



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

Issued by the Department of Transportation
On the 24th day of November, 2010

ACASS Canada Ltd.

**Violations of 49 U.S.C. §§ 41301, 41712 and
14 CFR 212.9(b)(1)**

Docket OST 2010-0005

Served November 24, 2010

CONSENT ORDER

This consent order concerns violations by ACASS Canada Ltd. (ACASS) of 14 CFR 212.9(b), the Department's prior authorization requirement rule for foreign air carriers. It directs ACASS to cease and desist from future violations of those provisions and assesses the carrier a compromise civil penalty of \$20,000.

Foreign air carriers must obtain a "statement of authorization" under 14 CFR 212.9(b)(1) prior to performing a fifth-freedom charter.¹ A foreign air carrier that engages in air transportation without appropriate authority from the Department, including that required by Part 212, is in violation of 49 U.S.C. § 41301. Violations of section 41301 also constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

ACASS is a foreign air carrier that holds a Canadian charter air taxi registration pursuant to 14 CFR Part 294. That registration does not authorize ACASS to conduct fifth-freedom charters to or from the United States. ACASS recently conducted two fifth-freedom charter flights, one from Bermuda International Airport (BDA) to Syracuse Hancock International Airport (SYR), and a second from BDA to Boston Logan International Airport (BOS). These flights lacked the requisite Departmental

¹ A "fifth freedom charter" is a charter flight that carries traffic that originates and terminates in countries other than the carrier's home country, regardless of whether the flight operates via the home country. 14 CFR 212.3.

authorization, required by 14 CFR 212.9(b)(1), as ACASS neither applied for nor was granted a statement of authorization to conduct either operation. Before issuing such authorization, the Department would have assured itself that necessary conditions were met, including that the homeland of the applicant carrier employed a reciprocal policy with regard to U.S. carriers.

By engaging in the operations described above, ACASS violated 14 CFR 212.9(b)(1), thereby violating 49 U.S.C. §§ 41301 and 41712 as well.

While ACASS does not deny that the two concerned flights took place, ACASS states that the flights were carried out in relation to air ambulance services. ACASS asserts that such services represent but a minor component of its overall business and that it conducted these isolated flights under the mistaken assumption that they were exempt from the requirement to obtain a Statement of Authorization because they were in relation to medical treatment. ACASS points out that prior to being contacted by the Office of Aviation Enforcement and Proceedings (Enforcement Office) it had already been made aware of its potential violations and undertook immediate measures to ensure future full compliance.

The Department views compliance with the Federal aviation statutes and regulations very seriously. Therefore, the Enforcement Office has carefully considered the information provided by ACASS and continues to believe that enforcement action is warranted. The Enforcement Office and ACASS have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, ACASS consents to the issuance of this order to cease and desist from future violations of 14 CFR 212.9(b)(1) and 49 U.S.C. §§ 41301 and 41712, and to the assessment of \$20,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future noncompliance with the Department's prior authorization requirement rule by ACASS and other foreign carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.
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 ACASS Canada Ltd. violated 14 CFR 212.9(b)(1) by conducting fifth-freedom charter flights without the requisite Departmental authorization;
3. We find that by engaging in the conduct described in paragraph 2, above, ACASS Canada Ltd. violated 49 U.S.C. § 41301, and engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;

4. We order ACASS Canada Ltd. and all other entities owned or controlled by, or under common ownership and control with ACASS Canada Ltd. their successors, affiliates, and assigns, to cease and desist from further similar violations of 49 U.S.C. §§ 41301 and 41712 and 14 CFR 212.9(b)(1);
5. We assess ACASS Canada Ltd. a compromise civil penalty of \$20,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above; and
6. We order ACASS Canada Ltd. to pay within 30 days of the issuance of this order, the compromise civil penalty assessed in ordering paragraph 5, above, 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 compromise penalty assessment as ordered will subject ACASS Canada Ltd. to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and to 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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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