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Spirit.com

May 11, 2022

The Honorable Peter P. M. Buttigieg
Secretary of Transportation
Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Captain Billy Nolen, FRAES
Administrator (Acting)
Federal Aviation Administration
U.S. Department of Transportation
800 Independence Avenue SW
Washington, D.C. 20591

Dear Secretary Buttigieg and Captain Nolen:

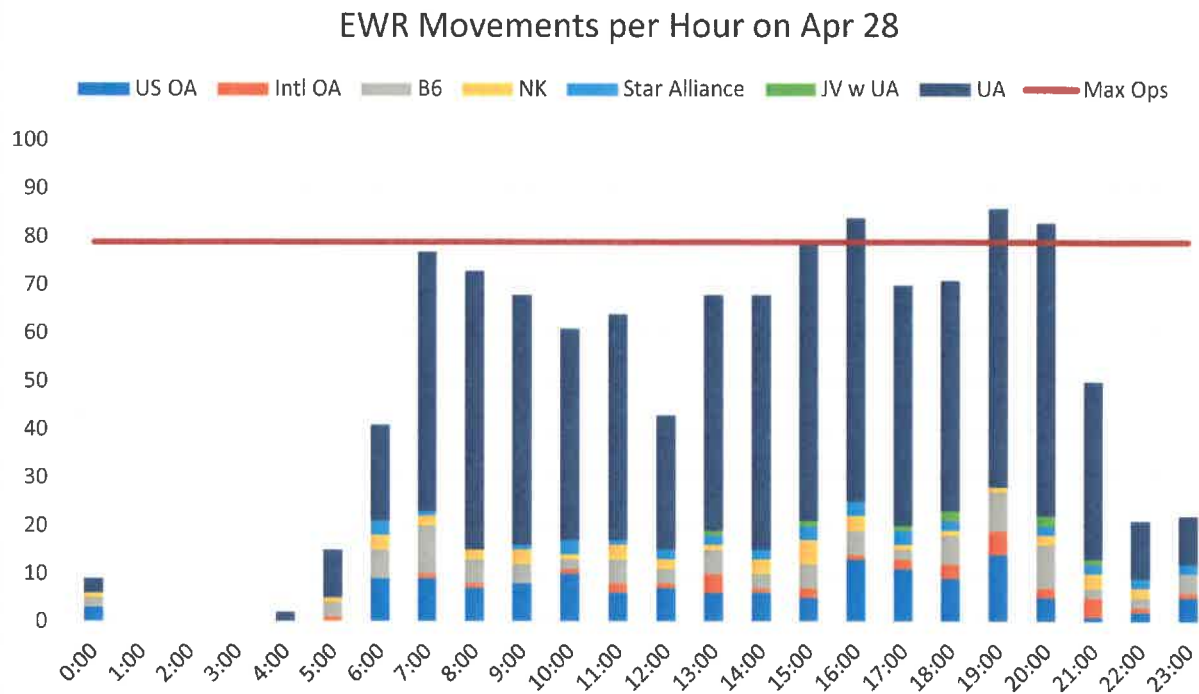
On behalf of Spirit Airlines, I write in response to United Airlines' recent misleading efforts to blame Spirit and JetBlue for congestion delays at Newark Liberty International Airport.¹ These statements by United's CEO and COO are using short-term weather and pandemic-related service issues to advance a deceptive narrative about the causes for congestion delay at the Airport. This is part of United's long-term public intimidation campaign against the Department's reassignment of the former Southwest peak-hour flight authorizations.

For at least the past decade, United Airlines has dominated flying at Newark, operating on average over seventy percent (70%) of scheduled flights. United has long been recognized as the root cause of the Airport's congestion.² United has even claimed the honor of operating the "worst flight in America" from Newark, which in 2013 it also blamed on the FAA.³

Contrary to CEO Kirby's claim, Spirit follows FAA rules for Newark flights just as United does. All of Spirit's Newark operations are either pre-approved by, or coordinated with, the FAA. Indeed, most of Spirit's peak-hour operations are ad hoc flights made available due to *cancellations by international carriers serving Newark*.⁴ These ad hoc flights are not adding to hourly operations but simply replacing cancelled international flights. Since Spirit entered Newark in 2016, especially recently pending reinstatement of the former Southwest authorizations, it has asked FAA for additional peak-hour flights including at the times it now operates as ad hoc. Spirit has proposed to continue its current flying permanently if it is assigned Southwest's former peak-hour runway timings in the reassignment proceeding initially announced in September 2021.⁵

United’s flying at Newark currently exceeds 70% of peak and non-peak operations, leaving only a very limited opportunity for expanding the low-fare competition Newark travelers continue to seek from Spirit. Flights cannot be added during peak times that customers desire. Yet Spirit currently operates only about 20 scheduled flights daily at Newark, less than five percent (5%) of United’s over 400 daily flights. United cancels and delays far more flights at Newark every day, on average, than Spirit or any other carrier. For example, in the challenging month of April 2022, Spirit averaged just under two (2) departure cancellations per day; by comparison, United averaged just over 10 flight cancellations each day.

Here is a typical Spring 2022 day, showing carrier share of peak-hour flights:



United cannot hide decades of reckless inefficiency at Newark behind a few recent weather delays that caused some takeoff/landing operations (including United’s) to push into the following hour. The D.C. Circuit Court of Appeals saw right through United’s flawed and misleading arguments in the *Spirit v. Department of Transportation* decision last year, calling them “self-serving” and to be taken “with a grain of salt.”⁶ Contrary to what CEO Kirby recently suggested in an earnings call with Wall Street analysts, no other airlines bear responsibility for United’s 2022Q1 results (apart from providing competition) – especially not for United’s poor load factor performance, which is a major contributor to congestion and environmental pollution at Newark.⁷

It is critical to note that Spirit and United *do not* share physical terminals at Newark, which is one of the most common factors contributing to airport delays. At Newark, United operates at terminals A and C while Spirit uses space in Terminal B. Therefore, contrary to what United has suggested, any ground or gate delays for Spirit have no effect on United. Moreover, in terms of runway delays, a cancelled Spirit flight would actually free up runway space and reduce delays.

United's blame-shifting ignores the realities of what caused national air travel disruptions in April, which were disruptions largely concentrated in Florida where Spirit's operations are predominantly based. The primary issue of understaffing -- as high as 50% -- at the FAA's Jacksonville Air Traffic Control Center, combined with seasonal bad weather, resulted in 115 hours of air traffic control delays early in the month (compared to 22 in *all of* 2019).⁸ These disruptions have disproportionately impacted Spirit's Newark flying of which approximately fifty percent (50%) touches Florida, compared to fifteen percent (10%) of United's flights. Even under these circumstances, United had over six times as many daily cancellations than Spirit in April (NK-56 versus UA-309).

Mr. Kirby's statements reference congestion issues at Newark from 2016-2019, but United's domination of Newark and its history of delays goes back to at least 2010 when United merged with Continental Airlines. United acquired Continental's 894 slots at Newark (just over 70%) and divested its own 36 slots at EWR to Southwest to avoid antitrust litigation by the Department of Justice.⁹ In the years since that merger, Newark has persistently remained one of the nation's most-delayed airports:

1. **2011** - United deals with flight delays after outage | (Reuters)¹⁰
2. **2012** - United Airlines Update on Flight Operations, Customer Options Due to Eastern Weather | (CNBC)¹¹
3. **2013** – United operates the worst flight in America from Cincinnati to Newark | (Skift)¹²
4. **2015** - United's controversial Newark-Columbia flight frequently flew half-empty | (USA Today)¹³
5. **2015** – United Airlines blames grounding of hundreds of flights on computer glitch | (LA Times)¹⁴

In the 2016-2019 timeframe cited by CEO Kirby, little had changed from 2010. United was still, by far, the dominant airline at Newark and the airport continued facing delays as a result. United's narrative seeks to place blame on Spirit and JetBlue for those delays. However, during those years Spirit operated a maximum of 5 afternoon/evening peak-hour flights and JetBlue operated a maximum of 20,¹⁵ while United operated an average of 447 peak-hour slots over those years.¹⁶ Those statistics speak for themselves, and the Port Authority of New York and New Jersey (PANYNJ), which manages Newark, was explicitly clear: "...one carrier [United] appears to have made schedule shifts that are a root cause of schedule imbalances and delay, while also driving a policy agenda in Washington, D.C. by citing a problem that the carrier – with FAA approval – largely caused."¹⁷

When Southwest announced its departure from Newark in 2019, United sought to unwind what remained of the competition to which it agreed in 2010. This effort included a secret letter from then United CEO Oscar Munoz to former Secretary Elaine Chao asking the Department to focus on Newark congestion rather than competition. In its *Spirit* decision the Court of Appeals found the Department's decision to follow United's advice to be arbitrary.¹⁸

When the Department initiated the reassignment proceeding and sought comment on criteria to be used for selecting the carrier to receive the authorizations, United filed 107 pages of comments including two economic studies none of which was responsive to the Department's Notice.¹⁹ Further, United enlisted many of its friends and allies to file the same comments, almost entirely copied-and-pasted, multiple times in the Reassignment docket to deter Department action.²⁰ The Department should take these comments "with a grain of salt."

The simple truth is that delays at Newark long preceded service by Spirit. Cutting service by Spirit and JetBlue, to satisfy United, only harms consumers and tightens United's control and dominance at that airport. If United sincerely wishes to address congestion and support the public interest then a schedule reduction meeting moderated by the FAA, where all carriers would reduce flights fairly and equitably, is a solution. Spirit would certainly participate in such meeting, but it can only take place after the Southwest reassignment. Without completing the reassignment, carriers would give up authorizations starting from an arbitrarily anticompetitive level, whereby the government would allow United a position 10 yards in front of the starting line – i.e., a higher proportion of authorizations viz. other airlines serving Newark. That benefits only United, not the traveling public, and directly contradicts the D.C. Circuit decision.

Spirit appreciates the Department's difficult task of prioritizing the competitive environment at Newark while withstanding repeated criticism and attacks from that airport's dominant airline. By supporting competition at Newark, especially by carriers like Spirit whose business model is built on operational efficiency, congestion issues will likewise improve.

We look forward to working with the Department on these issues.

Respectfully,



Ted Christie
President & Chief Executive Officer

cc: The Honorable C. Annie Petsonk
The Honorable A. Bradley Mims

¹ See, e.g., *United Airlines Holdings, Inc. (UAL) CEO Scott Kirby on Q1 2022 Results - Earnings Call Transcript*, SEEKING ALPHA (Apr. 21, 2022), <https://seekingalpha.com/article/4502800-united-airlines-holdings-inc-ual-ceo-scott-kirby-on-q1-2022-results-earnings-call-transcript>.

² *Spirit Airlines, Inc. v. Dep't of Transport.*, 997 F.3d 1247, 1256 (D.C. Cir. 2021) (“...United's own scheduling requests – on which the FAA signed off – were “the root cause of ... delay” at Newark.”).

³ *Worst flight in America: The Cincinnati to Newark route that's rarely on time*, SKIFT (May, 31, 2013), <https://skift.com/2013/05/31/the-worst-flight-in-america-can-never-get-from-cincinnati-to-newark-on-time/> (“United Express Flight 4352 has been on time for just 19 percent of its trips; a shocking statistic *supposedly* caused by weather delays at Newark, the flight's short-haul status, and FAA flight-coordinating strategies. ...what's meant to be a 97-minute jump from Cincinnati to Newark, N.J. **The 6 p.m. flight has run chronically late more often than any other U.S. airline flight over the past two years**, according to Department of Transportation data.” (emphasis added)); see also Mutzabaugh, Ben, *Analysis: United rarely filled controversial Newark-South Carolina flight*, USA TODAY (Oct. 14, 2015), <https://www.usatoday.com/story/todayinthesky/2015/10/09/uniteds-controversial-newark-columbia-flight-frequently-flew-half-empty/73621226/>.

⁴ See, e.g., *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 Fed. Reg. 18057 (Mar. 29, 2022).

⁵ *Notice of Proposed Reassignment of Schedules at Newark Liberty International Airport*, Docket DOT-OST-2021-0103 (Sept. 16, 2021).

⁶ *Spirit Airlines, Inc. v. Dep't of Transport.*, 997 F.3d 1247 (D.C. Cir. 2021)

⁷ See *United Airlines Q1 2022 Earnings Report Recap: United Airlines missed on earnings and on revenue*, INVESTOPEDIA (Apr. 21, 2022); See also *Transtats, Load Factor (passenger-miles as a proportion of available seat-miles in percent (%))*, BUREAU OF TRANSPORTATION STATISTICS, <https://www.transtats.bts.gov/DataElements.aspx?Data=5> (compare UA-EWR-2021 load factor at 70.63%, with NK-EWR-2021 load factor at 83.43%).

⁸ Spirit appreciated meeting with the FAA this week to discuss these issues and solutions. We look forward to continuing to work with the FAA on ensuring operational efficiency and resiliency across Florida airspace.

⁹ Office of Public Affairs, *United Airlines and Continental Airlines Transfer Assets to Southwest Airlines in Response to Department of Justice's Antitrust Concerns*, DEPT. OF JUSTICE (Aug. 27, 2010), <https://www.justice.gov/opa/pr/united-airlines-and-continental-airlines-transfer-assets-southwest-airlines-response>.

¹⁰ <https://www.reuters.com/article/us-unitedcontinental/united-deals-with-flight-delays-after-outage-idUSTRE75H1FG20110618>.

¹¹ <https://www.cnbc.com/2012/10/28/united-airlines-update-on-flight-operations-customer-options-due-to-eastern-weather.html>.

¹² <https://skift.com/2013/05/31/the-worst-flight-in-america-can-never-get-from-cincinnati-to-newark-on-time/>.

¹³ <https://www.usatoday.com/story/todayinthesky/2015/10/09/uniteds-controversial-newark-columbia-flight-frequently-flew-half-empty/73621226/>.

¹⁴ <https://www.latimes.com/business/la-fi-united-flights-grounded-20150708-story.html>.

¹⁵ Joint Appendix, A446-A452, *Spirit Airlines v. Department of Transport.*, Case No. 19-1248 (D.C. Cir. June 12, 2020) (United Airlines' August 2019 Newark Update Presentation).

¹⁶ *Id.*

¹⁷ Joint Appendix, A439, *Spirit Airlines v. Department of Transport.*, Case No. 19-1248 (D.C. Cir. June 12, 2020) (Letter from PANYNJ to FAA Administrator Dickson (Aug. 30, 2019)).

¹⁸ *Spirit Airlines, Inc. v. Dep't of Transport.*, 997 F.3d 1247, _____ (D.C. Cir. 2021).

¹⁹ See *Comments of United Airlines, Inc.*, Docket DOT-OST-2021-0103 (Sept. 27, 2021).

²⁰ See, e.g., *Comments of New Jersey Business & Industry Assoc.*, Docket DOT-OST-2021-0103 (Sept. 22, 2021).