



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

**Issued by the Department of Transportation
On the Ninth day of June, 2011**

Frontier Airlines, Inc.

Violations of 14 CFR 234.11 and 49 U.S.C. § 41712

Docket OST-2011-0003

Served June 9, 2011

CONSENT ORDER

This consent order concerns violations by Frontier Airlines, Inc., (Frontier) of the Department's requirements in 14 CFR 234.11 to display on-time performance data for each domestic flight for which schedule information is available on the initial listing of flights on its website. These violations of section 234.11 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Frontier to cease and desist from future violations of section 234.11 and 49 U.S.C. § 41712 and assesses the carrier \$40,000 in civil penalties.

Applicable Law

The Department's on-time performance (OTP) data rule enables consumers to make informed choices when booking air transportation by requiring the posting of information on carrier websites to indicate which flights are often late or are often cancelled. Specifically, the rule requires reporting carriers to display the percentage of arrivals that were on time (i.e., within 15 minutes of scheduled arrival time), the percentage of arrivals that were more than 30 minutes late (including special highlighting if the flight was late more than 50 percent of the time), and the percentage of flight cancellations if 5 percent or more of the flight's operations were cancelled in the month covered. This information must be provided in the initial listing of flights or by showing all of the required information via a prominent hyperlink in close proximity to each flight on the page with the initial listing of flights. By requiring carriers to display flight delay data to consumers in the browsing/shopping phase of booking air transportation, consumers are able to identify flights that suit their travel needs and abandon consideration of flights that frequently experience lengthy delays or cancellations if they choose. Reporting carriers that do not disclose performance data on their website are not in compliance with section 234.11. Violations of section 234.11 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

Background

The Office of Aviation Enforcement and Proceedings' (Enforcement Office) review of Frontier's website and information provided by Frontier revealed that OTP data were not available to consumers visiting Frontier's website during a period of time in early 2011, a significant violation of the Department's OTP rule. Frontier did not discover or correct the deficiency until after the Enforcement Office notified Frontier of the deficiency. The failure to display OTP data violated section 234.11 and constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Mitigation

In mitigation, Frontier states that it is committed to full compliance with the Department's consumer disclosure requirements. Frontier further states that it has a track record of compliance with the Department's regulations for the disclosure of OTP data, as the Department's past testing of Frontier's website has demonstrated, and that it has never previously had OTP data disclosure issues. Frontier further explains that the OTP data disclosure incident occurred as a result of a unilateral change by an outside vendor to the vendor's proven system for collecting and disseminating OTP data. Frontier was not told by the vendor that the system had changed. According to Frontier, upon learning of the issue, Frontier promptly resolved the issue, within one business day. Frontier further states that it fully cooperated with the Enforcement Office throughout its investigation. Frontier also states that Frontier did not receive any complaints about its website's OTP information during the brief period the data were not disclosed. Frontier claims that its own internal monitoring system would have detected the issue, and that it is implementing enhancements to its monitoring and auditing procedures to prevent a reoccurrence of this issue.

Decision

The Enforcement Office has carefully considered the information provided by Frontier but continues to believe that enforcement action is warranted. In order to avoid litigation, Frontier, without admitting or denying any violation, agrees to settle this matter with the Enforcement Office through the issuance of this order to cease and desist from future similar violations of 14 CFR 234.11 and 49 U.S.C. § 41712 and to the assessment of \$40,000 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 establishes a strong deterrent to future similar unlawful practices by Frontier and other 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 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 the requirements of 14 CFR 234.11 by failing to display on-time performance data on its website;
3. We find that by violating 14 CFR 234.11 as described in ordering paragraph 2, above, Frontier Airlines, Inc., has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Frontier Airlines, Inc., and its successors and assignees to cease and desist from further violations of 14 CFR 234.11 and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Frontier Airlines, Inc., and its successors and assignees to further enforcement action;
5. We assess Frontier Airlines, Inc., a compromise civil penalty of \$40,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$20,000 shall be due and payable within thirty (30) days of the date of issuance of this order. The remaining \$20,000 shall be due and payable immediately if Frontier Airlines, Inc., violates this order's cease and desist or payment provisions during the twelve (12) months following the service date of this order; and
6. We order Frontier Airlines, Inc., to pay 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 civil penalty as ordered shall subject Frontier Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible additional 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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Deputy General Counsel

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