



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

Issued by the Department of Transportation
on the 29th day of September, 2016

Silver Airways LLC

**Violations of 49 U.S.C. § 41712 and 14 CFR
Parts 259 and 374**

**Docket OST 2016-0002
Served September 29, 2016**

CONSENT ORDER

This consent order concerns violations by Silver Airways LLC (Silver Airways) of 14 CFR Parts 259 and 374 related to the timely processing of consumer refund requests, as required by the Consumer Credit Protection Act and Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§ 1601–1693r and 12 CFR Part 226 (Regulation Z). Violations of Parts 259 and 374 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712. This order directs Silver Airways to cease and desist from future similar violations of 14 CFR Parts 259 and 374 and 49 U.S.C. § 41712 and assesses the carrier \$25,000 in civil penalties.

Applicable Law

Air carriers are subject to the refund requirements of Part 374, which implements Regulation Z and the Consumer Credit Protection Act; 14 CFR 259.5(b)(5); and enforcement case precedent. Part 374 and Regulation Z establish that, for refund requests involving airline tickets purchased with a credit card for which a refund is due, an airline must transmit a credit statement for a passenger refund to the credit-card issuer within seven business days of receipt of full documentation for the refund requested. See 14 CFR 374.3(b); 12 CFR 226.12(e)(1). Further, under section 259.5(b)(5) and enforcement case precedent, where a refund is due for a ticket purchased with cash, an airline must provide the refund within twenty business days of receipt of full documentation of such a request. A failure to provide such refunds within the stipulated time periods violates Part

374 and is considered to be an unfair and deceptive practice in violation of 49 U.S.C. § 41712. Such a failure may also be contrary to a carrier's customer service plan in violation of 14 CFR Part 259. Failing to follow a carrier's own published policies regarding prompt refunds is unfair and deceptive in violation of section 41712. The Enforcement Office expects carriers to dedicate the appropriate resources necessary to process refunds in a timely manner.

Facts and Conclusions

Silver Airways is a certificated air carrier operating scheduled passenger service using aircraft originally designed to have a passenger capacity of 30 or more seats. The carrier's contract of carriage and its customer service plan state that it will issue refunds within seven business days for credit card purchases and 20 business days for purchases made with cash, check, or other forms of payment. An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that during 2014 and 2015, Silver Airways failed to issue refunds to a relatively small number of consumers making purchases by credit card within the time limitations specified in regulations, the carrier's contract of carriage, and its customer service plan. Although the effect on consumers was limited, during the relevant period Silver Airways failed to dedicate the appropriate resources necessary to determine when a refund was due and to process the refunds in a timely manner. In light of the foregoing, Silver Airways violated 14 CFR sections 259.5(b)(5) and 374.3, as well as 49 U.S.C. § 41712.

Decision

The Enforcement Office views seriously Silver Airways' violations of 14 CFR 259.5(b)(5) and 374.3 and 49 U.S.C. § 41712. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, Silver Airways consents to the issuance of this order to cease and desist from future violations of 14 CFR 259.5(b)(5) and 374.3 and 49 U.S.C. § 41712 and to the assessment of \$25,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent against future similar unlawful practices by Silver Airways and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Silver Airways LLC violated 14 CFR 374.3 by failing to timely process refunds for purchases by credit card, as required by the Consumer Credit Protection

Act and Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§ 1601–1693r and 12 CFR Part 226;

3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Silver Airways LLC failed to adhere to the customer commitments in its customer service plan and violated 14 CFR 259.5(b)(5);
4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3, above, Silver Airways LLC engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order Silver Airways LLC and its successors and assigns to cease and desist from further violations of 14 CFR 259.5(b)(5) and 374.3 and 49 U.S.C. § 41712;
6. We assess Silver Airways LLC \$25,000 in compromise of civil penalties that might otherwise be assessed for the violations described above;
7. We order Silver Airways LLC to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 6, above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Silver Airways LLC to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

BLANE WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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