

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

CONTINUATION OF CERTAIN AIR
SERVICE

Under Public Law 116-136 §§ 4005
and 4114(b)

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) Docket DOT-OST-2020-0037
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**SILVER AIRWAYS LLC REQUEST FOR
EXEMPTION FROM SERVICE OBLIGATION**

Communications with respect to this document should be addressed to:

Steven A. Rossum
Chief Executive Officer
Jennifer Wirth
Senior Manager – Legal & Regulatory Affairs
Silver Airways LLC
1100 Lee Wagener Boulevard, Suite 200
Fort Lauderdale, Florida 33315
+1 954.985.1500
steve.rossum@silverairways.com
jennifer.wirth@silverairways.com

April 30, 2020

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**SILVER AIRWAYS LLC REQUEST FOR
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Silver Airways LLC (“Silver”) hereby respectfully requests an exemption from certain of its minimum required air service levels (the “Service Obligation”) set forth in Appendix B of Order 2020-4-2 (the “Order”), as more fully described below. Silver further asks for (i) a waiver from the Order’s requirement that exemption requests be filed at least 10 business days before proposed service alterations,¹ and (ii) prompt consideration and approval of this request.

Pursuant to the procedures established by the Department in Appendix D of the Order, Silver seeks a limited exemption from its Service Obligation at six (6) points. More specifically, Silver requests an exemption to the extent necessary to allow it to:

- reduce its minimum service levels for the Miami, Orlando and Tampa, FL, metropolitan areas, each of which is serviced by a “large hub” airport, from three (3) weekly flights to one (1) weekly flight at each such point, through July 31, 2020;
- reduce its minimum service levels for the Huntsville, AL, and Tallahassee, FL, metropolitan areas, due to their unique market characteristics, from three (3)

¹ For the reasons set forth herein, good cause exists to grant Silver’s request for such a waiver.

weekly flights to one (1) weekly flight at each such point, through July 31, 2020; and

- suspend service at Key West, FL, until the later of June 15, 2020, or seven (7) calendar days after Monroe County, FL, lifts certain travel restrictions imposed due to COVID-19, as more fully detailed below.

Through this request, Silver is also asking that the Department remove Daytona Beach, FL from Silver's Service Obligation listed on Appendix B to the Order. Silver ceased all scheduled service at Daytona Beach on July 1, 2019, well before the February 2020 weekly baseline in Appendix B. As a consequence, Daytona Beach should be permanently removed from Silver's Service Obligation.²

I. Miami, Orlando and Tampa, FL

Against the backdrop of an unprecedented 95% drop in demand for air travel nationwide since the onset of the COVID-19 public health emergency, passenger traffic on Silver flights serving the Miami, Orlando and Tampa³ metropolitan areas has practically evaporated.⁴ As a regional carrier that has less access than larger carriers to equity markets and credit on reasonable terms, Silver is disproportionately impacted by the financial and operational burdens of maintaining a Service Obligation of at least three (3) weekly flights at each of these points when little travel demand exists. The operating

² Due to an administrative oversight, Silver, in its exemption request filed on April 15, 2020, inadvertently omitted its request to remove Daytona Beach from the carrier's Service Obligation.

³ Silver's Miami, Orlando and Tampa metropolitan area services are provided at Fort Lauderdale-Hollywood International Airport, Orlando International Airport and Tampa International Airport, respectively.

⁴ Based on TSA checkpoint travel numbers for April 28, 2020, available at <https://www.tsa.gov/coronavirus/passenger-throughput>.

losses resulting from such minimum service levels at these metropolitan areas, which are well-served by other larger carriers, will accelerate Silver's cash burn at a time when the carrier's very future is at stake and, consistent with the objectives of the CARES Act, it is endeavoring to refrain from furloughs and layoffs.⁵

Silver's traffic levels for Miami, Orlando and Tampa have actually fallen more steeply than the nationwide average. Thus far for April 2020, Silver's traffic for the Miami metropolitan area has fallen 96.7% year-over-year, to eight (8) passengers daily each way ("PDEW").⁶ During the same period, traffic at Orlando has fallen 97.5%, to less than four (4) PDEW, while traffic at Tampa reflects a similar drop (97.7%), to less than five (5) PDEW.

Each of the Miami, Orlando and Tampa metropolitan areas are served by "large hub" airports as defined at 49 U.S.C. § 47102(11). Passengers traveling to and from these points will not be disadvantaged due to Silver's requested decrease in weekly frequencies, as they will continue to have abundant air service provided by larger air carriers. Perhaps most importantly, the relief requested herein is consistent with recent actions taken by the Department to provide partial relief for smaller air carriers from their

⁵ Although Silver is grateful to have received payroll support financial assistance from the U.S. Department of the Treasury, the level of such financial assistance (approximately 76% of the air carrier's eligible salaries, wages and benefits, to be paid in installments through the third quarter of 2020) compels Silver to reduce operating expenses to a greater degree than it had reasonably anticipated when submitting its last exemption request on April 15, 2020.

⁶ Although the Governor of Florida recently announced measures to begin a gradual re-opening of Florida businesses, much of the South Florida area – including Broward, Miami-Dade and Palm Beach counties – remains excluded from the measures. See Elliott C. McLaughlin, Rosa Flores, Sara Weisfeldt and Jason Morris, "Florida will start to reopen May 4, but for now Miami-Dade and two other counties won't be included," CNN (April 29, 2020).

Service Obligations.⁷ In those cases, the Department, in exercising its discretionary authority to require service at points “to the extent reasonable and practicable,” recognized the unique challenges faced by such carriers. Grant of Silver’s request will not result in any loss of access by these metropolitan areas to the national air transportation system and will avoid undue financial and operational burdens for a small carrier.

To be clear, Silver does not seek an exemption in order to suspend all service at Miami, Orlando and Tampa, but rather to retain the flexibility to adjust its scheduled flying in response to demand levels, including reducing its service levels as necessary through July 31, 2020. The relief requested by Silver at these three metropolitan areas is “reasonable and practicable” because Silver “is a small carrier with 10% or less share of the domestic market” and the request “is limited in scope to large hubs that have abundant service by large operators using the airports in question to provide connecting services.”⁸ In short, Silver has tailored its request for relief at Miami, Orlando and Tampa narrowly, and granting it the relief requested herein, through July 31, 2020, is well-justified and in the public interest.⁹

⁷ See Notices of Action Taken in Docket DOT-OST-2020-0037, issued April 25, 2020 and granting exemption to Frontier Airlines, Inc. with respect to Boston, MA/Providence, R.I., Charlotte, N.C. and Detroit, MI; issued April 25, 2020 and granting exemption to Sun Country, Inc. d/b/a Sun Country Airlines with respect to Las Vegas, NV, Orlando, FL and Phoenix, AZ; and issued April 24, 2020 and granting exemption to Hyannis Air Service d/b/a Cape Air with respect to New York, N.Y.

⁸ Notice of Action Taken in Docket DOT-OST-2020-0037, issued April 25, 2020 (Sun Country Airlines).

⁹ Silver’s narrowly tailored request for flexibility to reduce its service levels to one weekly flight at these large hub airports is consistent with relief granted by the Department to other smaller carriers. See Notices of Action Taken in Docket DOT-OST-2020-0037, issued April 29, 2020 (Allegiant Air); and issued April 25, 2020 (Sun Country Airlines).

II. Huntsville, AL and Tallahassee, FL

As with the Florida metropolitan areas discussed above, demand for air travel at Huntsville and Tallahassee is nearly non-existent. More specifically, and thus far for April 2020, Silver's traffic at Huntsville has fallen a staggering 98% year-over-year, to barely one (1) PDEW, while traffic at Tallahassee has fallen 96% during the same period, to less than three (3) PDEW.

Silver acknowledges that the Department previously denied its request for an exemption from its Service Obligation at Huntsville, however, the instant request differs significantly as Silver is no longer seeking permission to suspend service at this community. Rather, Silver seeks the operational flexibility through July 31, 2020, to adjust its service level as necessary, while ensuring that Huntsville does not experience a total loss of Silver service. The instant request is thus more narrowly tailored than the relief previously requested by Silver for Huntsville.

Moreover, the Huntsville market differs from many other air travel markets due to its heavy dependence on military travel to and from installations in the region – a dependence that has only further suppressed travel demand. Indeed, by memorandum dated April 20, 2020, the Secretary of Defense modified previous Department of Defense ("DoD") policies and directed DoD service members, civilian personnel and their dependents to cease travel, both domestically and internationally, until at least June 30, 2020. The moratorium applies to official travel and, in the case of service members, also extends to personal leave and non-official travel outside their local area.¹⁰ Under the

¹⁰ Memorandum of the Secretary of Defense, Modifications and Reissuance of DoD Response to Coronavirus Disease 2019 – Travel Restrictions (April 20, 2020).

current circumstances, holding Silver to three (3) weekly flights at Huntsville is neither reasonable nor practicable, and will disproportionately impact a small carrier that already is facing significant liquidity challenges. One (1) weekly flight by Silver will be more than adequate to accommodate the minimal level of travel demand in the market.

Demand for air travel to and from Tallahassee is, as noted above, also nearly non-existent. With barely three (3) PDEW, requiring Silver to maintain three (3) weekly flights is neither reasonable nor practicable, and will disproportionately burden a small carrier. What little demand exists can be more than adequately accommodated with one (1) weekly flight. Granting of the requested relief through July 31, 2020, with respect to Tallahassee will not result in the community experiencing a total loss of service by Silver. Moreover, Tallahassee will continue to receive no less than 10 weekly flights combined between American Airlines and Delta Air Lines.

Significantly, Silver's request to reduce – but not suspend – its service levels at Huntsville and Tallahassee involves routes where travel is highly local in nature, with very little connecting traffic carried. Additionally, Silver's business model differs significantly from other carriers – Silver's domestic routes are comprised of short stage length, point-to-point flying. For travel between such points, many individuals will simply choose to continue driving during the public health emergency, even after stay-at-home orders are lifted, in order to maximize social distancing recommendations. Finally, Silver's service at Huntsville and Tallahassee has historically focused on connecting travelers to leisure destinations (Orlando and Fort Lauderdale). The shuttering of Florida tourist attractions during the public health emergency, and the likelihood of diminished demand for tourism travel even after such attractions are re-opened, will exacerbate the challenges Silver

faces in maintaining its Service Obligation at these points. Requiring Silver to operate a minimum of three (3) weekly flights, without the flexibility to adjust its schedule downward during periods of nearly non-existent travel demand, will create undue financial and operational burdens for a small carrier.

Silver's request presents the Department with circumstances similar to those that were present when the Department issued its recent decision on Allegiant Air's exemption request, involving "point-to-point service . . . to leisure destinations" operated by a small carrier with a "markedly different business model." In granting Allegiant Air's request to reduce – but not suspend – service levels at multiple points (including several that were not served by "large hub" airports) the Department reasoned:

This approach provides relief for the carrier while also ensuring that no point in the carrier's network will experience a total loss in service or eliminate passenger access to the national air transportation system. Granting the request enables the Department to implement the CARES Act in a way that continues to balance appropriately the needs of communities to retain at least minimal connections to the national air transportation system during the current public health emergency, as required by the CARES Act, with the economic needs of certain segments of the industry.¹¹

Granting Silver's request with respect to Huntsville and Tallahassee similarly strikes an appropriate balance between maintaining community connection to the national air transportation and ensuring that a smaller carrier with a unique business model does not experience undue financial and operational burdens under its Service Obligation.

III. Key West, FL

Silver's maintenance of its assigned Service Obligation at Key West is, under present circumstances, neither reasonable nor practicable. More specifically, Monroe

¹¹ Notice of Action Taken in Docket DOT-OST-2020-0037, issued April 29, 2020.

County has closed the Florida Keys to tourists and others traveling for leisure, further to local efforts to contain the spread of COVID-19.¹² These restrictions, which have drastically reduced travel demand since they were announced on April 1, 2020 and are in addition to a Florida statewide order mandating a self-quarantine of at least 14 days for individuals arriving from areas of the country with substantial community spread,¹³ are anticipated to remain in place through at least May 31, 2020. Monroe County estimates that the average passenger count per flight at Key West International Airport (“EYW”) is down as much as 92% from this time last year, with local residents and property owners comprising the majority of what little traffic remains.¹⁴ Silver’s drop in traffic at Key West thus far for April 2020 has been even more dramatic, falling 99.5% year-over-year, to one (1) PDEW.

Due to these travel restrictions, Silver requests that it be permitted to temporarily suspend operations at Key West (an overwhelmingly tourist market) until the later of either (i) June 15, 2020 or (ii) seven (7) calendar days after the travel restrictions are lifted by Monroe County, to allow the air carrier adequate time to ramp up its resumption of operations. Requiring Silver to adhere to its Service Obligation at Key West, a largely tourist market, in the midst of locally-imposed travel restrictions specifically targeting leisure visitors, creates an undue financial burden and does not provide any measurable benefit for travelers or the community.

¹² See Monroe County Emergency Management, Emergency Directive 20-02, Closing the Keys to Visitors (April 1, 2020).

¹³ State of Florida, Office of the Governor, Executive Order No. 20-82 (March 24, 2020). See also Monroe County Emergency Management, Emergency Directive 20-04, Airport Screenings (April 7, 2020).

¹⁴ Monroe County, Florida, “COVID-19 Information: Frequently Asked Questions,” accessible at <https://www.monroecounty-fl.gov/Faq.aspx?QID=217> (last visited April 26, 2020).

As with the other communities covered by this request, Silver's time-limited request with respect to Key West is narrowly tailored and well-justified. Requiring Silver to fulfill its Service Obligation at Key West under the present circumstances would have a disproportionately negative financial impact on a small regional carrier. Additionally, the relief Silver seeks with respect to Key West is consistent with relief from Service Obligations previously provided by the Department to other carriers under similar circumstances, particularly in the case of predominantly tourist markets.¹⁵

IV. Daytona Beach, FL

The Order lists Daytona Beach, FL, as a destination covered by Silver's Service Obligation, at a level of one flight per week based on T100 data.¹⁶ Silver ceased all scheduled operations at Daytona Beach, FL, on July 1, 2019, with no plans to resume service. Therefore, Silver requests that Daytona Beach be removed from its Service Obligation.

V. Seasonal Designation

In accordance with the Order, Silver hereby notifies the Department of its intention to provide seasonal services based on the winter 2020 seasonal schedule set forth in Appendix C to the Order.

¹⁵ See Notices of Action Taken in Docket DOT-OST-2020-0037, issued April 21, 2020 and granting exemption to Seaborne Virgin Islands, Inc. with respect to points in Puerto Rico; and issued April 17, 2020 and granting exemption to Alaska Airlines, Inc. with respect to points in Hawaii.

¹⁶ Order, Appendix B at 11.

WHEREFORE, for the above reasons, Silver Airways respectfully requests that the Department grant (i) its requested exemption from certain aspects of its Service Obligation as identified in this request (ii) the removal of Daytona Beach from its Service Obligation and (iii) such other relief as the Department finds to be consistent with this request and the public interest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'SAR', with a long horizontal stroke extending to the right.

Steven A. Rossum
Chief Executive Officer
Silver Airways LLC

April 30, 2020

Certificate of Service

A copy of the foregoing Request for Exemption was served this 30th day of April, 2020 by electronic mail on each person listed below.

Orlando, FL Representatives:

pbrown@goaa.org (Executive Director); buddy.dyer@orlando.gov (Mayor)

Ft. Lauderdale, FL (Miami Metropolitan Area) Representatives:

mgale@broward.org (Chief Executive/Director of Aviation); dholness@broward.org (Mayor, Board of Commissioners); bhenry@broward.org (County Administrator)

Tampa, FL Representatives:

jlopano@tampairport.com (Chief Executive); Jane.Castor@tampagov.net (Mayor); millerLJ@hillsboroughcounty.org (Chairman, Board of Commissioners); MerrillM@hcfllgov.net (County Administrator)

Huntsville, AL Representatives

rick@hsvairport.org (Chief Executive Officer); tommy.battle@huntsvilleal.gov (Mayor)

Tallahassee, FL Representatives

david.pollard@talgov.com (Director of Aviation); mayor@talgov.com (John E. Dailey; Mayor); reese.goad@talgov.com (City Manager)

Key West, FL Representatives:

tjohnston@cityofkeywest-fl.gov (Mayor); Strickland-Richard@MonroeCounty-FL.Gov (Director of Airports); Gastesi-roman@monroecounty-fl.gov (County Administrator); Boccdis3@monroecount-fl.gov (Mayor, Board of Commissioners)

Daytona Beach, FL Representatives

rkarl@volusia.org (Director of Aviation & Economic Resources); ekelley@volusia.org (Chair, County Council); grecktenwald@volusia.org (County Manager)

Carrier Representatives:

jack.rossi@alaskaair.com

dheffernan@cozen.com; rwelford@cozen.com (Counsel for Alaska)

agoerlich@ggh-airlaw.com (Counsel for Allegiant)

robert.wirick@aa.com; john.b.williams@aa.com

mike.migliore@capeair.com; andrew.bonney@capeair.com

chris.walker@delta.com; alex.krulic@delta.com; steven.seiden@delta.com

howard.diamond@flyfrontier.com

perkmann@cooley.com (Counsel for Hawaiian)

robert.land@jetblue.com; adam.schless@jetblue.com; reese.davidson@jetblue.com

leslie.abbott@wnco.com; bob.kniesley@wnco.com

jyoung@yklaw.com; dkirstein@yklaw.com (Counsel for Spirit)

robert.cohn@hoganlovells.com; patrick.rizzi@hoganlovells.com (Counsel for Sun Country)

dan.weiss@united.com; steve.morrissey@united.com

amna.arshad@freshfields.com; mwarren@jenner.com (Counsel for United)

DOT:

joel.szabat@dot.gov

david.short@dot.gov

todd.homan@dot.gov

peter.irvine@dot.gov

albert.muldoon@dot.gov

cindy.baraban@dot.gov