



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

Issued by the Department of Transportation
On the Tenth day of August, 2011

Swift Air, LLC

**Violations of 49 U.S.C. § 41712 and
14 CFR Part 380**

Docket OST 2011-0003

Served August 10, 2011

CONSENT ORDER

This consent order concerns violations of certain consumer protection provisions of the Department of Transportation's (Department) Public Charter regulations, 14 CFR 380.43, by Swift Air, LLC, (Swift Air) a direct air carrier, stemming from its voluntary cancellation of a public charter flight less than 10 days before the scheduled departure date without demonstrating circumstances that rendered it physically impossible for Swift Air to conduct the operation. These violations also constituted unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Swift Air to cease and desist from future similar violations and assesses a compromise civil penalty of \$100,000.

Direct air carriers operating public charter flights must comply with the applicable requirements of 14 CFR Part 380, which are designed to prevent economic harm to charter passengers. Under section 380.43, a direct air carrier operating public charter flights is prohibited from cancelling a charter fewer than 10 days before the scheduled departure date, except under circumstances that make it physically impossible to perform the charter trip. Violations of section 380.43 also constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

Since 2006, Swift Air has had a certificate of public convenience and necessity from the Department and an air carrier certificate from the Federal Aviation Administration (FAA) authorizing it to perform supplemental operations pursuant to 14 CFR Part 121. In March 2011, the Department accepted a public charter prospectus (PC-11-066) filed by Air Plus, GM LLC, (Air Plus) which provided for Air Plus to operate, as an indirect air carrier, a series of public charter flights between Chicago and Belgrade, Serbia, and Zagreb, Croatia. The flights were scheduled to operate three times a week between June and September

2011 with the inaugural flight scheduled to depart Chicago's Rockford International Airport on June 17, 2011. The prospectus listed Swift Air as the direct air carrier.

On June 17, 2011, minutes before take-off, Swift Air notified Air Plus that it had cancelled the inaugural charter flight due to significant unresolved FAA compliance concerns of which it had been aware for nearly a month. Air Plus subsequently took action to cancel all remaining flights contained in PC-11-066.

The FAA's compliance concerns stemmed from alleged deficiencies in Swift Air's pilot training manual and the qualifications of its crewmembers to conduct Part 121 operations. Based on the Enforcement Office's investigation of this matter, the FAA's concerns were, at the time they were initially raised with Swift Air, of sufficient gravity that it was reasonably foreseeable that the suspension of Swift Air's operating authority could result. It was, therefore, incumbent upon the carrier to take prompt action to avoid significant harm to the passengers that might arise due to a last-minute cancellation in the event these problems could not be resolved. Rather, Swift Air chose to proceed without taking such action. Swift Air's last minute cancellation of the PC-11-066 flight on June 17, 2011, caused consumers who had purchased tickets for this flight and the subsequent flights significant inconvenience when they were left without readily available and acceptable travel alternatives.

In mitigation Swift Air states that it has and continues to work closely with the FAA on safety issues and believes that safety is the most important obligation it has to its customers. According to Swift Air, it also takes very seriously any concerns raised by the FAA as to any of its operations and, during the time involved, it met with the FAA and worked through each issue raised as a concern by its FAA Certificate Management Office. Swift Air states that, up until moments before the flight, it did not believe the issues raised by the FAA would necessitate cancellation of the flight in question, and it felt that the information it had received from the FAA supported that view. Because of the FAA's concerns, Swift Air points out that it took the only step it could in light of the issues raised, and it cancelled the flight. Swift Air deeply regrets the inconvenience to the charter customers, but it maintains that given the timing of the FAA's expressed concerns, it had no alternative but to cancel the flight. Swift Air states that no alternative arrangements could be made to accommodate the plane load of passengers given the extremely short time frame involved, but Swift Air assisted affected passengers on an individual basis by providing hotel rooms, meals and alternate transportation and, for those who chose not to travel, a refund of all their payments.

The Enforcement Office has carefully considered all of the information available to it, including that provided by Swift Air, but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Swift Air have reached a settlement of this matter. Without admitting or denying the violations described above, Swift Air agrees to the issuance of this order to cease and desist from future violations of 14 CFR Part 380 and 49 U.S.C. § 41712, and to the assessment of \$100,000 in compromise of potential civil penalties otherwise assessable against it. This compromise assessment is appropriate in view of the nature and extent of the violations in question,

serves the public interest, and establishes a deterrent to future similar unlawful practices by Swift Air and other direct air carriers operating public charter flights.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest.
2. We find that Swift Air, LLC, violated 14 CFR 380.43, as described above, by cancelling a public charter flight it contracted to operate less than 10 days before the scheduled departure date.
3. We find that by engaging in the conduct described in paragraph 2 above, Swift Air, LLC, engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.
4. We order Swift Air, LLC, and all other entities owned and controlled by or under common ownership with Swift Air, LLC, and its successors and assignees, to cease and desist from further violations of 14 CFR Part 380 and 49 U.S.C. § 41712.
5. We assess a compromise civil penalty of \$100,000 in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this total amount, \$50,000 will become due and payable according to the following installment schedule: the initial installment of \$10,000 shall be due 30 days after the issuance date of this order; the 4 remaining installments of \$10,000 each shall be due, respectively, 60, 90, 120, and 150 days after the issuance date of this order. The remaining \$50,000 will become due and payable if Swift Air, LLC, violates the cease and desist provisions or the payment provisions of this order within one year following the date of the issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Swift Air, LLC, may be subject to additional enforcement action for failure to comply with this order.
6. Payments shall be made by wire transfers through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the instructions contained in the attachment to this order. Failure to pay the penalty as ordered shall subject Swift Air, LLC, to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible enforcement action for failure 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 initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

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