



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

Issued by the Department of Transportation
on the 18th day of August 2004

Frontier Airlines, Inc.

**Violations of 49 U.S.C. § 41712
and 14 CFR Part 212**

Docket OST 2004-16943

Served August 18, 2004

CONSENT ORDER

This consent order concerns violations by Frontier Airlines, Inc., (Frontier) of 14 CFR Part 212, the Department's charter regulations applicable to direct air carriers, and 49 U.S.C. § 41712, which prohibits unfair and deceptive practices and unfair methods of competition. Frontier entered into an aircraft management agreement with Blue Moon Aviation, LLC, (Blue Moon) under which Frontier operated aircraft for Blue Moon, which in turn engaged in air transportation services as an indirect air carrier without the requisite economic authority from the Department.

Companies engaged in air transportation are required to hold economic authority from the Department under 49 U.S.C. § 41101.¹ Frontier is an air carrier that holds such economic authority from the Department, together with safety certification from the Federal Aviation Administration under 14 CFR Part 121. However, Blue Moon, the lessee of an Airbus 319 aircraft, has no economic authority itself to hold out or to provide, directly or indirectly, air transportation using this or any other aircraft. Nevertheless, from its inception in December 2003 until May 2004, Blue Moon engaged in significant indirect air carrier service pursuant to an "aircraft management and charter services agreement" with Frontier, requiring, among other things, that Frontier place Blue Moon's aircraft on its Part 121 Operating Certificate and operate it exclusively for charter flights "arranged and sponsored by" Blue Moon. The agreement also required Frontier to provide flight crews and flight dispatch services in exchange for a monthly management fee and reimbursement of all direct costs, while specifying that Blue Moon had authority over the use of the aircraft, as well as sole responsibility for soliciting, marketing, and scheduling of any charters using the aircraft, and for invoicing and

¹ A carrier may also operate small aircraft as an air taxi under the exemption authority of 14 CFR Part 298. Carriers engaged in air transportation must also be certificated by the Federal Aviation Administration under 14 CFR Parts 135 or 121. 14 CFR 119.1.

collecting monies associated with those charters. In addition, under the agreement, Blue Moon was responsible for procuring substitute service if its A-319 was unavailable and for arranging and paying for, either directly or through reimbursement to Frontier, various air operating services associated with its use, including fuel, catering, and ground handling services, and airport fees.

Pursuant to its arrangement with Frontier, Blue Moon held out air transportation in its own right and not as an agent of Frontier or any other properly certificated entity through direct solicitation. Blue Moon also held out in its own right on its Internet website, which invited potential customers to request quotes for charters aboard an A-319 that it claimed to operate. Blue Moon's efforts resulted in the procurement of a number of contracts for air transportation, ranging from single flights to operations over an entire professional sports season, into which Blue Moon entered as a principal, despite its lack of economic authority.

In each of these contracts, there was no privity between the ultimate customers, either directly or through agents, and Frontier, the authorized air carrier, thereby creating a situation in which the customers looked primarily to Blue Moon for performance of their contracts, notwithstanding the fact that the latter was not legally authorized to provide air transportation. Frontier, which was or should have been aware of Blue Moon's conduct, as well as the fact that Blue Moon was not a certificated air carrier, in effect, facilitated Blue Moon's unlawful conduct. By aiding and abetting such conduct, Frontier itself engaged in an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

Furthermore, in its arrangement with Blue Moon, Frontier engaged in unauthorized charter operations in violation of 14 CFR 212.4, which specifies the charter types air carriers are authorized to conduct. Because no privity of contract existed between Frontier and the ultimate customer, Frontier was not engaged in single entity charters with respect to the operations in question and no other authorized charter type is remotely similar to the arrangement between Frontier and Blue Moon. Therefore, Frontier engaged in a non-authorized charter type, in violation of 14 CFR 212.4. In addition, even assuming that Frontier and Blue Moon had maintained a proper "charter to charterer" relationship, Frontier was not properly escrowing the monies received from Blue Moon, in violation of 14 CFR 212.8.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) is particularly concerned about Frontier's operations because its arrangement with Blue Moon bypassed the protections put in place by the Department to afford the public a measure of financial protection where charter flights are involved. With respect to traditional single-entity charters using large aircraft, Department rules require a direct air carrier that engages in charter air transportation to maintain a bond, in an unlimited amount, to guarantee performance of all charter flights for which it has contracted, or to maintain an escrow account into which it must deposit immediately all payments received for charter flights until after the flight has been operated.² Not only did Frontier

² This rule is specified in 14 CFR 212.8. Similar protections exist for public charter flights, with the authorized indirect air carrier required to have a bond or other security arrangement and to escrow

not escrow the money received from Blue Moon, it was Blue Moon, not Frontier, that entered into contracts with the ultimate charter customers for charter air transportation. Therefore, Frontier's relationship with Blue Moon would not even qualify as a single entity charter. Frontier's operations were not only unlawful, but also created an unacceptable risk to the public's funds that the Department regulations, where followed, are designed to preclude.

In summary, therefore, we believe that Frontier has allowed Blue Moon to unlawfully conduct air transportation services and, thus, it has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. Additionally, Frontier has violated 14 CFR 212.4 and 212.8 by conducting a non-authorized charter type and by failing to escrow funds it received from Blue Moon.

In mitigation, Frontier states that it did not enter into its initial arrangement with Blue Moon with the intent of engaging in an unfair and deceptive practice and unfair method of competition. The carrier attributes its actions to inexperience, rather than guile. Frontier maintains that the ultimate charter customers whom it transported were sophisticated entities with ample knowledge of the business of charter air transportation. Furthermore, in terms of consequences, the carrier states that all of these customers received the transportation for which they contracted and which Frontier was obligated to perform pursuant to its separate agreement with Blue Moon. Therefore, the carrier believes that there was no actual harm to consumers. Lastly, Frontier points out that, upon learning of the Enforcement Office's concerns, it immediately took remedial action to ensure that its future operations conformed with the requirements of 14 CFR Part 212 and no longer violated 49 U.S.C. § 41712.

The Enforcement Office has carefully considered all of the information provided by Frontier, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Frontier have reached a settlement of this matter. Without admitting or denying the violations described above, Frontier agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 212.4 and 212.8 and to the assessment of \$30,000 in compromise of potential civil penalties otherwise assessable. Of this amount, \$15,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$15,000 shall be suspended for one year after the issuance of this order and then forgiven unless Frontier violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Frontier may be subject to additional enforcement action. The Enforcement Office believes that this compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful operations by carriers in their arrangements for air transportation with entities that lack appropriate economic authority.

payments from charter participants until payment is made to the airline's own escrow account. 14 CFR 380.34.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest;
2. We find that Frontier Airlines, Inc., violated 14 CFR 212.4 by operating charter flights not authorized by that section;
3. We find that by failing to properly escrow funds received for charter flights, Frontier Airlines, Inc., violated 14 CFR 212.8;
4. We find that Frontier Airlines, Inc., by facilitating unauthorized operations by Blue Moon Aviation, LLC and its related companies and by violating 14 CFR 212.4 and 212.8, engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. Frontier Airlines, Inc., and all other entities owned and controlled by, or under common ownership and control with Frontier Airlines, Inc., and their successors and assignees, as well as the owners and officers of all such companies, are ordered to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 212.4 and 212.8;
6. Frontier Airlines, Inc., is assessed \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of this total penalty amount, \$15,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$15,000 shall be suspended for one year after the issuance of this order and then forgiven unless Frontier Airlines, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Frontier Airlines, Inc., may be subject to additional enforcement action. Failure to pay the penalty as ordered shall also subject Frontier Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order; and
7. Payment of the civil penalty described above shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the attached instructions.

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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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