



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

**Issued by the Department of Transportation
on the 14th day of November, 2022**

Frontier Airlines

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

Docket OST-2022-0001

Served November 14, 2022

CONSENT ORDER

The U.S. Department of Transportation's (Department or DOT) Office of Aviation Consumer Protection (OACP) has determined that Frontier Airlines (Frontier) failed to provide timely refunds to tens of thousands of consumers for flights that the airline significantly changed in violation of 49 U.S.C. § 41712 (section 41712) and 14 CFR Part 259. Frontier modified its definition of a significant schedule change that would entitle a consumer to a refund and applied that change retroactively to passengers who purchased tickets under an earlier more generous refund policy. Until recently, Frontier failed to provide refunds to those passengers whose flight schedules were significantly changed under Frontier's earlier definition. OACP has also determined that Frontier engaged in an unfair and deceptive practice in violation of section 41712 by directing passengers to redeem credits for future travel through an online system on its website but then failing to maintain a functioning system for a 15-day period in 2020, which negatively impacted potentially thousands of Frontier loyalty consumers' ability to redeem flight credits. This order directs Frontier to cease and desist from future similar violations of section 41712 and 14 CFR Part 259 and assesses the carrier \$2.2 million in civil penalties.

Applicable Law

Pursuant to 49 U.S.C. § 41101, an air carrier¹ may provide air transportation² only if the air carrier holds a certificate from the Department authorizing the air transportation or has a valid exemption from that

¹ 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."

² 49 U.S.C. § 40102(a)(5) defines "air transportation" as "foreign air transportation, interstate air transportation, or the transportation of mail by aircraft."

section.³ An air carrier that holds an air carrier permit from the Department is subject to the requirements of 49 U.S.C. § 41712, which prohibits an air carrier, foreign air carrier, or a ticket agent from engaging in an unfair and deceptive practice in air transportation or the sale of air transportation. Section 41712 authorizes the Department to investigate and decide whether a carrier or ticket agent is engaging in an unfair or deceptive practice, and if so, to prohibit such a practice.⁴

In April and May 2020, in response to the high volume of air travel service complaints received, many of which concerned refunds, OACP issued notices to help consumers understand their rights and emphasize to airlines that the unprecedented impact COVID-19 has had on air travel has not changed the airlines' obligation under Section 41712 to refund passengers for flights that airlines cancel or significantly change.⁵ With respect to refunds for significant schedule changes, OACP stated the following in its May 12, 2020 "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel:"

The Department interprets the statutory prohibition against unfair or deceptive practices to cover actions by airlines and ticket agents applying changes retroactively to their refund policies that affect consumers negatively. The refund policy in place at the time the passenger purchased the ticket is the policy that is applicable to that ticket. [OACP] would consider the denial of refunds in contravention of the policies that were in effect at the time of the ticket purchase to be an unfair and deceptive practice.⁶

The notice also stated the Department's longstanding view that an unfair practice is one that "(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"⁷ and that a deceptive practice is one that "is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter."⁸ In December 2020, the Department published in the Federal Register a

³ The authority required by section 41101 is separate and distinct from the operations specifications and approvals that such an entity must obtain from the Federal Aviation Administration (FAA) for operations to and from the United States.

⁴ The Department's regulations impose obligations on airlines that cannot be avoided through contractual provisions. *See Spirit Airlines vs. DOT*, 687 F.3d 403, 416 (D.C. Cir. 2012) (DOT may implement rule that airlines must change their policies to permit a passenger to cancel a reservation without penalty within 24 hours, based on DOT's finding that existing practices were unfair or deceptive).

⁵ "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (April 3, 2020), available at https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020; "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (May 12, 2020), available at https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020.

⁶ "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (May 12, 2020) at 2, available at https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020.

⁷ *Id.* at 2 fn7.

⁸ *Id.*

final rule titled “Defining Unfair or Deceptive Practices,”⁹ which codified both definitions.¹⁰ That rulemaking, among other things, also requires that the Department provide its reasoning for concluding that a certain practice is unfair or deceptive to consumers when an aviation consumer protection regulation does not apply to the practice at issue and the determination is based on the Department’s general authority to prohibit unfair or deceptive practices under section 41712.¹¹

OACP sets forth below the reasons that an airline changing its refund policy and applying those changes retroactively to the detriment of passengers who purchased tickets under an earlier more generous refund policy is an unfair and deceptive practice. OACP also explains below that directing passengers to redeem miles for future travel through an online system on the airline’s website but then failing to maintain a functioning system to enable consumers to redeem miles is an unfair and deceptive practice.

Unfair Practices

An airline’s practice of modifying its refund policy by changing the definition of significant schedule change that would entitle consumers to a refund and then applying that change retroactively to the detriment of consumers is “unfair” as it causes substantial harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition. Consumers are substantially harmed when they pay money for a service that an airline does not provide, and the airline refuses to provide a refund or unduly delays issuance of the refund because the airline’s new refund policy, which was not in effect when consumers purchased their tickets, does not require refunds under these circumstances. This harm is also not reasonably avoidable by consumers. Consumers are unable to avoid these injuries because the airline changing its refund policy and applying it retroactively is outside of their control. There are also no countervailing benefits to consumers or competition of such a practice as it only benefits the airline.

Similarly, it is an “unfair practice” by an airline to fail to provide a functioning system for consumers to redeem flight credits. Consumers are substantially harmed as consumers can lose the entire value of the flight credit if they are unable to book a flight before the flight credit expires. Consumers are also harmed if they are unable to redeem flight credits for a specified period and the delay results in seats on the flight that they wanted to take to no longer be available or results in an increase in the ticket price for the desired flight. Such harms are not reasonably avoidable as it is the airline and not the consumer who determines how flight credits may be redeemed. It is also the airline that operates and maintains the online system that consumers must use to redeem miles. There are no countervailing benefits to consumers or competition when consumers are unable to log into their accounts to redeem miles while there is tangible and significant harm to consumers of losing the entire value of their flight credit or not being able to use their credits during a specific period to arrange travel. An airline that fails to extend or unduly delays the extension of consumers’ ability to redeem miles for the time that the system was malfunctioning unfairly benefits.

Deceptive Practices

In addition to being an unfair practice, retroactively changing the definition of schedule change to deny consumers a refund that they were entitled to receive under the previous policy is a deceptive practice.

⁹ 85 Fed. Reg. 78707 (December 7, 2020).

¹⁰ 14 CFR 399.79(b).

¹¹ 14 CFR 399.79(e)(2).

Consumers acting reasonably would believe that the airline's refund policy in place when they purchased a ticket would determine their rights and are misled when that is not the case. An airline's failure to follow the refund policy that was in effect when the consumer purchased his or her ticket is material as it impacts consumers' ability to obtain refunds.

Also, it is deceptive for an airline to provide consumers flight credits that are valid for a specified period, inform consumers that they can redeem their flight credits through the airline's website during that specified period, but not have a functioning system for a portion of that time. A consumer acting reasonably under the circumstances would expect that they would be able to redeem the flight credits during the entire period that the credits were valid. Consumers are misled with respect to a material matter when they attempt to redeem the credits and are unable to do so despite the credits having not yet expired.

DOT's Customer Service Regulation

In addition to the general prohibition on unfair and deceptive practices, 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. Customer Service Plans represent a baseline, uniform, minimum level of service to which all covered carriers operating flights to and from the United States must comply. 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) requires: "Where ticket refunds are due, providing prompt refunds, as required by 14 CFR 374.3 and [Regulation Z, 12 CFR Part 1026] 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." OACP's position is that refunds are "due" when failure to provide them would constitute an unfair or deceptive practice under Section 41712. 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. Pursuant to 14 CFR 374.3(b), violations of Regulation Z constitute violations of 49 U.S.C. Subtitle VII.¹²

Facts and Conclusions

Frontier is a certificated air carrier that is subject to the requirements in 49 U.S.C. § 41712 and 14 CFR 259.5. Since March 1, 2020, over 2,600 consumers complained to OACP regarding Frontier's refund and customer service practices.¹³ Consumers alleged, among other things, that Frontier failed to provide timely refunds for significant schedule changes and failed to provide a reliable mechanism for passengers to use to redeem flight credits.

An investigation by OACP revealed that until March 25, 2020, Frontier defined a significant schedule change as a schedule change of more than three hours. On March 25, 2020, Frontier changed the definition to a schedule change that could not be accommodated on the same calendar day or a

¹² In enforcement orders, DOT has clarified that violations of section 259.5 are violations of Section 41712 specifically, not just 49 U.S.C. Subtitle VII generally. See, e.g., *American Airlines*, DOT Order 2017-7-9.

¹³ OACP received one formal complaint against Frontier alleging that the carrier had failed to provide a refund or credits for a cancelled flight. OACP has filed an Order of Dismissal in Docket DOT-OST-2020-0184 for that complaint as the claims are unsubstantiated.

misconnection. On October 27, 2020, Frontier changed the length of time defined as significant back to a schedule change of more than three hours or when a nonstop/through flight was changed to a connecting flight.

From March 25 through October 26, 2020, Frontier applied the more stringent definition of significant schedule change retroactively to consumers who had purchased tickets under Frontier's earlier more generous definition of significant change and experienced a schedule change. When these consumers rejected a schedule change of more than three hours that could be accommodated on the same calendar day, Frontier provided credits instead of refunds. Frontier's practice resulted in tens of thousands of consumers not being provided refunds because the carrier retroactively applied its new refund policy with a more stringent definition of significant schedule change.¹⁴

In addition to revealing that Frontier retroactively applied a new definition of significant schedule change to the disadvantage of tens of thousands of consumers who had purchased flights prior to the date of the change, the OACP investigation revealed that Frontier's online loyalty account system malfunctioned such that thousands of consumers could not redeem credits that were only valid for 90 days during a 15-day period in 2020 (approximately 17% of the promised available time to redeem credits). From May 28 to June 12, 2020, a website technology issue prevented consumers from redeeming credits online if the consumers were logged into their loyalty accounts. This issue potentially affected 62,535 bookings, each representing one or more passengers. However, the exact number of consumers that attempted to redeem credits online while logged into loyalty accounts is not known.

Beginning on June 14, 2020, Frontier began providing 48-hour extensions in the form of vouchers to consumers who contacted the airline about not being able to redeem credits because of the technology issue. Frontier did not publicize the availability of this extension by notifying all the consumers holding the reservations that were potentially affected that they could obtain an extension. Moreover, during this time, according to numerous complaints to OACP, it was extremely difficult to reach Frontier customer service by phone or to obtain prompt responses from Frontier customer service to email inquiries, with some consumers reporting that they called Frontier over several days before they were able to speak with a customer service agent. Frontier did not take proactive corrective action by applying the extension automatically to the credits of all bookings that were potentially affected by the technology issue for over two years. Consumers who were potentially affected by the technology issue experienced significant harm in the first instance by being unable to redeem credits through a reliable means during a 15-day period and, in the second instance, by not being provided for over two years an extension of time to redeem credits that were only valid for 90 days.

Response

¹⁴ Frontier's records indicate that consumers holding 82,711 bookings (each of which represents one or more passengers) who purchased the tickets under the carrier's more generous definition of significant schedule change no longer wished to fly when their flight experienced a schedule change of more than three hours, but other flights were available on the same calendar day. As of May 6, 2022, 31,397 of those bookings were refunded for such reasons as the booking involved a refundable ticket, a codeshare through another airline, or a subsequent qualifying schedule change.

In response, Frontier states that despite the devastating impacts of the COVID-19 global pandemic on the airline industry, Frontier provided its customers, upon request, original-form-of-payment (“OFOP”) refunds if due under the policy in effect when it cancelled a flight or made a significant schedule change.

Frontier asserts that its actions were not an unfair or deceptive practice, nor did it fail to adhere to its customer commitment. Frontier disagrees with the Department’s determinations and maintains that enforcement action is not warranted here.

Frontier explains that it received very few complaints about the amendment to its significant schedule change definitions. Frontier asserts that for the period of March 2020 – December 2020, only 0.24% (or just 20) of the DOT and Executive Escalation complaints received by Frontier involved pre-March 25 bookings that related to the application of the updated definition of significant schedule change. With respect to the brief technology issue, Frontier notes that it only affected a small subset of customers (loyalty members) using a sub-portal of Frontier’s website and all of those customers could have redeemed their travel credits during this period via Frontier’s website (without accessing their loyalty accounts) or by calling Frontier’s contact center, and some did so. Moreover, Frontier states that none of the travel credits issued after the World Health Organization declared COVID-19 a global health pandemic expired during the brief 15-day technology issue (Frontier contends that it provided extensions upon request) and Frontier worked quickly to resolve the technology issue.

Frontier asserts that it provided in excess of \$95,000,000 of goodwill OFOP refunds, credits, and vouchers to customers who were not entitled to any compensation under U.S. law and regulations:

- more than \$71.4 million in goodwill OFOP refunds to over 222,200 unique PNRs *with non-refundable tickets who voluntarily cancelled* their flights between March 1, 2020, and December 31, 2021, *and were not entitled to refunds* under U.S. law;
- more than \$14.7 million in goodwill extension vouchers between June 15, 2020 and August 22, 2022 *that have been redeemed by customers who had voluntarily cancelled* their non-refundable tickets and whose expired travel credits were extended by these vouchers;
- more than \$6.1 million in goodwill vouchers between February 28, 2020 and August 22, 2022, above and beyond full fare travel credits, *that have been redeemed by customers who had voluntarily cancelled* their non-refundable tickets; and
- more than \$2.7 million in refunds to passengers by applying a more generous definition of significant schedule change, after October 26, 2020, than was in effect at the time of the booking and ticket purchase.

Frontier also asserts that it updated its policies regarding credits, vouchers, and fees several times to respond to customer feedback and the evolving COVID-19 pandemic, sometimes providing passengers with greater flexibility in terms of refunds, vouchers, credits, and rebooking than its Contract of Carriage required. Among other policies, Frontier offered unique vouchers with extended expiration dates valid until December 31, 2020, to provide customers with more time to book another flight with the vouchers; extended the validity of its future travel credits to one full year from date of issuance; instituted policies that allowed *expired* credits to be redeemed; allowed passengers, upon request, to exchange certain credits for an OFOP refund; permitted passengers to use credits for multiple bookings until depleted; waived certain otherwise applicable fees, depending on the circumstances; offered passengers with non-refundable tickets who cancelled their tickets a future travel credit in the full amount of the tickets, plus

an additional voucher, resulting in more value being provided to passengers than the amount of the non-refundable tickets; and extended its flight schedule out a full year and even beyond.¹⁵

Lastly, Frontier fully cooperated with OACP throughout this process.

Decision

OACP views seriously Frontier's violations of 49 U.S.C. § 41712 and 14 CFR Part 259. Accordingly, after carefully considering all the facts in this case, OACP believes that enforcement action is warranted. In order to avoid litigation and without admitting the violations described above, Frontier 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 \$2,200,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. 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 Frontier 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 significantly delaying the payment of refunds to passengers for flights that Frontier significantly changed from March 25, 2020 through October 26, 2020, Frontier engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
3. We find that by failing to adhere to its customer commitment related to providing prompt refunds, Frontier violated 14 CFR 259.5(b)(5), which also constitutes a violation of 49 U.S.C. § 41712;
4. We find that by not ensuring that consumers could redeem credits online while logged into their loyalty accounts during a 15-day period in 2020 or that such consumers received the full 90 days to redeem their credits, Frontier engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
5. We order Frontier and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 259.5;
6. We assess Frontier \$2,200,000 in compromise of civil penalties that might otherwise be assessed for the violations described in paragraphs 2, 3, and 4 above. Of this amount,
 - a. \$1,000,000 shall be due and payable within 60 days of the issuance of the order; and

¹⁵ Although Frontier states that it provided the flexibilities described here, not all of them were publicized and OACP believes that many consumers were likely not aware of these changes in time to take advantage of them.

- b. \$1,200,000 shall be credited to Frontier for refunds provided to passengers who voluntarily cancelled their non-refundable tickets.
7. We order Frontier to pay within 60 days of the issuance of this order the penalty assessed in ordering paragraph 6(a), above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Frontier 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; and

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 motion.

BY:

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

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