



U.S. Department
of Transportation
**Federal Aviation
Administration**

November 3, 2022

VIA EMAIL

Mr. Robert C. Land
Senior Vice President for
Government Affairs and
Associate General Counsel
JetBlue Airways Corporation
1212 New York Avenue, NW
Suite 1212
Washington, DC 20005

Dear Mr. Land,

The Federal Aviation Administration (FAA) partially grants the waiver sought by JetBlue Airways Corp. (JetBlue) on July 26, 2022, as amended October 10, 2022, for the reasons stated below and subject to this letter's conditions.

JetBlue petitioned for a limited waiver from the minimum slot usage requirements at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Ronald Reagan Washington National Airport (DCA) from March 27, 2022, through October 29, 2022. Specifically, JetBlue asks the FAA to treat canceled movements at these airports as if they had been flown. In addition, JetBlue requests that relief be extended to cover JetBlue's operations at Newark Liberty International Airport (EWR).

On October 10, 2022, JetBlue withdrew the request for relief at LGA and DCA, indicating it expects to meet the minimum usage requirements based on subsequent operational performance since July. JetBlue also provided supplemental information to support its petition for relief pertaining to operations at JFK, including recent impacts to JetBlue operations due to hurricanes Fiona and Ian.

In support of its request for relief, JetBlue contended the following circumstances as having impacted previously planned operations¹:

- 1) Continued and unprecedented disruptions from the COVID-19 pandemic. JetBlue asserts that it has struggled with significantly elevated levels of cancellations due to high sick rates among crew and continued staffing challenges. JetBlue contends due to the unforeseen spike in sickouts by pilots and inflight crewmembers, "JetBlue's workforce and flight operations are under extraordinary strain, leaving little margin for operational challenges caused by airport

¹ Due to JetBlue withdrawing its request for relief at LGA and DCA this section focuses on the circumstances having impacted previously planned operations at JFK and EWR.

construction, ATC delays and weather.” These continued impacts of the pandemic, JetBlue alleges, have made it difficult or impossible to meet the utilization requirement at JFK, and operate its planned schedule at EWR.

- 2) A schedule reduction JetBlue undertook in Spring 2022 to address large operational and staffing challenges. JetBlue states that its request “is solely to address operational resilience,” and that a waiver “is needed to ensure that operations continue to normalize in the coming months.” JetBlue states that most of the network reductions occurred outside the slot-controlled airports.
- 3) A severe, industry-wide shortage of aircraft parts. JetBlue asserts that they have been unable to meet the minimum slot usage requirement because of an ongoing global aircraft parts shortage that has caused aircraft to remain in maintenance and out of service for longer than normal. JetBlue indicates it significantly increased the number of spare aircraft starting in August 2022 but with additional aircraft out of service daily, the “ability to cover slotted flying is even more challenged.”
- 4) JetBlue indicates it is “uniquely being forced to relocate the entirety of our operation at EWR across four separate security checkpoints due to the early closure of our operating pier in Terminal A” and noted the spring 2022 schedule reductions included EWR flights.
- 5) An increase in FAA Air Traffic Management programs that has led to lengthy delays and cancellations. Specifically, JetBlue alleges that FAA understaffing at Air Traffic facilities and unprecedented weather systems have led to heightened cancellations, especially in the Northeast of the United States. JetBlue also indicates this “disproportionately impact JetBlue as a heavy ‘North-South’ airline dependent on traffic flows passing through important airspace that has been weather challenged”.
- 6) Hurricane Fiona impacted JetBlue operations from September 14-25, 2022, causing widespread delays and cancellations as it impacted Puerto Rico, the Dominican Republic, Turks and Caicos and Bermuda, amongst other airports where JetBlue has significant operations. JetBlue indicates that it canceled 39 operations from JFK directly related to the impacts of Hurricane Fiona.
- 7) Hurricane Ian impacted JetBlue operations from September 25, 2022, to the present day (based on the October 10, 2022, supplemental filing). JetBlue indicates that to date it has canceled 123 operations at JFK, due to the storm and impacts. JetBlue notes Southwest Florida International Airport (RSW) in Fort Meyers reopened with constraints that prevent JetBlue from operating its planned schedule.

JetBlue acknowledges in its request for relief that its “current predicament will not form a sufficient basis for relief going forward” into future scheduling seasons and asks that their relief be limited to the Summer 2022 scheduling season. However, JetBlue believes it should not be penalized for non-usage of slots in the Summer 2022 season due to the highly unusual and unpredictable impacts it experienced throughout the season. JetBlue states it initially removed “capacity from non-slot-controlled airports first, but the impacts from our staffing challenges in March and April are catching up with JetBlue.” JetBlue contends that this relief would allow JetBlue to reduce its schedule where needed to normalize operations and provide a more reliable product for their customers.

FAA Analysis

FAA requires that a slot be used at least 80 percent of the time, or it may not receive historic precedence for the following equivalent scheduling season at JFK.² Carriers are expected to schedule sufficient operations to allow planned or unplanned non-use within the 20 percent allowance of the minimum

² See Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020).

usage rules. At EWR, priority is given to carriers based on actual approved schedules and operations conducted in the previous corresponding season over new demand for the same timings.³

Though FAA may waive this minimum usage requirement at JFK, such relief is not common and when granted is typically related to specific and unique circumstances. A petitioner must demonstrate the waiver need arose from a highly unusual and unpredictable condition beyond the control of the slot-holding carrier and existed for a minimum of five consecutive days.⁴ This exacting standard recognizes that slots are scarce public resources whose use the holder must prioritize or surrender to another operator who will maximize their benefit for the traveling and shipping public. By way of illustration, FAA extended its previous COVID-19 related waiver through October 29, 2022, but limited the extension to international operations at the slot controlled and Level 2 airports in recognition of COVID-19 impacts to international passenger demand and potential government restrictions.⁵ Further, the FAA also granted conditional relief for part of Summer 2022 to Delta Air Lines, Inc. at JFK, LGA, and DCA due to COVID-19 pandemic effects impacting staffing and resources.

In addition, the FAA has previously found the impacts associated with airport terminal and runway construction sufficient to provide relief at EWR. Specifically, the FAA granted conditional relief at EWR and allowed United Airlines, Inc. to temporarily reduce schedules due to terminal construction that limited access to gates and decreased airport capacity due to runway construction and closures beginning in September 2022, both of which were outside of United's control.

JetBlue has asserted that it is experiencing significant effects on operations due to higher-than-expected employee resource and illnesses-related issues, including unexpected increases in COVID-19-related crew absences. In addition, JetBlue indicates it is "uniquely being forced to relocate the entirety of our operation at EWR across four separate security checkpoints due to the early closure of our operating pier in Terminal A" and noted the spring 2022 schedule reductions included EWR flights. FAA understands that decisions about crewmember assignments are made months in advance based on each carrier's demand predictions. FAA acknowledges COVID-19 continued to complicate crew and staff level forecasting, especially when coupled with pandemic-driven workforce practice changes that disrupted planning models or supply-chains during the summer scheduling season. As a result, FAA finds that for a time in the summer of 2022, these pandemic effects constituted a highly unusual and unpredictable condition beyond JetBlue's control. These effects will not form a sufficient basis for relief going forward because JetBlue will have had sufficient opportunity to plan and take remedial action, including moving resources to prioritize the staffing of operations at these airports, if necessary. Further, FAA acknowledges that the construction at EWR Terminal A, which is not under JetBlue's control, resulted in operational impacts that limited JetBlue's ability to normalize its operations. However, as noted below, JetBlue scheduled and operated a significant number of flights without FAA-approved runway times. That action was clearly under JetBlue's control and magnified the operational impact of the Terminal A construction.

³ Change of Newark Liberty International Airport (EWR) Designation, 81 FR 19861 (Oct. 30, 2016).

⁴ See Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020).

⁵ COVID-19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2022 Scheduling Season, 87 FR 18057 (Mar. 29, 2022).

In contrast, FAA does not agree that the general weather and ATC circumstances cited by JetBlue meet the applicable waiver standard. Such cancellations, with limited exceptions such as the widespread and extended impacts that JetBlue experienced from the recent hurricanes, are intended to be covered by the 20 percent non-use allowance provided in the minimum usage requirement.

JetBlue has requested relief at JFK beginning March 27, 2022, but has not provided information that relief from the minimum usage requirements is needed for the entirety of the Summer 2022 scheduling season. JetBlue indicated it minimized the Spring 2022 schedule reductions at slot-controlled airports, but relief would provide opportunities to adjust schedules or help normalize operations challenged by COVID-19 pandemic-related issues. JetBlue states the recent hurricanes and severe weather challenges have only further demonstrated the need for relief.

FAA Decision

The Department of Transportation, including FAA, has been closely monitoring recent demand, air carrier operations, and the significant increase in cancellations, delays, and challenges with customer service.

As part of this effort, Secretary Buttigieg met this summer with JetBlue and other air carrier executives to discuss operations and the impacts to consumers, focusing initially on high demand around the July 4th weekend and continuing to the peak summer demand periods. The Secretary requested that JetBlue and other carriers review schedule plans to ensure that sufficient carrier resources are available to reliably deliver on planned operations. The Secretary also made it clear that carriers should be able to provide customers an opportunity to be accommodated on other operations or have their fare refunded. Since those discussions, some carriers have adjusted schedules at several airports.

After reviewing JetBlue's petition, FAA is conditionally granting, in part, JetBlue's request for relief for its specific, canceled scheduled flights at JFK based on COVID-19 pandemic effects impacting staffing and resources.. FAA believes it is appropriate to provide relief but does not believe based on JetBlue's petition that relief is warranted for the entire scheduling season. The relief at JFK covers the period from July 1, 2022, through October 29, 2022. The FAA believes this time period is appropriate because JetBlue indicated that it undertook a schedule reduction in Spring 2022 to address large operational and staffing challenges and that most of the network reductions occurred outside the slot-controlled airports. Further, because usage at JFK is determined on a seasonal basis⁶, the FAA believes that relief beginning in July, the month the FAA received JetBlue's initial petition, provides JetBlue with adequate relief for the Summer 2022 scheduling season..

The FAA also partially grants JetBlue's request for relief at EWR, with conditions, based on staffing and other temporary impacts related to COVID-19 pandemic effects and the relocation of its operations due to construction at Terminal A. The FAA understands these factors may have impacted JetBlue's planned operations for the Summer 2022 scheduling season and that JetBlue has reduced scheduled operations at the airport for various reasons. The relief at EWR covers the period from March 27, 2022, through October 29, 2022. However, the FAA's relief will only apply to flights for which JetBlue received FAA approval for runway timings in Summer 2022. It excludes newly approved times for operation in Summer 2022 that were not subsequently scheduled and operated in those times and other flights that

⁶ See Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020).

were scheduled or operated without corresponding FAA-approved runway times. Schedule facilitation at Level 2 airports is designed to engender collaboration and gain mutual agreement between the FAA and carriers regarding schedules and potential adjustments to stay within the performance goals and capacity limits of the airport. Although voluntary, carriers are expected to seek and obtain schedule approval from the FAA in the Level 2 process, as schedule facilitation is used to prevent an escalation in congestion necessitating a possible Level 3 designation. The FAA intends to apply the normal Level 2 processes for priority consideration of JetBlue's proposed schedules for Summer 2023, including eligible, approved runway timings that may benefit from this relief. The FAA expects to work cooperatively with JetBlue and other carriers at the airport to voluntarily agree on scheduled flight times that will not exacerbate projected congestion and delay.

The granted relief from minimum usage requirements is intended to be short-term while JetBlue assesses the underlying reasons why slots may not meet minimum usage, makes plans to mitigate the circumstances, or determines it cannot operate the slots as required. FAA believes this relief should provide JetBlue sufficient time to manage current operational challenges while implementing plans or adjusting network resources to reliably use its allocated slots in the future, even if current circumstances continue, or otherwise return those slots it cannot reliably operate to the minimum usage requirements so that another carrier can make use of them.

FAA will treat as operated⁷ the specific flights impacted by these issues at JFK for the period from July 1, 2022, through October 29, 2022, and at EWR from March 27, 2022, through October 29, 2022, subject to the following conditions:

1. This relief applies only to JetBlue operations that are solely under JetBlue's marketing control. It does not apply to operations by other carriers that may include a codeshare, joint venture, or similar agreement or for slots held by JetBlue that are operated by another carrier not under its marketing control.
2. This waiver does not apply to slots newly allocated at JFK or FAA approved runway times at EWR for initial use during the Summer 2022 Scheduling Season. The waiver does not apply to historic in-kind slots within any 30-minute time in which JetBlue seeks and obtains a similar new allocation.
3. The waiver does not apply to JFK slots newly transferred on an uneven basis (i.e., one-way slot transaction/lease) since July 26, 2022. Slots transferred prior to this date may benefit from the waiver if all other conditions are met.
4. This waiver applies only to slots or runway times that have corresponding, scheduled operations during the period of the grant. JetBlue must identify corresponding scheduled operations for JFK slots or a corresponding FAA-approved runway time for EWR to obtain relief. The FAA may validate information against published schedule data and other operational data maintained by

⁷ These flights are not considered operated for reporting purposes under 14 CFR Part 234. JetBlue continues to be required to report on time performance data under 14 CFR § 234.4, including for canceled flights which is defined in the regulation to mean a flight operation that was not operated, but was listed in a carrier's computer reservation system within seven calendar days of the scheduled departure.

FAA. Slots or runway times without an associated scheduled and canceled operation will not receive relief.

5. Slots at JFK that benefit from this relief may not enter into an uneven transfer that did not exist prior to July 26, 2022, in the Summer 2023 Scheduling Season. A slot receiving relief under this waiver renders the entire slot time assigned to that slot ID as ineligible for new uneven transfers in Summer 2023 Scheduling Season.
6. The relief granted by this letter expires October 29, 2022.

Sincerely,

Alyce Hood-Fleming
Acting Vice President, System Operations Services