



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

Issued by the Department of Transportation on May 12, 2020

NOTICE OF ACTION TAKEN -- DOCKET DOT-OST-2020-0037

On March 27, 2020, the President signed the Coronavirus Aid, Recovery, and Economic Security Act (the CARES Act) into law. Sections 4005 and 4114(b) of the CARES Act authorize the Secretary of the U.S. Department of Transportation (Secretary) to require, “to the extent reasonable and practicable,” an air carrier receiving financial assistance under the act to maintain scheduled air transportation service as the Secretary deems necessary to ensure services to any point served by that air carrier before March 1, 2020 (Service Obligation). By Order 2020-4-2, the U.S. Department of Transportation established the parameters for implementation of the authority granted to the Secretary under the CARES Act, including an exemption process as described at pages 9 – 10 and in Appendix D of that order. This serves as notice to the public of an action taken by a Department official with regard to exemption(s) from Order 2020-4-2. No additional confirming order will be issued in this matter.

Applicant: **Silver Airways LLC (Silver)**¹

Date Filed: **April 30, 2020**

XX Service Level Exemption (a) - Silver requests that the Department approve a temporary reduction, to one flight per week, of its minimum service obligation under the provisions of Order 2020-4-2 at covered points 1 to 5 through July 31, 2020.

- (1) Miami, FL
- (2) Orlando, FL
- (3) Tampa, FL

- (4) Huntsville, AL
- (5) Tallahassee, FL

Silver contends that operations to covered points 1-5 represent a significant burden to the carrier. The carrier states that passenger traffic to these points has fallen more than the nationwide average and the operating losses resulting from minimal levels of service will accelerate Silver’s cash burn. For covered points 1-3 (Miami, Orlando, Tampa), Silver argues that the metropolitan areas of these specific covered points are served by large hubs which have abundant service by large carriers using the airports in question to provide connecting services. For covered point 4 (Huntsville, Alabama), Silver acknowledges that the Department previously denied its request to suspend service entirely to this covered point and that its current request differs in that the carrier is requesting relief to adjust its service level as necessary. The carrier argues that the Huntsville market is heavily dependent on military travel to and from installations in the region and with imposed Department of Defense (DOD) travel limitations, one weekly flight can adequately support the minimal level of travel demand in this market. For covered point 5 (Tallahassee), Silver states that demand is nearly non-existent and reducing its weekly frequency level to one weekly flight will not result in a loss of service to Tallahassee; moreover, the community will continue to receive service from larger carriers. Overall, Silver argues that in light of recent Department actions that expanded exemptions available to small carriers, granting its current exemption request to adjust its flying schedule in response to passenger demand through July 31, 2020, is warranted and consistent with those the Department has granted to other covered carriers.²

XX Service Level Exemption (b) – Silver requests that the Department approve a temporary suspension of service to the following covered point from its Service Obligation under the provisions of Order 2020-4-2:

- (6) Key West, FL

¹ A copy of Silver’s application and the basis for its exemption request can be found at:
<https://www.regulations.gov/document?D=DOT-OST-2020-0037-0117>.

² Silver cites as examples our recent actions on exemptions requested by Hyannis Air Service d/b/a Cape Air and Allegiant Air, LLC in this Docket. See Notices of Action Taken dated April 24 and April 28, 2020, respectively.

Silver states that Florida travel restrictions have significantly suppressed demand, particularly in Monroe County, which closed the Florida Keys to leisure travelers. In light of the travel restrictions, Silver requests that the Department allow the carrier to temporarily suspend service to covered point 6 (Key West) until June 15, 2020, or seven (7) calendar days after Monroe County, Florida lifts certain travel restrictions, whichever occurs later, to allow it to ramp up its resumption of operations. The carrier cites previous Department actions granting relief to carriers under similar circumstances in predominantly tourist markets.³

XX Service Level Exemption (c) – Silver requests that the Department approve deletion of the Service Obligation to the following covered point:

(7) Daytona Beach, FL

Silver states that it ceased service at covered point 7 (Daytona Beach) on July 1, 2019, and that therefore this city should be permanently removed from its Service Obligation.

XX Waiver from the 10-business day advance filing requirement for exemptions under Order 2020-4-2.

Responsive pleadings: None

DISPOSITION

XX **Granted, in part, denied in part (see below)**

Action date: **May 12, 2020**

Requests for exemption granted and effective dates of authority granted:⁴

For covered points 1-4: **May 12, 2020 through July 31, 2020**

For covered point 6: **May 12, 2020 through June 15, 2020**

For covered point 7: **May 12, 2020 through September 30, 2020**

Request for exemption denied at:

Covered point: 5

This authority is subject to the terms, conditions, and limitations indicated:

XX **Holder's certificate(s) of public convenience and necessity**

XX **Standard exemption conditions (attached)**

Basis for approval: We find that granting Silver's request for a service level reduction through July 31, 2020 is warranted for covered points 1-3 (Miami, Orlando, and Tampa) based upon our ongoing monitoring of carrier operations. In our action on the request of Cape Air, we found that exempting the carrier from serving a large hub, in that case JFK, was reasonable and practicable because the requesting air carrier (a) was a small carrier with a ten percent or less share of the domestic market, and (b) was seeking relief from serving a large hub or focus city airport that has abundant service by large air carriers using the airports to provide connecting services. We find that the

³ Silver cites as examples our recent actions on exemptions requested by Alaska Airlines, Inc. and Seaborne Virgin Islands, Inc., in this Docket. See Notices of Action Taken dated April 17 and April 21, 2020, respectively.

⁴ The effectiveness of this authority will terminate on the date(s) specified above. Should the air carrier wish to extend the date(s) of effectiveness, it must file another request for an exemption in accordance with the exemption process as described in Appendix D of Order 2020-4-2.

same factors exist in the case of Silver for covered points 1-3 (Miami, Orlando, and Tampa), given the carrier's size and the nature of the covered points for which it seeks relief.⁵

For covered point 4 (Huntsville), we find that granting Silver's request to reduce its Service Obligation from three flights to one flight per week is also warranted. We agree with Silver that the Huntsville area differs from other markets given the number of military bases in the region, the markets dependence on military travel to and from these installations, and the DOD travel restrictions. Therefore, we find that one weekly flight through July 31, 2020, can adequately support the minimal level of travel demand in this market.

For covered point 6 (Key West), we grant the carrier's request, in part, to delay its commencement of service. The Florida Keys are currently closed to visitors and Monroe County, Florida, where Key West is located, does not anticipate opening up to visitors during the month of May.⁶ While we agree with Silver that additional time is required for the carrier to establish its facilities once the Monroe County travel restrictions are lifted, we are not inclined to grant an exemption until such time and to the extent that Monroe County may relax its current travel restrictions. In this regard, we find it would not be reasonable or practicable for Silver to serve Key West, Florida, prior to June 15, 2020.

With respect to Silver's request that covered point 7 (Daytona Beach) be removed from its Service Obligation, we find that granting the carrier's request is warranted, as the carrier notes that it ceased operations to Daytona Beach in July 2019. Under these circumstances, it would not be reasonable or practicable to require Silver to serve these points under the terms of Order 2020-4-2.

For covered point 5 (Tallahassee), we deny Silver's request to reduce its service obligation to this covered point. The Department is authorized to require air carriers receiving financial assistance under sections 4005 and 4114 of the CARES Act to maintain scheduled air transportation service as the Secretary deems necessary. By Order 2020-4-2, the Department modified its original methodology to address concerns raised by interested parties and to balance the needs of communities appropriately to retain at least minimal connections to the national air transportation system during the public health emergency, as required by the CARES Act, and the economic needs of certain segments of the industry. While, for the reasons set forth above, we have found that limited relief from that methodology is warranted with respect to some of Silver's covered points, the carrier has not persuaded the Department that we must strike a different balance with respect to service to Tallahassee, Florida. Moreover, Order 2020-4-2 generally provides substantial flexibilities to covered carriers.

Finally, we grant Silver's request for a waiver of the 10-business day advance filing requirement for exemptions under Order 2020-4-2 so that its proposed schedule changes can be implemented promptly.

We may amend, modify, or revoke this exemption at any time without hearing at our discretion.

⁵ For these purposes, the Department is applying the same metric applied in Order 2020-4-2, namely carriers below a 10% share of total industry domestic capacity in calendar year 2019, as measured in available seat miles (ASMs). The Department defines a large hub as those airports that are listed on the FAA's most recent (calendar year 2018) "large hub" classification, as defined by 49 U.S.C. § 47102(11), including airports within the broader metropolitan areas defined by Order 2020-4-2, as well as additional points where the Department observes carriers connecting a high percentage of traffic. Those points are: Atlanta, Boston, Charlotte, Chicago, Dallas/Ft. Worth, Denver, Detroit, Honolulu, Houston, Las Vegas, Los Angeles, Miami, Minneapolis/St. Paul, Nashville, New York City, Orlando, Philadelphia, Phoenix, Portland, Salt Lake City, San Diego, San Francisco, Seattle, St. Louis, Tampa, and Washington, DC.

⁶ See <https://www.monroecounty-fl.gov/1169/COVID-19-Coronavirus>.

Persons entitled to petition the Department for reconsideration of the action set forth in this Notice under the Department's regulations, 14 CFR § 302.14, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for reconsideration will not alter such effectiveness.

Action taken by: David Short
Deputy Assistant Secretary
Aviation and International Affairs

An electronic version of this document is available at: <http://www.regulations.gov>

U.S. Carrier Exemption Conditions

In the conduct of the operations authorized, the U.S. carrier applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with consumer protection and civil rights requirements, including, but not limited, to requirements contained in 14 CFR Parts 250, 254, 257, 259, 374, 382 and 399;
- (3) Comply with the requirements for reporting data to the Department, including, but not limited, to requirements contained in 14 CFR Parts 234, 241, and 244;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with all applicable requirements of the Federal Aviation Administration, the Transportation Security Administration, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1544. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.