



**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 January 2025**

**Frontier Airlines, Inc.**

**Violations of 49 U.S.C. § 41712 and  
14 CFR Part 399**

**Docket OST-2025-0001**

**Served January 15, 2025**

**CONSENT ORDER**

The U.S. Department of Transportation’s Office of Aviation Consumer Protection (OACP) has determined that Frontier Airlines, Inc. (Frontier) held out three chronically delayed flights between August 2022 and April 2023 at least 63 times in violation of 49 U.S.C. § 41712 (Section 41712) and 14 CFR 399.81. This order directs Frontier to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR 399.81 and assesses the carrier \$650,000 in civil penalties.

**Applicable Law**

A “chronically delayed flight” means any domestic flight that is operated at least 10 times a month and arrives more than 30 minutes late (including cancelled flights) more than 50 percent of the time during that month.<sup>1</sup> For purposes of determining chronically delayed flights, the Department considers all of a carrier’s flights that are operated in a given city-pair market whose scheduled departure times are within 30 minutes of the most frequently occurring scheduled departure time to be one single flight.<sup>2</sup> The holding out of a chronically delayed flight for more than four consecutive one-month periods represents one form of unrealistic scheduling and is an unfair and deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. § 41712.<sup>3</sup>

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. For the period in question, Frontier was subject to a maximum civil penalty of \$40,272 for each violation of

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<sup>1</sup> 14 CFR 399.81(c)(2).

<sup>2</sup> 14 CFR 399.81(c)(3).

<sup>3</sup> 14 CFR 399.81(c)(4).

section 41712 and 14 CFR 399.81.<sup>4</sup> A separate violation takes place for each day the violation continues or, if applicable, for each flight involving the violation.<sup>5</sup>

### **Facts and Conclusions**

As part of its monitoring of airlines' operations, OACP regularly obtains chronic delay data from the Department's Bureau of Transportation Statistics (BTS). OACP uncovered that, from April to August of 2022, Frontier operated a chronically delayed flight between St. Thomas and Orlando, (Flight 131, STT-MCO). In addition, from December 1, 2022, through April 30, 2023, Frontier operated two chronically delayed flights: (1) between Atlanta and Phoenix (Flight 1563, ATL-PHX); and (2) between Orlando and Houston (Flights 1251/1043, MCO-IAH). The BTS data that OACP used to monitor Frontier's operations revealed that Frontier was primarily responsible for the three chronically delayed flights. Regardless of the cause of the delay (carrier, weather, national airspace, security), it is a violation to hold out a chronically delayed flight.

Frontier held out these chronically delayed flights to the public at least 63 times<sup>6</sup> in violation of Section 41712 and 14 CFR 399.81. Holding out these chronically delayed flights disregarded consumers' need to have reliable information about the real arrival time of a flight and harmed thousands of passengers, including those with connections. The civil penalty in this matter is intended, in part, to reflect that harm. We also note that Frontier had ample opportunity (four months) to act to correct the chronic delays and avoid being subject to civil penalties for violations of section 399.81, by revising its schedule to prevent a fifth consecutive month of delay.<sup>7</sup>

### **Response**

Frontier states that it takes regulatory compliance very seriously and strives to operate its flights safely and on-time. Frontier states that it has decided to resolve this matter without any admission

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<sup>4</sup> 49 U.S.C. § 46301(a)(1)(A) and (B). For violations occurring from March 21, 2022, to January 5, 2023, the maximum civil penalty is \$37,377. Revisions to Civil Penalty Amounts, 87 Fed. Reg. 15839 (March 21, 2022). For violations occurring on or after January 6, 2023, the maximum civil penalty is \$40,272. Revisions to Civil Penalty Amounts, 88 Fed. Reg. 1114 (Jan. 6, 2023).

<sup>5</sup> 49 U.S.C. § 46301(a)(2).

<sup>6</sup> Frontier operated (and therefore held out) Flight 131 18 times in August 2022; Flight 1563 28 times in April 2023; and Flights 1251/1043 17 times in April 2023.

<sup>7</sup> The preamble to the Department's rule covering chronically delayed flights states as follows: "Carriers know at the beginning of month two whether the flights they operated during month one were chronically late. **We believe that carriers can make adjustments to their schedules within 60 days; therefore, we expect that during months two, three and four carriers would adjust their schedule for each of their chronically late flights to make the schedule for that flight more realistic by month five.** While flight delays for weather, mechanical, or other operational reasons occur frequently in the airline industry, the Department considers the continued publishing of schedules that list chronically late flights to be one form of unrealistic scheduling and an unfair or deceptive practice and unfair method of competition within the meaning of 49 U.S.C. 41712." See 74 FR 68983, 68993-94 (December 30, 2009) (emphasis added).

of liability on the terms herein in order to avoid the additional expense, burden, and distraction of additional litigation. Frontier emphasizes that in so doing, it is not conceding the DOT's statement of applicable law or recitation of facts and conclusions.

Frontier states that many of the flights at issue were delayed or cancelled as a result of uncontrollable events (circumstances beyond Frontier's control, including weather and NAS delays) and many missed the 30-minute "on-time" benchmark under 14 CFR 399.81(c) by a matter of a few minutes. For example, with respect to Flight 131 from STT to MCO, Frontier explains that numerous unexpected changes in wind direction complicated by unscheduled airport construction during summer 2023 resulted in departures often being changed from runway 28 to runway 10, resulting in significant weight restrictions due to the terrain and obstacles near the departure end of that runway. Frontier believes that it made the consumer-friendly decision in those cases to make a technical fuel stop at San Juan, which delayed the flight's arrival at MCO, in order to avoid denied boardings and leaving passengers and their baggage behind in STT.<sup>8</sup>

Frontier states that it received very few passenger complaints about these flights. According to Frontier, very few of the passengers on the ATL-PHX and MCO-IAH flights were connecting passengers.

Frontier states that it was proactive in its efforts to resolve the alleged chronic delays for these three flights, as it significantly re-timed or discontinued these flights before receiving the DOT's inquiries requesting information about the alleged chronic delays of these flights. Frontier also states that it has been cooperative with the DOT throughout this investigation and that it has implemented more robust procedures, and is investing in new software, to enhance the tracking of the on-time and completion/cancellation performance for all Frontier flight operations.

### **Decision**

OACP views seriously Frontier's violations of Section 41712 and 14 CFR 399.81. Accordingly, after carefully considering all the facts in this case, OACP believes that enforcement action is warranted. In order to avoid litigation, Frontier consents to the issuance of this order to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR 399.81 and to the assessment of \$650,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. DOT states that the compromise assessment is appropriate considering the nature and extent of the violations described herein, serves the public interest, establishes a strong deterrent to future similar unlawful practices by Frontier and other carriers, and properly takes into account Frontier's recent financial results.

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

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<sup>8</sup> OACP notes that, to avoid holding out a chronically delayed flight, Frontier could have adjusted its schedule to account for a stop in San Juan.

**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 Frontier Airlines, Inc. held out a chronically delayed flight, as defined by 14 CFR 399.81(c)(2), for five consecutive months from April through August 2022; and two chronically delayed flights from December 2022 through April 2023;
3. We find that by engaging in the conduct described in paragraph 2, above, Frontier Airlines, Inc. violated 14 CFR 399.81(c)(4) and engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. 41712;
4. We order Frontier Airlines, Inc. and its successors and assigns to cease and desist from further similar violations of 49 U.S.C. § 41712 and 14 CFR 399.81(c)(4);
5. We assess Frontier Airlines, Inc. \$650,000 in compromise of civil penalties that might otherwise be assessed for the violations described in paragraph 2 and 3, above:
  - a. \$162,500 of the assessed penalty is due and payable within 60 days of the date of this order;
  - b. \$162,500 of the assessed penalty is due and payable within 12 months of the date of the payment under subparagraph (a) above; and
  - c. \$325,000 of the assessed penalty will become due and payable, if within three years of the service date of this order, Frontier violates this order's cease and desist provision or fails to comply with the order's payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Frontier may be subject to additional enforcement action for failure to comply with this order.
6. We order Frontier Airlines, Inc. to pay the penalties assessed in ordering paragraph 5, 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 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.
7. 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.

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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