



U.S. Department of
Transportation

Office of the Secretary
of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, SE
Washington, DC 20590

Dane S. Field
Interim Trustee
Estate of Aloha Airlines
P.O. Box 4198
Honolulu, HI 96812-4198

MAR 30 2010

Re: Passenger Facility Charge Refunds

Dear Mr. Field:

This responds to your March 9, 2009 letter to the U.S. Department of Transportation's (DOT) General Counsel submitted in your capacity as Interim Trustee for Aloha Airlines, which ceased operations on March 31, 2008. Thank you for your patience as we have reviewed this matter.

Specifically, you request "assistance in providing guidance to the airports that refund of [Passenger Facility Charges (PFCs)] by airports is appropriate when refunds for unusable tickets have been refunded to ticket purchasers as a part of a full ticket refund initiated by the airline ticket purchasers." Your letter refers in particular to situations in which the customer held a ticket for an Aloha flight scheduled for March 31, 2008 or later, contacted his/her credit card processor to request a refund given Aloha's cessation of operations, and received the refund -- including a refund of the PFC associated with the ticket. Now Aloha's bankruptcy estate seeks to obtain from the relevant airports the amount of PFCs refunded to these customers, but not all of the airports have refunded the amounts to Aloha's estate. As a matter of aviation law (as opposed to bankruptcy law), we believe a refund of the PFCs by the relevant airports is appropriate where an airline fails to provide the purchased flight due to liquidation in bankruptcy.¹ However, out of deference to the Bankruptcy Court presiding over Aloha's estate, we offer no opinion on which party may properly claim repayment of the PFCs from the airports (Aloha's bankruptcy estate or the credit card processor that has refunded such amounts to the ticket purchasers), or how such collection should be effected.

In support of Aloha's position, you cite 14 CFR Section 158.45(a)(3)(i), which states that, "Any change in itinerary initiated by a passenger that requires an adjustment to the

¹ Our conclusion is based solely on an analysis of 12 CFR Section 226 and 49 U.S.C. Section 40117(g)(4), as implemented by the relevant PFC regulations (as set forth below).

amount paid by the passenger is subject to collection or refund of the PFC as appropriate.” Section 158.45(a)(3)(ii), on the other hand, states that a passenger’s “*failure* to travel on a nonrefundable or expired ticket is not a change in itinerary” requiring a PFC refund. (Italics added.) Arguing against the application of the latter provision, you state that it was Aloha that ceased operations, and thus the passenger did not “fail” to travel. As you explain, “The ticket purchasers requested refund of non-expired tickets on which it is not possible to travel, due to the actions of others, and not the ticket purchaser’s inaction.” Furthermore, you note that the tickets were “basically usable or refundable until one year after issuance.”

It is important to note that the prohibition of refunds in Section 158.45(a)(3)(ii) covers only “a nonrefundable or expired ticket.” Section 158.45(a)(3)(ii) further provides that, “[i]f the ticket purchaser is not permitted any fare refund on the unused ticket, the ticket purchaser is not permitted a refund of any PFC associated with that ticket.” In the matter before us, DOT understands that the ticket purchasers were given a refund of the full fare, including PFCs, by the credit card processor. Such refunds would be required from a credit card processor by 12 CFR Sections 226.13(a)(3) and (e)(1), both of which are applicable to credit card processors working with air carriers under 14 CFR Section 374.3(b), in the event of a “billing error.” The regulations define “billing error” as including “a reflection on or with a periodic statement of an extension of credit for property or services...*not delivered to the consumer* or the consumer’s designee as agreed,” 12 CFR § 226.13(a)(3) (italics added), in which case -- at least as an initial matter pending further investigation -- the credit card processor must “[c]orrect the billing error and credit the consumer’s account with any disputed amount and related finance or other charges, as applicable.” 12 CFR § 226.13(e)(1). Barring a reversal of the refund following an investigation, it is then up to the credit card processor and the merchant to work out the matter between themselves, and in the case of a bankruptcy, subject to the terms of any bankruptcy stay or other bankruptcy requirements.

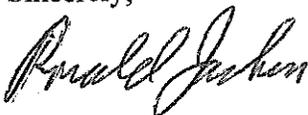
If full fare refunds to the ticket purchasers by the credit card processors were indeed required by 12 CFR Sections 226.13(a)(3) and (e)(1), then the tickets at issue could not be considered “nonrefundable” under Section 158.45(a)(3)(ii). Therefore, the prohibition of PFC refunds in 158.45(a)(3)(ii) is inapplicable, and a refund of the PFCs would be appropriate. Moreover, if the Bankruptcy Court should also find as a factual matter that the tickets under their terms were refundable by Aloha as of the bankruptcy filing date, then that would provide a further basis for a refund.

You indicate that Aloha requests that the airports submit the refunds to the Aloha bankruptcy estate. We do not offer an opinion on that particular issue. As stated above, we defer to the Bankruptcy Court on the appropriate treatment of the PFC revenues. We do note that under 49 U.S.C. Section 40117(g) and 14 CFR Section 158.49(b), an air carrier or its agent holds collected PFC revenues in “trust” for the beneficial interest of the eligible agency imposing the fee, and neither the carrier nor its agent holds legal or equitable interest in the revenues (with exceptions not relevant here). This is not to set forth a DOT position that Aloha may not collect the refundable PFC revenues; rather, as stated above, out of deference to the Bankruptcy Court and because we are not privy to

Aloha's arrangements with the credit card processors or the flow of funds in this matter, we defer to the Bankruptcy Court on all such matters, including which party may properly claim repayment of the PFCs, how such collection should be effected, and whether the airports have some other claim to the revenues in these circumstances based on an accounting error or otherwise. But should refund be appropriate, any solution must ensure that the flow of funds among Aloha, the credit card processors, and the airports complies with 14 CFR Sections 158.45 and 158.49.

We appreciate the importance of your work on Aloha's behalf, and we hope that you find this letter helpful. As a courtesy, we are copying the Bankruptcy Court Judge and airports that may be affected by this letter. To be clear, however, this letter is not intended as a DOT position in the bankruptcy proceeding, or any type of final agency action; rather, we are merely providing guidance on the interpretation of the PFC regulations, in response to your request. If you have any further questions, please do not hesitate to contact me at (202) 366-4710.

Sincerely,



Ronald Jackson
Assistant General Counsel for Operations

cc: United States Bankruptcy Court, District of Hawaii
Airport Managers or PFC Contacts for the following airports:

- Sacramento International Airport (SMF)
- San Francisco International Airport (SFO)
- John Wayne-Orange County Airport (SNA)
- Oakland International Airport (OAK)
- Denver International Airport (DEN)
- Los Angeles International Airport (LAX)
- Chicago O'Hare International Airport (ORD)
- San Diego International Airport (SAN)