



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

Issued by the Department of Transportation
on the 11th day of August, 2004

Frontier Airlines, Inc.

**Violations of 14 CFR 201.5 and
49 U.S.C. § 41712**

Docket OST 2004-16943

Served August 11, 2004

CONSENT ORDER

This consent order concerns Frontier Airlines' advertisement and sale of proposed new service to Cancun prior to obtaining the requisite economic authority from the Department. The order assesses a compromise civil penalty of \$35,000 and directs the carrier to cease and desist from further violations.

On April 1, 2004, Frontier applied for authority under 49 U.S.C. § 41101 to operate nonstop service to Cancun from St. Louis, Kansas City and Salt Lake City.¹ The carrier issued a press release describing the service at the time it made its filings with the Department and indicated that consumers interested in making reservations should contact the carrier. The service, which was to begin in July, also appeared on the carrier's website, where reservations could be booked prior to the Department's approval of the requested authority. Under 14 CFR 201.5, a carrier may not advertise or sell air transportation prior to its receipt of appropriate economic authority under 49 U.S.C. 41101. Moreover, during the pendency of an application for authority, a carrier may not engage in advertising or sale of its proposed services. The carrier received approval to operate on two of its proposed routes on May 11, 2004, but prior to that date had accepted over \$100,000 in reservations for the planned service. The carrier's premature advertising and sales activities were in violation of section 201.5 and, in addition, constituted unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

In mitigation, Frontier states that all those who made reservations for the service in question prior to May 11, the date on which it received exemption authority from the Department, will receive the transportation that they purchased, or have received refunds. Frontier states that it believed that section 201.5 allowed prior sales so long as the

¹ Applications were filed in the following dockets: OST 04-17470 for St. Louis-Cancun; OST 04-17467 for Salt Lake City-Cancun; and OST 04-17466 for Kansas City-Cancun. The carrier thereafter withdrew its application for the St. Louis authority. Its applications for Kansas City and Salt Lake City authority were granted on May 11, 2004.

advertisements notified consumers that the service was “subject to government approval.” Moreover, the carrier claims that it was under the impression that approval would be granted with little delay so that it appeared advisable to make the service available for sale as soon as possible. In addition, the carrier states that the premature advertising and sales were inadvertent and that it has put in place procedures designed to avert similar oversights in the future.

We believe that enforcement action is warranted with respect to Frontier’s premature advertising and sales in this instance. In order to avoid litigation, Frontier has agreed to the issuance of this order to cease and desist from further violations of 14 CFR 201.5 and 49 U.S.C. § 41712 and the findings made below. By this order, Frontier is assessed \$35,000 in compromise of potential civil penalties otherwise assessable under 49 U.S.C. § 46301 of which one-half will be paid according the payment provisions described below. The remaining \$17,500 shall be suspended for one year following the service date of this order and shall then be forgiven unless Frontier fails to comply with the provisions of this order during the suspension period, in which case the entire unpaid portion of the \$35,000 assessed penalty shall become due and payable immediately. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future noncompliance with the Department's advertising regulations and section 41712 by Frontier, as well as by other vendors of air transportation.

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 this order as being in the public interest;
2. We find that Frontier Airlines, Inc., violated 14 CFR 201.5 by advertising and accepting reservations for service for which it lacked economic authority from the Department under 49 U.S.C. § 41101;
3. We find that by engaging in the conduct described in paragraph 2 above, Frontier Airlines, Inc., violated 49 U.S.C. § 41712;
4. Frontier Airlines, Inc., its successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 14 CFR 201.5 and 49 U.S.C. § 41712;
5. Frontier Airlines, Inc., is assessed \$35,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above of which \$17,500 shall be due and payable 30 days after the service date of this order. The remaining \$17,500 shall be suspended for one year following the service date of this order and shall then be forgiven unless Frontier fails to comply with the provisions of this order during the suspension period, in which case the entire unpaid portion of the \$35,000 assessed penalty shall become due and payable immediately; and

6. Payment 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 instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall also subject Frontier Airlines, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

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:

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