



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

**Issued by the Department of Transportation
on the 15th day of December, 2023**

Southwest Airlines Co.

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

Docket DOT-OST-2023-0001

Served December 15, 2023

CONSENT ORDER

This consent order (“Consent Order” or “order”) concerns violations of consumer protection laws by Southwest Airlines Co. (Southwest) during and after the operational failures that stranded over two million passengers over the 2022 Christmas holiday and into the New Year. While Southwest has paid consumers experiencing flight disruptions over six hundred million dollars in refunds and reimbursements,¹ the Department finds that Southwest also violated the law on numerous occasions. Specifically, the Department’s Office of Aviation Consumer Protection (“OACP”) has determined that Southwest failed to provide prompt or proper refunds to some of its passengers for flights the carrier cancelled or significantly changed in violation of 49 U.S.C. § 41712 and 14 CFR Part 259. The Department has also determined that Southwest failed to provide prompt flight status notifications for flight disruptions, which harmed numerous consumers in violation of 14 CFR § 259.8 and 49 U.S.C. § 41712. Additionally, the Department has determined that Southwest failed to provide adequate customer service assistance to consumers during the widespread flight irregularities in violation of 49 U.S.C. § 41712. This order directs Southwest Airlines to cease and

¹ At the urging of the U.S. Department of Transportation (Department or DOT), in September 2022, Southwest made significant changes to its customer service plan to improve services provided to passengers when their flights are canceled or delayed because of an airline issue (i.e., controllable cancellations and delays). As a result, Southwest customers impacted by controllable cancellations and delays related to the December 2022 flight disruptions were entitled to receive reimbursements for expenses such as meals, hotels, and ground transportation. See <https://www.flihtights.gov>. Southwest also promised to honor reasonable requests for reimbursement for alternative transportation, such as other airline tickets, Amtrak, or rental cars for those impacted by a controllable cancellation or delay between December 24, 2022, and January 2, 2023.

desist from future similar violations of 49 U.S.C. § 41712, 14 CFR § 259.8, and 14 CFR Part 259 and assesses the carrier \$140,000,000 in civil penalties.²

Applicable Law

Southwest is an air carrier as defined by 49 U.S.C. § 40102(a)(2)³ and is subject to the requirements of 49 U.S.C. § 41712 (Section 41712), which prohibits an air carrier, foreign air carrier, or a ticket agent from engaging in an unfair or deceptive practice in air transportation or the sale of air transportation. A practice is unfair if it (1) causes or is likely to cause substantial injury to consumers, (2) cannot be reasonably avoided by consumers, and (3) is not outweighed by countervailing benefits to consumers or to competition.⁴ A practice is deceptive if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter.⁵ Where an existing regulation applies to the practice of an air carrier, foreign air carrier, or ticket agent, the terms of that regulation apply, rather than the general definitions of unfair or deceptive.⁶

Customer Service Assistance

An airline's practice of not providing adequate call center assistance when the carrier cancels or significantly changes a passenger's flight is unfair as it causes *substantial harm* to consumers. Consumers are substantially harmed when they are stranded and need help to rebook flights and are unable to reach a customer service representative at all or in a reasonable amount of time by phone. This harm is *not reasonably avoidable* by consumers when other readily available means of contacting the airline and obtaining needed customer service assistance are not available. Finally, the harm to consumers is *not outweighed by countervailing benefits to consumers or to competition*. Consumers gain no countervailing benefit from a lack of adequate call center assistance. Likewise, this practice does not convey competitive benefits in the marketplace, and the practice appears to benefit only the carrier in reduced staffing and IT costs at the expense of consumers.

In addition to being an unfair practice, an airline's practice of not providing adequate call center assistance is deceptive when a carrier advertises the call center to consumers as an available means of obtaining customer service assistance and fails to provide that service or fails to provide the service within a reasonable period. Consumers are *misled* to believe that they will receive assistance through call centers within a reasonable period. Consumers *acting reasonably* do not expect to face unreasonably long wait times, busy signals, and/or disconnected calls when attempting to reach an

² In the interest of settlement, the Department is closing its investigation into whether Southwest engaged in unrealistic scheduling of flights and will not bring an enforcement action against Southwest involving unrealistic scheduling related to Southwest's December 2022 travel disruptions. The Department is not making a finding that Southwest did, or did not, engage in unrealistic scheduling. Under federal law, unrealistic scheduling is considered an unfair and deceptive practice.

³ 49 U.S.C. § 40102(a)(2) defines an "air carrier" as "a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation."

⁴ 14 CFR 399.79(b)(1).

⁵ 14 CFR 399.79(b)(2).

⁶ 14 CFR 399.79(d).

airline customer service agent to assist with travel-related issues during flight disruptions. An airline's failure to provide customer service via an offered customer service line within a reasonable amount of time is *material* as it impacts consumers' time-sensitive needs, including to change flights, cancel travel, request refunds, check on the status of bags, and understand the severity and impact of disruptions to airline operations.

Flight Status Notifications

Pursuant to 14 CFR § 259.8(a), covered carriers must promptly provide to passengers who are ticketed or hold reservations, and to the public, information about a change in the status of the flight within 30 minutes after the carrier becomes aware of a change in the status of a flight. A change in the status of a flight means, at a minimum, a cancellation, diversion, or delay of 30 minutes or more in the planned operation of a flight that occurs within seven calendar days of the scheduled date of the planned operation. Moreover, pursuant to 14 CFR § 259.8(a)(1), when carriers permit passengers and other interested persons to subscribe to flight status notification services, the carrier must deliver such notifications to subscribers, by whatever means the carrier offers that the subscriber chooses within 30 minutes of the carrier becoming aware of a change in a flight's status. A carrier's failure to comply with 14 CFR § 259.8(a) constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712. The Department has long considered it an unfair and deceptive practice when a "carrier's failure to obtain and pass on to consumers up-to-date and accurate information is caused by the carrier's own procedural shortcomings."⁷

Refunds

Pursuant to 14 CFR § 259.5, U.S. and foreign air carriers operating at least one aircraft having a seating capacity of 30 or more seats must adopt a Customer Service Plan and adhere to the Plan's terms. The Customer Service Plan must include certain commitments relating to the payment of refunds to passengers when required by Section 41712.

Section 259.5(b)(5) states that, where ticket refunds are due, carriers must provide prompt refunds, as required by 14 CFR § 374.3 and 12 CFR Part 1026 (Regulation Z),⁸ for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases, including refunding fees charged to a passenger for optional services that the passenger was unable to use due to an oversale situation or flight cancellation. It is the Department's position that refunds are "due" when failure to provide them would constitute an unfair or deceptive practice under Section 41712.

The practice of cancelling or significantly changing a flight without providing a proper and prompt refund upon request is "unfair" irrespective of the reason for the cancellation or significant change.⁹ Consumers incur *substantial harm* from delays in receiving refunds, from receiving a partial or no refund when a full refund is due, and from receiving a refund via a voucher/credit with restrictions on its use when a ticket is purchased with cash or with a gift card/voucher/credit that

⁷ 76 Fed. Reg. 23155 (April 25, 2011).

⁸ Regulation Z states, at 12 CFR § 1026.11(a)(2), that for credit card purchases, refunds must be provided within seven business days of receipt of a written request from the consumer.

does not have such restrictions. This harm is *not reasonably avoidable* because consumers who submit refund requests to an airline rely on the airline to promptly process the request. Additionally, with respect to non-refundable tickets, while consumers could have paid a higher fare for fully refundable flights, the purpose of refundable tickets is to ensure passengers can recoup costs should they cancel the air transportation, rather than cases where the airline cancels the flight or makes a significant change in the service provided.¹⁰ A *consumer acting reasonably* would believe that he or she is entitled to a refund of the unused portion of the ticket or optional service fee in the original form of payment (i.e., whatever payment method that the individual used – credit card, check, voucher/credit) or in cash or cash equivalent under U.S. law if the carrier cancelled or significantly changed the flight and the consumer submitted a refund request. Moreover, the harm is *not outweighed by countervailing benefits to consumers or competition*. Consumers gain no countervailing benefit from lack of proper and prompt refunds and likewise there is no benefit to competition.

Facts and Conclusions

Between December 21, 2022, and January 2, 2023, Southwest cancelled or significantly delayed over 16,900 flights impacting over two million passengers. With Southwest's cooperation throughout, the Department's OACP conducted a rigorous and comprehensive investigation into how Southwest cared for its passengers during and after Southwest's widespread flight disruptions. This investigation included on-site audits of Southwest's customer care records at Southwest's headquarters in Dallas, Texas; a review of complaints filed against Southwest; and meetings with senior Southwest officials. OACP's investigation revealed that Southwest engaged in a practice of failing to provide adequate customer service assistance, prompt flight status notifications, and proper and prompt refunds. Each of these issues is discussed in more detail below.

Failure to Provide Adequate Telephone Customer Service Assistance

Southwest promotes its call center as a way that its customers can talk to a customer service representative 24/7,¹¹ particularly during flight disruptions. When Southwest experienced its operational disruption in December 2022, numerous Southwest customers had their flights cancelled and were stuck in airports, at hotels, and in locations away from home. The scale of the disruption left travelers scrambling for hotels, ground transportation, alternative flight reservations, rebooking options, and with many other concerns. When many of these passengers attempted to call Southwest for assistance, Southwest's customer care telephone system was not able to handle the volume of consumer calls. In consumer complaints submitted to OACP, some consumers complained that they received a busy signal when attempting to contact Southwest, while others reported an inability to successfully connect with Southwest's telephone reservations system. OACP also received complaints alleging passengers were forced to wait on hold for many hours to connect with a Southwest agent. In some of these cases, consumers complained that their calls would suddenly drop

¹⁰ See DOT Order Denying Petition for Rulemaking, February 1, 2019, at 11 and 14 n.21 (describing the value of refundable fares as allowing a *passenger* “the freedom to change plans without paying a penalty”); available at <https://www.regulations.gov/document?D=DOT-OST-2015-0031-0035>.

¹¹ <https://mobile.southwest.com/contact-us>.

after waiting on hold for hours. Some consumers attached cellphone screenshots to their complaints that displayed the number of hours they had been on hold attempting to contact Southwest.

OACP's investigation found that Southwest's call center was overwhelmed, which, at times, led to a full call center queue and a busy signal upon calling Southwest's customer service telephone number (1-800-I-FLY-SWA). OACP also learned that Southwest's calls, at times, sounded garbled or choppy. Moreover, OACP found that the carrier was forced to drop thousands of calls to reinstate hold music that had suddenly stopped playing which had the effect of causing countless callers to believe that Southwest's telephone systems were not working at all. For those callers who were able to successfully call the Southwest customer care telephone number, OACP has learned from consumer complaints that, in certain instances, callers had to wait hours to speak to a Southwest representative. Due to these various issues, for several days in December 2022, Southwest published a public notice on its website stating, "Due to the very high demand from Winter Storm Elliott, our hold times are currently averaging more than 2 hours and have been as high as four hours." Southwest also published notices on its website advising consumers of "busy signals," "garbled calls or static on calls," and a lack of hold music, which led consumers to believe the Southwest telephone number was not working.

Failure to Provide Prompt Flight Status Notifications

Southwest publicly states that it will update consumers about flight status changes using the contact information listed in the reservation via text or email.¹² Southwest also states that consumers may use the carrier's flight status lookup tool on southwest.com or its apps to track the status of flights. However, OACP received complaints indicating that, between December 19-29, 2022, many consumers did not receive any flight status notifications via email, text message, cellphone app, or other communication channels. Other consumers stated that the updates they received were inaccurate or outdated and ineffective. Many consumers complained that they could not access Southwest's website during the operational irregularities to obtain flight status information due to apparent errors with the carrier's website and only found out that their flight had been cancelled after driving to the airport.

OACP's investigation revealed that, on numerous occasions, Southwest failed to provide prompt flight status notifications via the carrier's automated outbound messaging (AOM) system during the December 2022 operational meltdown. Between December 19-29, 2022, Southwest's process for sending AOM flight status notifications to passengers failed, causing flight status notifications to be delayed and/or inaccurate. Other flight status notifications were not sent until after the scheduled departure time of the flight.

Failure to Provide Proper and Prompt Refunds

A. Non-Transferrable Residual Travel Funds

In early 2023, OACP received consumer complaints from passengers who purchased all, or a portion of, their travel with a Southwest gift card, had their flight cancelled or significantly delayed by Southwest, and subsequently requested a refund. The Southwest gift card used to purchase the ticket

¹² <https://www.southwest.com/html/air/flight-status-notifications-conditions.html>.

was non-expiring and transferable. These consumers alleged that after submitting a legitimate refund request to Southwest, the carrier provided them with a non-transferable residual travel fund (RTF) instead of a check, similar gift card, or non-expiring transferable travel voucher.

OACP's investigation confirmed that, in some instances, Southwest provided non-expiring (non-transferable) RTFs to travelers who purchased all, or a portion of, their travel with a Southwest gift card, had their flight cancelled or significantly delayed by Southwest, and subsequently requested a refund. Although Southwest provided non-expiring transferable RTFs for some fares (Business Select, Anytime, and Wanna Get Away Plus), OACP found that Southwest provided non-expiring (but non-transferable) RTFs to other fare classes (Wanna Get Away) in thousands of instances. After OACP brought the issue to the carrier's attention, Southwest then converted the non-expiring RTFs to make them transferable.

B. Southwest's Microsite

Prior to December 2022, Southwest accepted refund requests through three channels: 1) their customer call center; 2) ticket counters at various airports; and 3) the "Contact Us"¹³ option on the carrier's website. In December 2022, Southwest built a "Microsite" website¹⁴ to allow consumers to submit refund requests using three pieces of information: 1) first name; 2) last name; and 3) passenger name record (PNR). While the Microsite enabled Southwest to assist the vast majority of passengers by processing refund requests quickly, the Microsite's design, in some cases, adversely impacted consumers.

Specifically, OACP's investigation revealed that Southwest considered all refund requests submitted through the Microsite that did not contain exact information to be "invalid" requests. Of the three pieces of information required to submit a refund request through the Microsite (first name, last name, and PNR), a passenger had to input this information in without an error or Southwest's microsite would not accept the refund request and would consider the request "invalid." The Department found that in many cases, consumers (possibly using cell phones, tablets, and other portable electronic devices) input a slightly incorrect PNR when making a refund request, at times, mistaking the number 0 for the letter "O" or the number 1 for the letter "I" in their PNR or making a similar error. An "invalid" refund request was not processed by Southwest and no refund was provided unless the passenger made an additional refund request.

However, during its investigation, the Department learned that consumers did not know to make an additional request, because Southwest did not notify consumers that their refund requests were not being processed due to an error. Southwest did not obtain contact information from consumers requesting refunds through the Microsite and made no attempt to contact consumers whose requests included an error. Also, Southwest's Microsite provided no error message or other type of communication alerting the consumer that there could be a problem. This led thousands of consumers to believe that they had submitted a refund request that would be promptly processed within the timeframes required by law when this was not occurring. As a result, many consumers

¹³ <https://www.southwest.com/html/contact-us/>

¹⁴ The Southwest refund Microsite was formerly housed at <https://www.southwest.com/traveldisruption/>, which now contains a webpage dedicated to Southwest's flight disruption recovery efforts (as of October 2023).

were deprived of funds owed to them following the December 2022 holiday travel disruptions. Southwest subsequently identified and refunded these consumers, but only after OACP conducted an audit of Southwest records and identified the issue.

C. Refunds of Ticket Purchases and Optional Service Fees

Between December 21, 2022, and January 31, 2023, OACP received numerous consumer complaints alleging that Southwest failed to provide prompt refunds of both the ticket cost and the cost of optional service fees after a valid refund request.¹⁵

While Southwest properly handled the vast majority of refund requests, OACP's investigation found that Southwest did not promptly process refund requests made through the Microsite unless the passenger making the request had a cancelled or significantly delayed flight that was scheduled to operate between December 24, 2022, and January 2, 2023. In other words, although the Microsite was built to allow Southwest to quickly process refund requests received following Winter Storm Elliott, its design prevented refund requests submitted for travel between December 21-23, 2022, from being promptly processed. Additionally, OACP's investigation revealed that Southwest did not notify consumers that the Microsite was designed only to accept refund requests for consumers whose scheduled flight date was between December 24, 2022, and January 2, 2023, until sometime on December 29, 2022. Accordingly, consumers who visited the Microsite webpage prior to that date/time, were not advised that refund requests made through the webpage would only be accepted if their flight was scheduled to take place between December 24, 2022, and January 2, 2023. Ultimately, Southwest failed to provide prompt refunds to thousands of consumers who were scheduled to travel between December 21-23, 2022, had their flight cancelled or significantly delayed, and submitted a refund request through Southwest's Microsite.

Furthermore, during one of the Department's audits of Southwest, OACP learned that Southwest recycled the six-character alphanumeric PNRs (Passenger Name Records also known as "confirmation numbers") that the carrier uses to identify passengers and their flight itineraries. As a result, the same PNR used to identify a passenger and their flight itinerary on a given date was used again on a subsequent date to identify a separate new passenger and flight itinerary. Upon reviewing Southwest refund records, OACP discovered a technological error related to Southwest's recycling of PNRs. Specifically, when processing refund requests related to the December 2022 disruption, Southwest mixed up the name that corresponded to a given recycled PNR on many occasions. Due to this "name mismatch" error, Southwest rejected numerous refund requests because the name on the submitted request did not match the PNR associated with the travel. Southwest did not provide refunds to these affected passengers until the Department alerted Southwest to their error, at which point, the refunds provided to passengers were late.

In addition to the above issues, the Department found that Southwest failed to provide prompt refunds of some optional service fees (e.g., pet fees, upgraded boarding) to thousands of consumers who purchased, but were unable to use, optional service fees due to the significant delay or cancellation of their planned travel.

¹⁵ Southwest optional service fees include: upgraded boarding, unaccompanied minor, EarlyBird check-in, pet fees, and overweight or excess baggage fees.

Response of Southwest Airlines Co.

Southwest states that it sincerely regrets the inconvenience caused to all Customers who were affected by the operational disruption that occurred following Winter Storm Elliott. Southwest emphasizes that it takes very seriously its responsibility to comply with all laws and regulations, and it has fully cooperated with the DOT's investigation of this operational disruption. Southwest states that it has worked tirelessly to repair the trust with its Customers that it has earned over its 52-year history, and it is committed to being America's most loved and most reliable airline. As described below, Southwest notes that it is taking many steps to improve customer care and boost operational resiliency, including adopting a new, industry-leading policy to provide compensation upon request in cases of controllable cancellations and delays.

Southwest disagrees with the DOT's position that Southwest violated 49 U.S.C. § 41712 and the specified regulations in 14 CFR Part 259. Southwest notes that it enters into this agreement for settlement purposes only and does not admit any violation of any statute or regulation or concede the DOT's recitation of facts and conclusions. Southwest strongly believes that it fully complied with all applicable laws.

Southwest's Overview

Southwest notes that Winter Storm Elliott was an unprecedented winter storm. According to the carrier, the storm's blizzards, high winds, snowfall, and record cold temperatures created unanticipated operational challenges for Southwest. Southwest explains that in response to the storm, Southwest proactively cancelled and delayed flights to keep Customers safe. Southwest states that its employees immediately mobilized to take care of Customers impacted by the disruption. Southwest believes that no process is perfect, and Southwest confronted several operational, volume-related issues during its all-hands-on-deck response to Winter Storm Elliott. Southwest states that, despite these challenges, Southwest worked hard to care for its Customers under very difficult conditions with diligence and in good faith.

Southwest states that it immediately began reimbursing Customers for the cost of hotels, meals, transportation, and other out-of-pocket expenses incurred due to cancellations and delays. Southwest adds that it provided reimbursements well beyond the amounts and categories of expenses listed in its Customer Service Plan. Southwest also notes that it quickly developed and launched a microsite on southwest.com to assist passengers in submitting airfare refund requests for travel scheduled between December 24 and January 2. Southwest states that, in January 2023, Southwest provided 25,000 Rapid Rewards points (approximately \$300 in value) to every Customer significantly affected by the disruption. Southwest stresses that it implemented these steps without hesitation due to its deep commitment to customer care.

Southwest's Position On Customer Service Assistance

Southwest believes that communication with Customers is essential, especially during disruptions due to winter storms. Southwest states that it employs several thousand U.S.-based telephone representatives, who provide 24/7 coverage for its call center 365 days per year. Southwest

emphasizes that it places a top priority on the responsiveness of its call center, and Customers normally experience very short wait times.

Southwest states that, during and after Winter Storm Elliott, Southwest received an unprecedented volume of calls, and therefore had a full call center queue at many times. Southwest notes that, importantly, Southwest's call center remained operational throughout the disruption even though many Customers experienced longer than expected wait times.

Southwest believes that all airline reservation centers have capacity limitations (in both queue capacity and trained workforce) and that it is not uncommon to experience delays during irregular operations. Southwest believes that the call volumes Southwest experienced during the Winter Storm Elliott disruption far eclipsed any previous demand, or any expected level of demand. Southwest states that in response to that increased demand, Southwest worked to quickly increase call center capacity to handle more calls. Southwest notes that its substantially increased capacity remains in place today.

Southwest's position is that its call center performance during Winter Storm Elliott was not an unfair or deceptive practice under 49 U.S.C. § 41712(a). Southwest explains that when it learned of call center issues during Winter Storm Elliott, it quickly fixed them so that it could continue its regular practice of timely answering customer calls.

In particular, Southwest strongly objects to the DOT's finding that it engaged in a deceptive practice with respect to its call center operations during Winter Storm Elliott. Southwest stresses that it did not misrepresent its call center capacity or wait times, or make any statements that created the impression that it is able to answer all calls in a certain amount of time during a severe weather-related disruption. Southwest emphasizes that, to the contrary, during the disruption Southwest repeatedly provided updates to Customers stating that it was experiencing higher-than-average call center wait times and advised them about other ways they could obtain information on flight status and rebook travel.

Southwest's Position On Flight Status Notifications

Southwest states that throughout the Winter Storm Elliott disruption, it sent proactive emails and texts to potentially impacted Customers, encouraging them to check their flight statuses. Southwest states that, during the disruption, Customers could retrieve updated flight information from Southwest's flight status website feature or mobile app, which were available and updated in real time. Southwest notes that although many passengers experienced delays in receiving automated text message (AOM) updates about delays and cancellations, the majority of passengers received those updates at least 4 hours before the scheduled departure times of their flights.

Southwest believes that it acted swiftly to resolve AOM performance issues during this disruption. Southwest states that, on December 26, 2023, Southwest's vendors informed it that some Customers were receiving AOMs more than 30 minutes after flight status changes. Southwest states that it immediately worked with its vendors to increase processing capacity to handle the unprecedented volume of flight status updates. Southwest notes that, by December 28, Southwest was able to resume sending AOMs within 30 minutes of flight status changes. Southwest notes that the increased AOM capacity added during the Winter Storm Elliott disruption remains in place today.

Southwest's position is that isolated AOM performance issues were not an unfair or deceptive practice under 49 U.S.C. § 41712(a) or a regulatory violation. Southwest states that it takes seriously its obligation to notify Customers of delays, cancellations, and diversions, and it has taken steps to ensure it is able to provide timely notifications in the future.

Southwest's Position On Refunds

Southwest states that its employees worked tirelessly to timely process refund requests after the Winter Storm Elliott disruption. Southwest stresses that it issued refunds in response to all valid requests for flights scheduled during the period of that disruption.

Southwest's position is that a very small percentage of requested refunds were issued late. Southwest notes that some of those refunds were delayed because of an inadvertent process issue caused by recycling PNRs, where customer travel information was matched with incorrect passenger name records. Southwest notes that it corrected that issue and provided the requested refunds. Southwest explains that the remaining refunds were delayed because Customers made errors in submitting the refund requests. Southwest notes that some Customers submitted requests through the microsite for flights that were outside of the date range for which the microsite was designed, and some Customers made typographical errors in submitting their refund requests, requiring significant manual research. Southwest states that it ultimately processed all valid refund requests, but it sometimes took longer than the seven business days allowed for credit card purchases or 20 days allowed for cash and check purchases, because Southwest had to match incomplete or inaccurate refund requests with available customer information. Southwest emphasizes that its employees spent hundreds of hours to match that information in order to provide refunds to all eligible Customers.

Southwest's position is that the small number of issues it had with refunds was not an unfair or deceptive practice under 49 U.S.C. § 41712(a) or a regulatory violation. Further, Southwest believes that the relevant regulation requires a refund only after a carrier receives "a complete refund request," 14 C.F.R. § 259.5(b)(5), and Southwest's position is that a refund request is not complete and a refund is not "due" under the regulation unless the Customer provides accurate information so the carrier can "confirm the passenger's refund eligibility," 87 Fed. Reg. 51550, 51563 (Aug. 22, 2022). Southwest emphasizes that it takes seriously its refund obligations and acted in good faith after the Winter Storm Elliott disruption to discharge those obligations.

Southwest's Stated Plans to Enhance Customer Service

Southwest believes that it has learned a great deal from the Winter Storm Elliott disruption, and it has taken a number of steps to further improve customer care during any future disruptive events. Southwest notes that those steps include significantly increasing AOM capacity and call center capacity. Southwest states that it also has announced a roadmap of significant customer enhancements, including increased flexibility for Customers to change and cancel flights using an online self-service tool. In addition, Southwest notes that it is introducing automatic bag tracking, online self-service for mishandled bags, and increased real-time, day-of-travel customer communication.

Southwest states that it is committed to leading the industry on compensating Customers when flights are delayed or cancelled. Southwest notes that, starting on April 30, 2024, for at least a three-year period, Southwest will provide vouchers of at least \$75 upon request when controllable cancellations or significant delays cause Customers to reach their final destinations three or more hours after scheduled arrival times. Southwest notes that this measure is one more part of Southwest's consistent efforts to lead the industry with its award-winning customer care.

Southwest states that it is proud of its proactive efforts to care for Customers after the Winter Storm Elliott disruption. Southwest emphasizes that it looks forward to continuing to prioritize Customers and build upon its reputation for outstanding customer service.

Decision

OACP views seriously Southwest Airlines' violations of 49 U.S.C. § 41712, 14 CFR § 259.8 and 14 CFR Part 259. Accordingly, after carefully considering all the facts in this case, OACP believes that enforcement action is warranted. To avoid litigation, Southwest Airlines consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR Part 259 and to the assessment of \$140,000,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. As part of this consent order Southwest has agreed to put in place a new industry-leading policy under which it will provide, upon request, a voucher of \$75 or more whenever a consumer's flight is cancelled or significantly delayed for a reason within Southwest's control, which results in the consumer arriving at his or her final destination three or more hours later than originally scheduled. 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 to future similar unlawful practices by Southwest Airlines and other carriers.

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

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that by failing to provide adequate customer service assistance via its call center to hundreds of thousands of consumers during widespread flight disruptions in December 2022, Southwest Airlines engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
3. We find that by failing to provide proper and prompt refunds to thousands of passengers, Southwest Airlines engaged in an unfair and deceptive practice in violation of 14 CFR § 259.5(b)(5) and/or 49 U.S.C. § 41712;
4. We find that by failing to provide prompt flight status notifications to over one million passengers regarding a cancellation, diversion, or delay of 30 minutes or more despite being aware of the flight status change for more than 30 minutes, Southwest Airlines violated 14 CFR § 259.8, which also constitutes a violation of 49 U.S.C. § 41712;

5. We order Southwest Airlines and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41712, 14 CFR § 259.5, and 14 CFR § 259.8;
6. We assess Southwest Airlines \$140,000,000 in compromise of civil penalties that might otherwise be assessed for the violations described in paragraphs 2, 3, and 4 above (“Compromise Penalty”). The Compromise Penalty shall be comprised of the three components described in paragraphs 6(a) to 6(c).
 - a) \$35,000,000 of the assessed penalty shall be paid to the U.S. Treasury. We order Southwest Airlines to pay \$35 million of the penalty assessed in ordering paragraph 6, above, through Pay.gov to the account of the U.S. Treasury (“Cash Penalty”). Of the \$35 million due to the U.S. Treasury, \$12 million shall be due and payable on or before January 31, 2024, \$12 million shall be due and payable on or before the January 31, 2025, and the remaining \$11 million shall be due and payable on or before January 31, 2026. Payment of the Cash Penalty shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the Cash Penalty as ordered shall subject Southwest Airlines 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.
 - b) \$72,000,000 of the assessed penalty shall be offset for future passenger compensation that goes above and beyond existing requirements. We order Southwest Airlines to provide a total of \$90,000,000 in vouchers from April 30, 2024, to April 29, 2027 (\$30,000,000 per year), as set forth in 6(b)(i) to 6(b)(vi) for which it will receive \$72,000,000 in offset.
 - i. We order Southwest Airlines and its successors and assigns to issue timely vouchers, upon request, to passengers subjected to controllable cancellations or delays that result in those passengers arriving at their final destination three or more hours later than originally scheduled.¹⁶ A voucher provided to any such passenger traveling on a Southwest reservation must be \$75 or more, transferable, and useable for future domestic or international travel on Southwest.¹⁷ In addition, any residual value of the voucher after use must remain available to consumers within the validity period. These transferrable vouchers shall expire in no less than one year after issuance. When a subsequent flight purchased using that voucher is canceled by the airline and the consumer elects not to accept rebooking or travel, the amount of the voucher applied to the fare will be returned to the consumer as either (1) a non-expiring RTF in accordance with the fare type, and if not transferrable

¹⁶ Circumstances within the control of Southwest include any cause listed as an example under the Air Carrier category on pages 27-28 of [BTS Technical Reporting Directive #34 issued December 12, 2018](#).

¹⁷ This voucher provision does not apply if, at least eight days before the passenger’s scheduled departure, Southwest notifies the passenger of the cancellation or delay of three hours or more.

will be made transferrable upon request or (2) a transferable voucher that may be extended for an additional one year upon request.

- ii. We order Southwest Airlines, its successors, and assigns to determine whether a delay or cancellation is within its control consistent with 14 CFR 234.4 and BTS Technical Reporting Directive #31 on on-time performance. We order Southwest Airlines, within 30 days of the issuance of this order, to provide OACP with an overview of the methodology by which the carrier determines whether a delay or cancellation is within the carrier's control that would entitle the consumer to compensation when there are multiple causes for a flight disruption.
 - iii. On the last Friday in May for years 2025, 2026, and 2027, we order Southwest Airlines, its successors, and assigns to provide OACP with a sworn report¹⁸ attesting to the expenditures of Southwest Airlines up to \$30,000,000 annually pursuant to paragraphs 6(b)(i) and 6(b)(iv). The report must include reasonable documentation including the voucher request date, voucher issuance date, and voucher amounts for any vouchers provided pursuant to ordering paragraph 6(b)(i) up to \$30,000,000 annually.
 - iv. Southwest Airlines will issue a minimum of \$30,000,000 in vouchers from April 30, 2024, to April 29, 2025, and each year thereafter until April 29, 2027. Of the \$30,000,000 in vouchers spent each year, Southwest will receive an offset of \$24,000,000 from the assessed civil penalty. To the extent that Southwest Airlines issues less than \$30,000,000 in vouchers for a given year, Southwest shall pay to the U.S. Treasury 80% of the difference between \$30,000,000 and the actual total value of vouchers provided pursuant to this Order during that one-year period. Southwest will identify any amount paid to the treasury pursuant to this paragraph in the annual report required in paragraph 6(b)(iii).
 - v. We order Southwest Airlines and its successors and assigns, by no later than April 23, 2024, to publish an external, public-facing policy announcing the program outlined in ordering paragraph 6(b)(i).
 - vi. We order Southwest Airlines and its successors and assigns, by no later than April 23, 2024, to update its customer service plan to include details outlining the program described in ordering paragraph 6(b)(i).
- c) \$33,000,000 of the assessed penalty shall be credited to Southwest for past compensation that was above and beyond existing requirements. Southwest Airlines issued 25,000 Rapid Rewards points to impacted passengers.¹⁹ To recognize the

¹⁸ The sworn report must be signed under penalty of perjury by one or more Southwest Airlines employees with knowledge and responsibility in this area.

¹⁹ Based on information provided to OACP, 25,000 Rapid Rewards points are valued at approximately \$300.

substantial value provided to consumers, and to incentivize other airlines to take similar measures during operational challenges, OACP agrees to credit \$33,000,000 against the Compromise Civil Penalty.

7. Dispute Resolution. Should a dispute arise under, or with respect to, this Consent Order, the parties will raise such concerns to one another and seek to resolve the dispute. If the parties are unable to reach a satisfactory resolution of the issue or issues within 60 days after concerns have been raised, then either party may seek judicial review of the dispute.
8. Effective Date. This order will become a final order of the Department 10 days after its service date (the “Effective Date”) unless a timely petition for review is filed or the Department takes review on its own motion.
9. Integration. This Consent Order constitutes the entire agreement among the Parties regarding the subject matter of the Order and supersedes all prior representations, agreements, and understandings, whether oral or written, concerning the subject matter of the Order herein.

BY:

BLANE A. WORKIE
Assistant General Counsel
for the Office of Aviation Consumer Protection

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