



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

**Issued by the Department of Transportation
on the 4th day of June 2007**

OneSky Network, LLC

**Violations of 49 U.S.C. §§ 41101 and 41712
and 14 CFR Part 399**

Served June 4, 2007

Docket OST No. 2007-26781

CONSENT ORDER

This consent order concerns violations by OneSky Network, LLC (OneSky), of the Department's aviation licensing requirement, 49 U.S.C. § 41101, and regulatory and statutory prohibitions against ticket agents engaging in unfair and deceptive trade practices and unfair methods of competition found in 14 CFR 399.80 and 49 U.S.C. § 41712. These violations are the result of OneSky having held out common carriage air service as an airline without the requisite economic authority from the Department. This order directs OneSky to cease and desist from future violations and assesses the company compromise civil penalties of \$50,000.

In addition to applicable FAA requirements, in order to engage directly or indirectly in air transportation, citizens of the United States¹ must hold economic authority from the Department, either in the form of a certificate of public convenience and necessity issued pursuant to 49 U.S.C. §§ 41101 and 41102, or in

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).

the form of an exemption from the certificate requirement, such as those applicable to direct air carriers² operating as air taxis under 14 CFR Part 298 and indirect air carriers³ functioning as public charter operators pursuant to 14 CFR Part 380 or air freight forwarders under 14 CFR Part 296. From the standpoint of the requirements of section 41101, the holding out of air service, as well as the actual operation of air service, constitutes “engaging” in air transportation.⁴ Engaging in air transportation without economic authority, in addition to violating section 41101, constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Persons or entities, including air charter brokers that do not have Departmental economic authority, may not, as principals, enter into contracts with direct air carriers for air transportation and then resell that air transportation pursuant to separate contracts with charter customers. Selling or reselling air transportation without economic authority violates the certificate requirement in 49 U.S.C. § 41101. Furthermore, as ticket agents pursuant to 49 U.S.C. § 40102(a)(2), air charter brokers, even if they act ultimately as agents of direct air carriers or agents of charter customers, may not, among other things, at any time 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 considered by the Department to be unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.⁵

OneSky is an air charter broker that does not hold economic authority from the Department. As an air charter broker, OneSky maintains that it arranges air transportation for its customers after obtaining their consent to act as their

² 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.”

³ 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 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 Prior to 1994, when Title 49 of the United States Code was re-codified 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 re-codified 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 Imperial Jets, Order 2007-4-7, Docket OST 2007-26781 (April 6, 2007).

agent.⁶ While such consent, as a general matter, may have been obtained by OneSky in the course of its business, an investigation by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) shows that OneSky held itself out as a direct air carrier in violation of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a). For example, its website asked "Why Air Charter with OneSky," then answered because of "our large national fleet." Furthermore, under the title "Executive Jet Charter: The Intelligent Choice," the site stated: "OneSky Network offers convenience and choice of a large national, safety-rated fleet." The web site also listed certain types of aircraft as being in "our fleet." In addition, a consumer using the site was told on the "About Us" page: "One Sky Network is dedicated to unifying and improving the charter industry by creating a national network. OneSky built a substantial fleet of private jets" OneSky also referred to itself as "a network of regional air carriers." Furthermore, on the "OneSky Fleet" page, the company described the aircraft as "our fleet of private jets." The company's web site was replete with these kinds of phrases, despite an Enforcement Office notice cautioning against the use of these and other misleading phrases and terms.⁷

In explanation and mitigation, OneSky Network states that it is a small business under the Small Business Act, and that it did not intend to violate any law or regulation of the Department pertaining to the Department's aviation licensing requirements. To this end, OneSky asserts that it had incorporated language relating to its operations prior to the issuance of guidance on this subject by the Department, and had consulted various U.S. government officials before it initiated operations. Furthermore, OneSky points out that its original web site contained a statement that OneSky is not a direct air carrier. Since OneSky has been in operation, the firm states, it has made multiple changes to its web site and to all documents forwarded to potential clients at a cost of over \$100,000. OneSky recounts that it has continued to discuss these issues with senior government officials. Furthermore, the company points out that it has cooperated fully with the Enforcement Office during this process, and has taken a leadership role in the industry in reminding all parties of the need to address issues regarding the role of firms providing this service.

⁶ Obtaining authorization from the customer to act on the customer's behalf as its agent in signing a contract for air transportation is one 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.

⁷ See note 5, *supra*. We note that the website did include a disclosure that OneSky is an air charter broker and not a direct air carrier. However, the effect of the misleading language on the website was not negated by the disclosure, which was relegated to an easily overlooked footnote on a secondary page within the website.

The Enforcement Office has carefully considered all of the information available to it, including OneSky's cooperation, and the fact that OneSky's web site now conforms to the Department's requirements, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and OneSky Network, LLC, have reached a settlement in this matter. While neither admitting nor denying the above allegations, OneSky accepts the findings and conclusions of this order to avoid potential litigation. Under this order, OneSky Network, LLC, is assessed \$50,000 in compromise of potential civil penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of the total penalty amount, \$25,000 shall be due as follows: \$12,500 shall be due and payable within 15 days of the date of issuance of this order. An additional \$12,500 shall be due and payable on October 1, 2007. The remaining \$25,000 shall be suspended for twelve months after the date of issuance of this order, and then forgiven, unless OneSky Network, LLC violates this order's cease and desist or payment provisions, in which case the entire sum will become due and payable. The Enforcement Office believes that the assessment of a civil penalty of \$50,000 is appropriate in light of the nature and extent of the violations in question and will provide an effective deterrent to unlawful conduct in the future by OneSky Network, LLC and other air charter brokers that hold themselves out as providing for or arranging 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 OneSky Network, LLC, violated 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority;
3. We find that OneSky Network, LLC, violated 14 CFR 399.80(a), as described above, by misrepresenting itself as an air carrier to the public;

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

5. OneSky Network, LLC, and all other entities owned and controlled by, or under common ownership and control with OneSky Network, LLC, and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR Part 399 and 49 U.S.C. §§ 41101 and 41712;

6. OneSky Network, LLC, is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 through 4 of this order. Of the total penalty amount, \$25,000 shall be due as follows: \$12,500 shall be due and payable within 15 days of the date of issuance of this order. An additional \$12,500 shall be due and payable on October 1, 2007. The remaining \$25,000 shall be suspended for twelve months after the date of issuance of this order, and then forgiven, unless OneSky Network, LLC, violates this order's cease and desist or payment provisions, in which case the entire sum shall become due and payable immediately. Failure to pay the compromise assessment as ordered will subject OneSky Network, LLC, to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and

7. Payments 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 transfers 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 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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