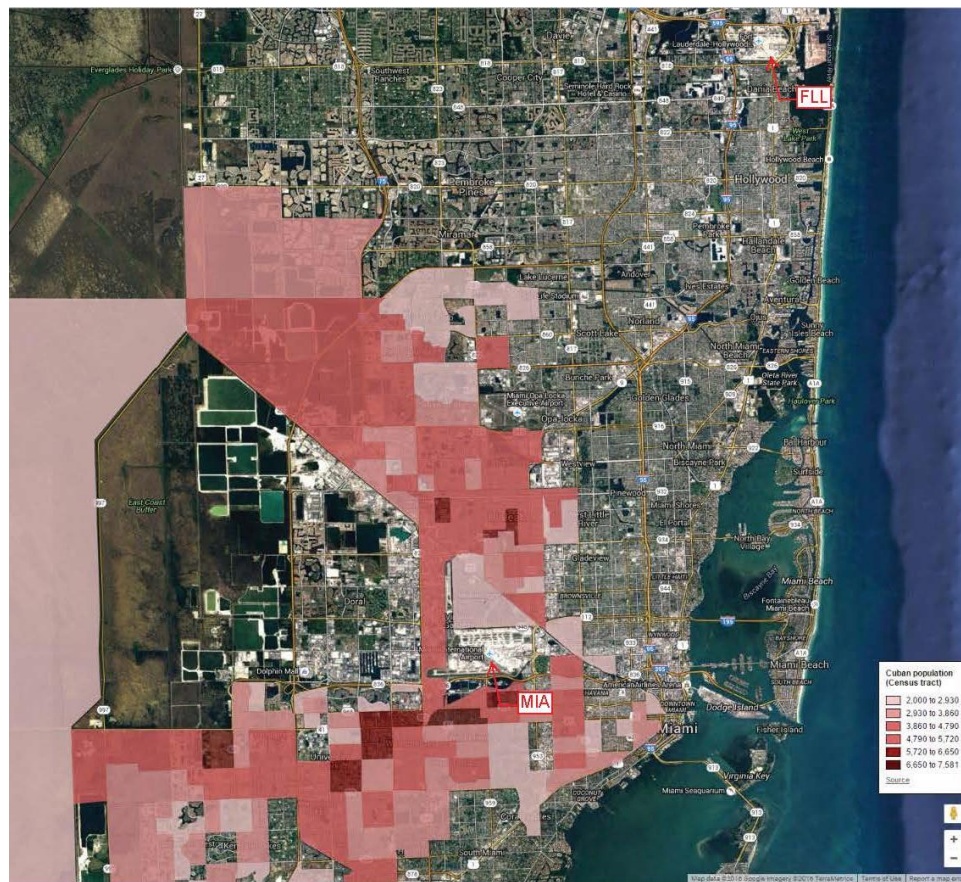


Figure 1

⁷ Id.

⁸ 2010 U.S. Census as analyzed by the Pew Research Center (<http://www.pewhispanic.org/2012/06/27/the-10-largest-hispanic-origin-groups-characteristics-rankings-top-counties/>).

⁹ Cuban Population Density in Southeast Florida, Cuban Research Institute of Florida International University (see <https://cri.fiu.edu/cuban-america/cuban-population-density-in-south-florida/> using map from Google). Airport labels added.

FLL, on the other hand, while often viewed as complementary to MIA, is simply not geographically comparable for the Southeast Florida Cuban-American population. FLL is approximately thirty (30) miles north of MIA¹⁰ (see the upper right corner of Figure 1) and, therefore, quite distant from center of the Cuban American population. Traveling that extra distance using a service such as UberX would likely add at least \$50-\$70 roundtrip to the cost of a trip to Cuba and potentially more.¹¹

III. Allocation Among Carriers at MIA

As noted above, among the six (6) HAV frequencies tentatively allocated to MIA, four (4) have been tentatively allocated to American, one (1) to Delta, and one (1) to Frontier. This leaves 83% of the flights and 81% of the seats¹² to be operated by the highest fare operators. As the only Ultra Low Cost Carrier – or even low cost carrier – allocated HAV frequencies at MIA, granting Frontier just one of the HAV frequencies that we urge be transferred from FLL would allow it to: (1) increase the passengers it could carry from 18% to almost 30% of the potential MIA total, (2) further stimulate the market and allow a greater portion of Cuban Americans access to flights to Cuba that may very well be out of reach with the dramatically higher prices commonly charged by American and Delta when compared to Frontier, and (3) impose far greater downward pressure on the prices to be charged for transportation in the MIA-HAV market. Frontier, therefore, requests such an allocation of an additional HAV-MIA frequency.

¹⁰ Per Google Maps driving from MIA to FLL.

¹¹ Costs per Uber and SuperShuttle.

¹² The difference arises from Frontier's intent to operate with 180-186 seat aircraft, while American and Delta have indicated that they intend to operate with 160 seat aircraft.

a. Market Stimulation

As explained in Frontier’s Application, Answer and Reply,¹³ Frontier’s dramatically lower fares, via its Low Fares Done Right® strategy, stimulate demand. Frontier’s Application provides three examples whereby Frontier’s entry into a market, and the associated introduction of its ultra-low fares, dramatically stimulated demand.¹⁴ Specifically, in March 2014 Frontier entered the Memphis market from Denver International Airport (DEN) as the only ultra-low fare carrier operating at Memphis International Airport (MEM). Frontier’s presence stimulated demand by 86%, while reducing the average fare in that market by \$90 (36%) (*see* Figure 2).

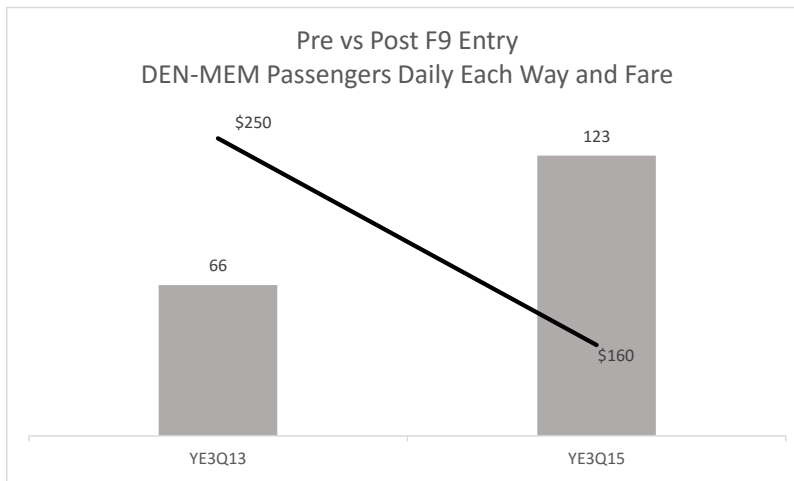


Figure 2

Similarly, in May 2013 Frontier entered the DEN-Cincinnati/Northern Kentucky International Airport (DEN-CVG) market, again as the only ultra-low fare provider at CVG. The results: demand rose by 112% by YE2Q14 and fares fell by an average of \$45 (21%) (*see* Figure 3).

¹³ Request of Frontier Airlines at § III (March 2, 2016), Answer of Frontier Airlines at § II.c (March 14, 2016) and Reply of Frontier Airlines at § V (March 21, 2016).

¹⁴ Request of Frontier Airlines at § III, including Figures 2, 3 and 4 (Mar. 2, 2016).

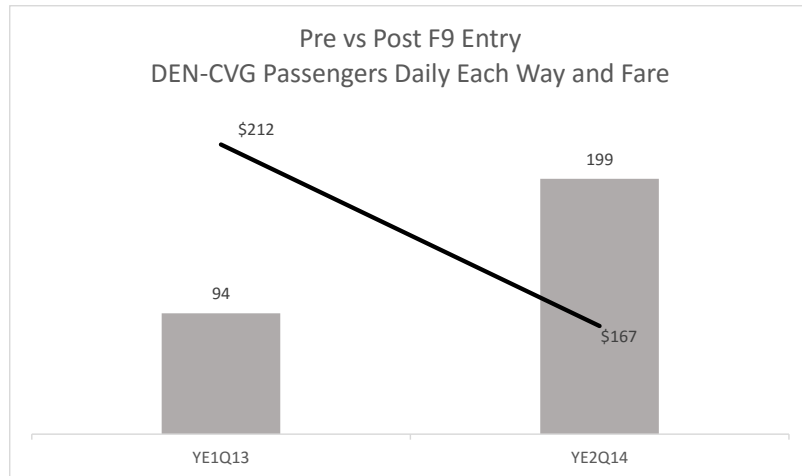


Figure 3

Finally, Frontier entered the MIA-O’Hare International Airport (MIA-ORD) market in December 2014. Despite the presence of other ultra-low fare carriers at alternative airports at both ends of that route, Frontier’s presence stimulated demand by 33% and pushed fares down by an average of \$37 (18%) (see Figure 4).

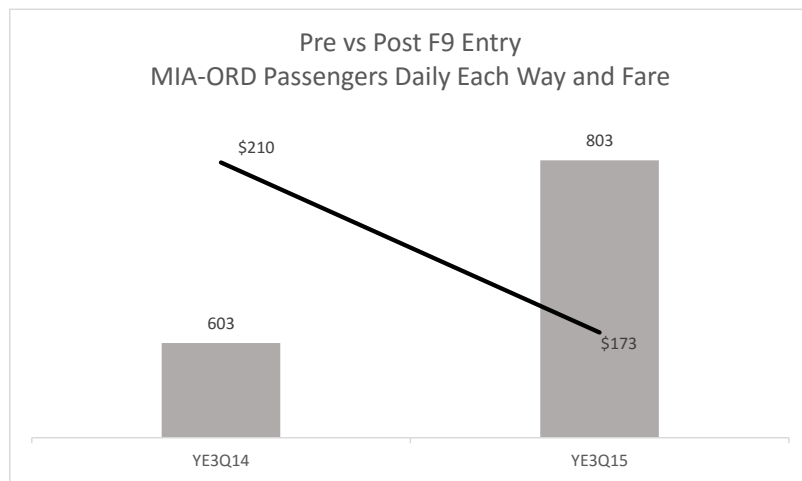


Figure 4

Frontier believes that its MIA-HAV flights will similarly stimulate that market. The appeal of Frontier’s Low Fares Done Right® has proven itself across all geographic regions and time periods. We expect similar stimulation on our routes to Cuba both at HAV and on its already allocated frequencies at Ignacio Agramonte International Airport in Camagüey (CMW), Juan

Gualberto Gómez Airport in Matanzas (VRA), Abel Santamaría Airport in Santa Clara (SNU), and Antonio Maceo Airport in Santiago de Cuba (SCU).

b. Price Discipline / Vigorous Competition

Frontier’s competitors in the MIA-HAV market under the tentative allocation will be American and Delta. We look forward to vigorous competition and take this opportunity to share the following graph from our Reply that shows the impact of Frontier’s fares on American’s when it competes with Frontier (Figure 5), and a second graph that shows the same as between Frontier and Delta (Figure 6).

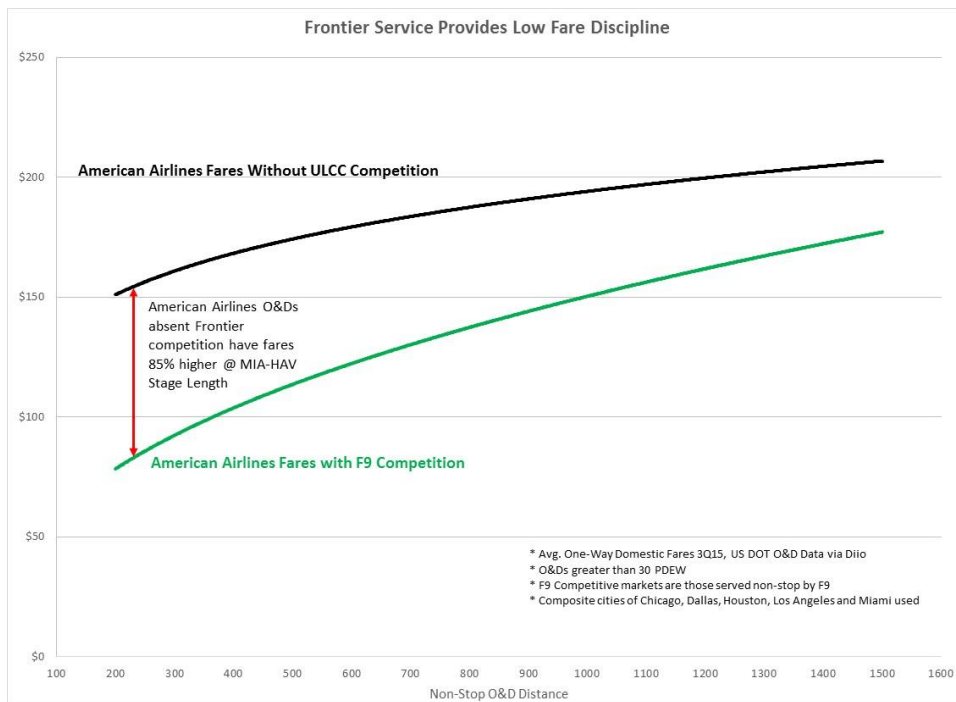


Figure 5

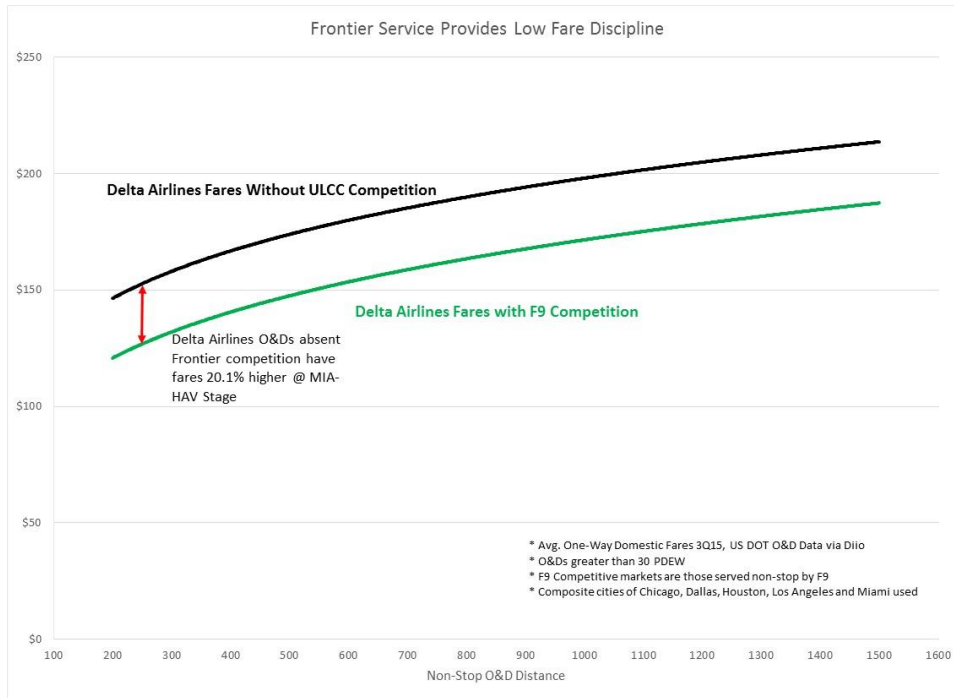


Figure 6

The impact is palpable: when competing against Frontier, both American and Delta charge dramatically less.

IV. Conclusion

Because of their eligibility to visit family in Cuba under the current general license,¹⁵ the Cuban-American population, as the Department notes, will be the primary users of U.S.-Cuba air services. Just as allocation of a substantial portion of the HAV frequencies to flights operated from Florida is logical based on the concentration of the Cuba-American population in Florida versus the rest of the United States, we suggest that same logic should carry through to the allocation of those frequencies to be operated from the airport in Florida nearest and most convenient to where the vast majority of that population actually resides: MIA.

¹⁵ 31 C.F.R. § 515.561.

Frontier further submits that the greatest benefit to the market would be obtained from allocating one of the frequencies transferred from FLL to MIA to Frontier. This would allow the market stimulation that Frontier's ultra-low fares bring as well as provide the more favorable prices that the customers in that market deserve.

Frontier looks forward to serving Cuba!¹⁶



Respectfully submitted,

A handwritten signature in black ink that reads "Brian E. Foont". The signature is written in a cursive style with a horizontal line underneath.

Brian E. Foont
The Foont Law Firm, LLC
11727 Gainsborough Road
Potomac, MD 20854
Tel. 202-236-4851
Fax. 202-318-9195
E-Mail: Foont@FoontLaw.com

Counsel for Frontier Airlines, Inc.

July 22, 2016

¹⁶ Pictured is a mockup of a design, in line with Frontier's other aircraft and marketing characters, showing Frontier's intended "Havana the Toco-ro-ro," the tocororo being national bird of Cuba.

CERTIFICATE OF SERVICE

I, Brian E. Foont, certify that on July 22, 2016, I caused a copy of the Reply of Frontier Airlines, Inc. in the 2016 U.S.-Cuba Frequency Allocation Proceeding (Order 2016-2-12) to be served as follows:

1. Upon the U.S. Department of Transportation via the electronic submission capability available through the Dockets FDMS Internet site (<http://www.regulations.gov>) and via e-mail to Brett.Kruger@dot.gov.
2. Via e-mail upon the following:

Alaska Airlines, Inc.

John Kirby, Vice President, Capacity Planning, john.kirby@alaskaair.com
Megan Ouellette, Managing Director, Government Relations,
megan.ouellette@alaskaair.com
Jeremy Ross, Associate General Counsel, Litigation & Regulatory,
jeremy.ross@alaskaair.com
David Heffernan, Cozen O'Connor, dheffenan@cozen.com
Rachel Welford, Cozen O'Connor, rwelford@cozen.com

American Airlines, Inc.

Howard Kass, Vice President Regulatory Affairs, howard.kass@aa.com
Robert A. Wirick, Managing Director Regulatory and International Affairs,
robert.wirick@aa.com
John B. Williams, Senior Analyst Regulatory and International Affairs,
john.b.williams@aa.com
Paul T. Denis, Dechert LLP, paul.denis@dechert.com
Steven G. Bradbury, Dechert LLP, steven.bradbury@dechert.com
William B. Sohn, Dechert LLP, william.sohn@dechert.com
Charles A. Hunnicutt, Thompson Hine LLP, charles.hunnicutt@thompsonhine.com
Brent Connor, Thompson Hine LLP, brent.connor@thompsonhine.com

JetBlue Airways Corporation

Robert C. Land, Senior Vice President Government Affairs & Associate General
Counsel, robert.land@jetblue.com
Adam L. Schless, Director, Aircraft Transactions & International Counsel,
Adam.Schless@jetblue.com
Evelyn D. Sahr, Eckert Seamans Cherin & Mellott, LLC, esahr@eckertseamans.com
Drew M. Derco, Eckert Seamans Cherin & Mellott, LLC,
dderco@eckertseamans.com
Reese Davidson, Eckert Seamans Cherin & Mellott, LLC,
rdavidson@eckertseamans.com

Delta Air Lines

Alexander Krulic, Managing Director and Associate General Counsel – Regulatory & International Affairs, alex.krulic@delta.com
Christopher Walker, Regional Director – Regulatory & International Affairs, chris.walker@delta.com

Dynamic International Airways, Inc.

Jason E. Maddux, Garofalo Goerlich Hainbach PC, jmaddux@ggh-airlaw.com

Eastern Air Lines Group, Inc.

John R. Mietus, Jr., Law Office of John Mietus, LLC, john@mietuslaw.com

Federal Express Corporation

Nancy S. Sparks, Managing Director Regulatory Affairs, nssparks@fedex.com
Courtney E. Felts, Senior Counsel – Regulatory Affairs, cefelts@fedex.com

MN Airlines, LLC d/b/a Sun Country Airlines

Thomas W. Ting, General Counsel, thomas.ting@suncountry.com

Southwest Airlines Co.

Robert W. Kneisley, Associate General Counsel, bob.kneisley@wnco.com
Leslie C. Abbott, Senior Attorney, leslie.abbott@wnco.com

Silver Airways Corp.

Sami Teittinen, President and Chief Executive Officer, sami.teittinen@silverairways.com
Bryan P. Winters, Chief Legal Officer, bryan.winters@silverairways.com

Spirit Airlines, Inc.

Joanne W. Young, Kirstein & Young, PLLC, jyoung@yklaw.com
David M. Kirstein, Kirstein & Young, PLLC, dkirstein@yklaw.com

United Airlines, Inc.

Steve Morrissey, Vice President-Regulatory & Policy, steve.morrissey@united.com
Daniel A. Weiss, Managing Director-International Affairs and Regulatory, dan.weiss@united.com
Thomas Newton Bolling, Acting General Counsel, thomas.bolling@united.com
Abby L. Bried, Associate General Counsel, abby.bried@united.com
James Conneely, Counsel-Regulatory, james.conneely@united.com
Marc L. Warren, Crowell & Moring LLP, mwarren@crowell.com
Gerald F. Murphy, Crowell & Moring LLP, gmurphy@crowell.com
Steven J. Seiden, Crowell & Moring LLP, sseiden@crowell.com



Brian E. Foont