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

Issued by the Department of Transportation
on the 6th day of April 2007

Imperial Jets, Inc.	**Docket OST 2007-26781**
Violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Part 399	**Served April 6, 2007**

CONSENT ORDER

This consent order concerns common carriage air service by Imperial Jets, Inc., without the requisite Departmental economic authority. Such conduct contravenes 49 U.S.C. § 41101, the Department's aviation licensing requirement, and 49 U.S.C. § 41712, which prohibits ticket agents and air carriers from engaging in unfair and deceptive trade practices and unfair methods of competition. This order also concerns Imperial Jets' separate and distinct violations of 14 CFR 399.80(a), which details certain proscribed practices by ticket agents that constitute unfair and deceptive practices and unfair methods of competition. It directs Imperial Jets to cease and desist from such further violations and assesses Imperial Jets a compromise civil penalty.

Citizens of the United States[1] are required under 49 U.S.C. § 41101 to hold economic authority[2] from the Department, either in the form of a "certificate of public convenience and necessity" or in the form of an exemption[3] from the certificate requirement in order to

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[1] A "citizen of the United States" includes a corporation organized in the United States that 1) meets certain specified standards regarding the citizenship of its president, officers and directors, and holders of its voting interest and 2) is under the actual control of citizens of the United States. 49 U.S.C. § 40102(a)(15).

[2] This authority is separate and distinct from any safety authority required by the Federal Aviation Administration.

[3] For example, such exemptions may take the form of direct air carrier authority as an air taxi pursuant to 14 CFR Part 298 (limited to aircraft originally designed for 60 passenger seats or less) or indirect air carrier authority as a public charter operator pursuant to 14 CFR Part 380 or as an air freight forwarder pursuant to 14 CFR Part 296. An entity or person who is directly engaged in the operation of aircraft that are used to provide air transportation is a "direct air carrier." An entity or person who is not a direct air carrier, but who solicits in his or her own right members of the public to purchase air

engage[4] directly or indirectly in air transportation. "Air transportation" is the transportation of passengers or property by air as a common carrier between two places in the United States or between a place in the United States and a place outside of the United States or the transportation of mail by air.[5] In the context of aviation, a "common carrier" is a person or other entity that, for compensation or hire, holds out and/or provides to the public transportation by air between two points.[6]

Air charter brokers that do not have Departmental economic authority may not, as principals, enter into contracts with direct air carriers[7] for air transportation and then re-sell the same air transportation pursuant to separate contracts with charterers, i.e. charter customers. Such conduct makes the air charter broker an unauthorized indirect air carrier[8] and violates the certificate requirement in 49 U.S.C. § 41101. Engaging in air transportation without economic authority, in addition to violating section 41101, constitutes an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712. Furthermore, as ticket agents pursuant to 49 U.S.C. § 40102(a)(2), air charter brokers, even when acting as agents of direct air carriers or agents of charterers[9], may not create the false impression that they are direct air carriers. Such misrepresentations violate 14 CFR 399.80(a) and, like violations of section 41101, are also considered by the Department to violate 49 U.S.C. § 41712.

Imperial Jets is an air charter broker that does not hold economic authority from the Department. For a period of time during 2006, Imperial Jets endeavored to link prospective charterers with direct air carriers. Notwithstanding its lack of economic authority, Imperial Jets contracted with direct air carries to provide air transportation,

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transportation is an "indirect air carrier." See, e.g., *Bratton v. Shiffrin*, 635 F.2 1228 (7th Cir. 1980), cert. denied, 449 U.S. 1123 (1980); *Civil Aeronautics Board v. Carefree Travel, Inc.*, 513 F.2d 375 (2d Cir. 1975).

[4] From the standpoint of the requirements of section 41101, the holding out of air service, as well as the actual operation of that service, constitutes "engaging" in air transportation. Prior to 1994, when Title 49 of the United States Code was recodified and simplified, 49 U.S.C. § 41101 stated that no carrier could "engage" in air transportation without appropriate authority. Although the wording of section 41101 now states that what is prohibited is "providing" air transportation without authority, Congress made clear when it recodified Title 49 that in doing so it did not intend any substantive change to the statute. Act of July 5, 1994, Pub. L. 103-272, § 6(a), 108 Stat. 745, 1378.

[5] 49 U.S.C. §§ 40102(a)(5),(a)(23), and (a)(25).

[6] *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516, 522-23 (5th Cir. 1993).

[7] See *supra* note 3.

[8] *Id.*

[9] Obtaining authorization from the customer to act on the customer's behalf as its agent or obtaining authorization from the direct air carrier to act on its behalf as its agent in signing contracts for air transportation are two of the lawful means of conducting business as an air charter broker. *Notice on the Role of Air Charter Brokers in Arranging Air Transportation*, 69 Fed. Reg. 61429, Oct. 18, 2004, *erratum* published 69 Fed. Reg. 62321, Oct. 25, 2004.

which Imperial Jets then re-sold as a principal to third-party charterers in violation of 49 U.S.C. §§ 41101 and 41712.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) of Imperial Jets' advertising practices revealed other violations of these statutes, as well as of 14 CFR 399.80(a). Specifically, Imperial Jets' Internet website contained language that reasonably could have led a consumer to conclude that Imperial Jets is a direct air carrier, which it is not. For example, the "About" page on Imperial Jets' website referred to "information regarding all of your Imperial Jets flights." Additionally, the same webpage stated that snacks and drinks were free on "our flights," and that "most of our planes can noticeably decrease your travel time without layovers, refueling or connections." Such statements, particularly ones that reference "our planes" and "our flights" can reasonably be read to mean that Imperial Jets was a direct air carrier. Through these and other statements on its Internet website, Imperial Jets held out direct air transportation when it did not have proper economic authority, thereby violating 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a).

In mitigation, Imperial Jets points out that, throughout this matter, it has cooperated with the Enforcement Office's investigation. Imperial Jets notes that, after being notified of the Enforcement Office's concerns, Imperial Jets undertook immediate remedial actions, which it asserts were at a significant monetary cost to itself, to prevent future violations of the Department's aviation licensing requirements and its rules pertaining to ticket agents. Imperial Jets states that it has implemented changes on its website which make plain the role in which it acts, and has otherwise complied with all suggestions of the Enforcement Office.

The Enforcement Office has carefully considered all of the information available to it, including the cooperation of Imperial Jets, Inc., but continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Imperial Jets, Inc., have reached a settlement of this matter. Without admitting or denying the violations described above, Imperial Jets, Inc., agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80. Imperial Jets, Inc., further agrees to the assessment of $45,000 in compromise of potential civil penalties otherwise assessable against it. Of this total amount, $22, 500 shall be paid under the terms described below. The remaining $22,500 shall be suspended for 15 months and then forgiven, unless Imperial Jets, Inc., violates this order's cease and desist, payment, or reporting provisions, in which case the entire unpaid amount shall become due and payable immediately and Imperial Jets, Inc., may be subject to further enforcement action. 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 practices by air charter brokers or other ticket agents.

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 Imperial Jets, Inc., violated 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority.

3. We find that Imperial Jets, Inc., violated 14 CFR 399.80(a), as described above, by misrepresenting itself as an air carrier.

4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Imperial Jets, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

5. We order Imperial Jets, Inc., and all other entities owned and controlled by or under common ownership with Imperial Jets, Inc., and its successors and assignees to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a).

6. We order Imperial Jets, Inc., to submit to the Office of Aviation Enforcement and Proceedings on the one-year anniversary of the service date of this order, copies of all advertising material, including print-outs of all versions of its Internet website, that Imperial Jets, Inc., has caused to be published since the service date of this order.

7. We assess Imperial Jets, Inc., a compromise civil penalty of $45,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of this total amount, $7,500 shall be due and payable on May 4, 2007, $7,500 shall be due and payable on September 4, 2007, and $7,500 shall be due and payable on January 4, 2008. The remaining $22,500 shall be suspended for 15 months after the service date of this order, and then forgiven unless Imperial Jets, Inc., violates this order's cease and desist, reporting, or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Imperial Jets, Inc., may be subject to additional enforcement action. Failure to pay the penalty as ordered shall subject Imperial Jets, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

8. We order Imperial Jets, Inc., to pay the compromise civil penalty assessed in ordering paragraph 7, above. 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.

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 initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

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