



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

Issued by the Department of Transportation
on the 9th day of December, 2016

JetBlue Airways Corporation

**Violations of 49 U.S.C. § 41712 and 14 CFR
Parts 250 and 259**

Docket OST 2016-0002

Served December 9, 2016

CONSENT ORDER

This consent order concerns violations of 49 U.S.C. § 41712, 14 CFR Parts 250, and 14 CFR Part 259 by JetBlue Airways Corporation (“JetBlue”). This order directs JetBlue to cease and desist from future similar violations of 49 U.S.C. § 41712, 14 CFR Part 250, and 14 CFR 259.5(a) and assesses the carrier \$40,000 in civil penalties.

Applicable Law

Statutory Prohibition Against Unfair and Deceptive Practices

As an air carrier, JetBlue is subject to 49 U.S.C. § 41712, which grants the Department broad authority to prohibit unfair or deceptive practices or unfair methods of competition in air transportation. A practice is deemed to be deceptive if it is likely to mislead a consumer acting reasonably in the circumstances to his or her detriment. A practice is deemed to be unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

The Department has long held that failing to comply with the contract of carriage is a misleading practice that constitutes an unfair and deceptive practice in a violation of 49 U.S.C. § 41712.¹

The Department's Oversales Rule

The Department's oversales rule, 14 CFR Part 250 ("Part 250"), reflects a carefully crafted balance between the right of individual passengers to obtain the services they purchase on the one hand, and the ability of carriers to market their services effectively and efficiently on the other hand. Part 250 permits airlines to sell more tickets for a flight than there are seats on the aircraft to be used for that flight. This allows carriers to fill seats that would otherwise have gone empty due to "no shows," thereby achieving operational efficiencies including revenue enhancement for carriers, and resulting in benefits for passengers as a whole by enabling carriers to offer them lower fares.

In exchange for the ability to overbook flights (a practice that would otherwise be an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712), Part 250 mandates compensation and other protections for passengers who hold "confirmed reserved space" on a flight, have complied with the carrier's contract of carriage, have met the carrier's requirements with respect to check-in time and appearance at the gate, and have been involuntarily denied boarding because their flight was oversold ("eligible passengers"). Specifically, under most circumstances, Part 250 mandates that a carrier pay Denied Boarding Compensation (DBC) to eligible passengers "on the day and [at the] place the denied boarding occurs," with "cash or an immediately negotiable check for the appropriate amount of compensation."² The appropriate amount of DBC varies for each passenger depending on the planned arrival time of substitute transportation arranged (or offered to be arranged) by the carrier, the value of the unused portion of the passenger's fare to his or her destination, and whether the flight segment on which the bumping occurred was between U.S. points, or from the U.S. to a foreign point.³ In addition, 14 CFR 250.5(e) requires the Department to review the maximum denied boarding compensation amounts every two years and to revise the limit to reflect changes in the Consumer Price Index for All Urban Consumers (CPI-U).⁴

¹ See *Comair, Inc.*, Order 2007-5-9 (May 17, 2007).

² 14 CFR 250.8.

³ 14 CFR 250.5.

⁴ The minimum DBC for domestic travel occurring on or after August 25, 2015, increased to 200 percent of the fare to the passenger's destination or first stopover, with a maximum of \$675 (from \$650), if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than two hours after the planned arrival time of the passenger's original flight; and 400 percent of the fare to the passenger's destination or first stopover, with a maximum of \$1,350 (from \$1,300), if the carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than two hours after the planned arrival time of the passenger's original flight for domestic flights. For international flights departing from a U.S. airport, the amount of denied boarding compensation shall be no less than 200 percent of the fare to the passenger's destination or first stopover, with a maximum of \$675 (from \$650), if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than four hours after the planned arrival time of the passenger's original flight; and 400 percent of the fare to the passenger's destination or first stopover, with a maximum of \$1,350 (from \$1,300), if the

Further, 14 CFR 250.5(c) permits a carrier to offer free or reduced rate air transportation in the form of travel vouchers for use on future flights in lieu of a cash payment. The carrier must first inform eligible passengers of their right to receive cash/check compensation and the amount thereof in the event they prefer that form of compensation instead of a travel voucher.⁵ In order to ensure that these passengers have the ability to make informed decisions regarding the various denied boarding compensation options available to them, 14 CFR 250.9 requires a carrier to furnish passengers who are involuntarily denied boarding with a written statement, the text of which is specified in the rule, that explains the terms, conditions, and limitations of denied boarding compensation.⁶ Violations of Part 250 also constitute an unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.⁷

The Department's Customer Service Plan Rule

In April 2011, the Department issued a set of rules designed to enhance protections for air travel consumers. Among these rules, 14 CFR 259.5(a) requires covered carriers to adopt and adhere to a customer service plan that includes a commitment to handle passengers denied boarding involuntarily fairly and consistently in the event of an oversales situation. Failure to adhere to a published customer service plan constitutes a violation of 14 CFR Part 259 ("Part 259"). Violations of Part 259 also constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Facts and Conclusions

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) of JetBlue's oversales practices revealed instances in which JetBlue did not provide compensation to passengers denied boarding involuntarily as pledged in the carrier's contract of carriage, "Customer Bill Rights," and customer service plan. Section 27(B) of JetBlue's contract of carriage states that a passenger who is denied boarding involuntarily due to an oversale shall be entitled to \$1,350 subject to certain recognized exceptions. JetBlue's Customer Bill of Rights states that "Customers who are involuntarily denied boarding due to overbookings shall receive \$1,350."⁸ Additionally, JetBlue's customer service plan incorporates and references section 27 of JetBlue's contract of carriage for oversales situations. The Enforcement Office found that in December 2015, JetBlue failed to provide \$1,350 to 12 passengers who were denied boarding involuntarily on international flights, as promised in its contract of carriage, "Customer Bill of Rights," and customer service plan. In addition, JetBlue failed to

carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than four hours after the planned arrival time of the passenger's original flight. 80 Fed. Reg. 30144. In August 2011, the DBC limit increased from \$400 or \$800 depending on the length of the bumped passenger's delay to \$650/\$1,300. 76 Fed. Reg. 23110.

⁵ 14 CFR 250.5(c).

⁶ 14 CFR 250.9.

⁷ See *Delta Air Lines, Inc.*, Order 2013-6-18 (June 26, 2013); *Comair, Inc.*, Order 2010-7-18 (July 26, 2010).

⁸ See JetBlue Airways' Customer Bill of Rights, <https://www.jetblue.com/flying-on-jetblue/customer-protection/> (last visited July 22, 2016).

inform the passengers of their right to receive cash compensation instead of a travel voucher as required by section 250.5(c), and failed to furnish a written notice to passengers as required by section 250.9. Furthermore, it appears that the amount JetBlue paid to the passengers who were denied boarding involuntarily was less than the DBC amount required by section 250.5(b). By engaging in the conduct described above, JetBlue violated 49 U.S.C. § 41712, 14 CFR 250.5(b), 14 CFR 250.5(c), 14 CFR 250.9, and 14 CFR 259.5(a).

Response

JetBlue states that it is committed to ensuring all customers are treated fairly and consistently as provided for in its contract of carriage and Customer Bill of Rights. JetBlue agrees with the Department's position that overselling flights without providing countervailing protections for passengers is inherently unfair to customers. To that end, JetBlue asserts that it does not intentionally oversell its flights and only involuntarily denies boarding to customers on rare occasions where it becomes operationally necessary. JetBlue states it also ensures, through its contract of carriage and Customer Bill of Rights, that customers who are involuntarily denied boarding are generally compensated more than is currently required by the Part 250 formulas.

JetBlue acknowledges that in December 2015, 12 customers were involuntarily denied boarding on five JetBlue flights due to unanticipated weight and balance safety restrictions. JetBlue states that these customers were immediately rebooked on the next available flight to their intended destinations and issued vouchers for future travel for the inconvenience, but were not paid \$1,350 at the time of the denied boarding. JetBlue further states that, when JetBlue subsequently discovered this error, JetBlue immediately issued \$1,350 checks to each of the 12 customers and disclosed the error to the Department. JetBlue also distributed comprehensive awareness information to its airport operations crewmembers reiterating that JetBlue must pay involuntary denied boarding compensation to customers who are involuntarily denied boarding due to payload safety restrictions that are outside JetBlue's control.

JetBlue points out that the Department does not require carriers to provide DBC to passengers that are denied boarding involuntary due to weight/balance restrictions on flights using aircraft with a designed passenger capacity of 60 or fewer seats. While JetBlue's aircraft fall outside of this exception, JetBlue asserts that advanced weight and balance predictions are not always reliable for aircraft with more than 60 seats as well and may sometimes result in unplanned payload restrictions or denied boardings at the time of travel to ensure safe operation of the aircraft, as was the case with the five JetBlue flights at issue herein.

Decision

The Enforcement Office views seriously JetBlue's violations of 49 U.S.C. § 41712, 14 CFR Part 250, and 14 CFR 259.5(a). Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that

enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, JetBlue consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712, 14 CFR Part 250, and 14 CFR 259.5(a) and to the assessment of \$40,000 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 against future similar unlawful practices by JetBlue.

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

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that JetBlue Airways Corporation violated 49 U.S.C. § 41712 by failing to pay eligible passengers the appropriate amount of denied boarding compensation specified in its contract of carriage and Customer Bill of Rights;
3. We find that JetBlue Airways Corporation violated 14 CFR 259.5(a) by failing to adhere to its customer service plan regarding compensation to passengers denied boarding involuntarily;
4. We find that JetBlue Airways Corporation violated 14 CFR 250.5(b) by failing to pay eligible passengers on international flights the appropriate amount specified in the rule;
5. We find that JetBlue Airways Corporation violated 14 CFR 250.5(c) by failing to inform eligible passengers of the amount of cash compensation that was due to them;
6. We find that JetBlue Airways Corporation violated 14 CFR 250.9 by failing to furnish eligible passengers, immediately after they were denied boarding, a written statement explaining the terms, conditions, and limitations of denied boarding compensation;
7. We find that by engaging in the conduct described in ordering paragraphs 3 through 6, above, JetBlue Airways Corporation engaged in unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
8. We order JetBlue Airways Corporation and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41712, 14 CFR Part 250, and 14 CFR 259.5(a);
9. We assess JetBlue Airways Corporation \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through

8, above. Of this total amount, \$20,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$20,000 shall become due and payable if, within one year of the service date of this order, JetBlue Airways Corporation violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case the entire unpaid amount shall become due and payable immediately and JetBlue Airways Corporation may be subject to additional enforcement action for failure to comply with this order;

10. We order JetBlue Airways Corporation to pay within thirty (30) days of the issuance of this order the penalty assessed in Ordering Paragraph 9, 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 JetBlue Airways Corporation 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.

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 WORKIE
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