



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

Issued by the Department of Transportation
On the Nineteenth day of October, 2012

I-Jet Aviation, LLC,

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

Docket OST 2012-0002

Served October 19, 2012

CONSENT ORDER

This consent order concerns unauthorized air transportation by I-Jet Aviation, LLC, (I-Jet) in violation of 49 U.S.C. § 41101 and 49 U.S.C. § 41712. For a period of time in 2011, I-Jet engaged in the provision of air transportation without holding requisite economic authority from the Department of Transportation. This order also concerns I-Jet's violations of 14 CFR 399.80, which prohibits certain practices by ticket agents that constitute unfair and deceptive practices and unfair methods of competition. This order directs I-Jet to cease and desist from such further violations and assesses a compromise civil penalty of \$50,000.

Applicable Law

In order to engage directly or indirectly in air transportation, citizens of the United States¹ are required to hold economic authority from the Department pursuant to 49 U.S.C. § 41101, either in the form of a “certificate of public convenience and necessity” or in the form of an exemption from the certificate requirement, such as those applicable

¹ A “citizen of the United States” includes a corporation or association 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).

to direct air carriers² operating as air taxis under 14 CFR Part 298, or indirect air carriers³ functioning as public charter operators pursuant to 14 CFR Part 380. This economic authority is separate and distinct from any safety authority required by the Federal Aviation Administration (FAA). “Air transportation” includes the transportation of passengers or property by air as a common carrier between two states 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.⁴ 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.⁵

Entities or persons, such as air charter brokers, that do not have economic authority from the Department may not, as principals, enter into contracts with direct air carriers for air transportation and then re-sell that air transportation pursuant to separate contracts with charter customers. Selling or re-selling air transportation without economic authority constitutes “engaging” in air transportation and violates 49 U.S.C. § 41101.⁶ Under Department enforcement case precedent, violations of section 41101 also constitute an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.⁷

Moreover, as ticket agents pursuant to 49 U.S.C. § 40102(a)(45), air charter brokers may not create the false impression that they are direct air carriers when they are not. Such conduct violates 14 CFR 399.80(a). Further, pursuant to 14 CFR 399.80(c), air charter brokers are prohibited from misrepresenting the quality or kind of air transportation service they arrange. Violations 14 CFR 399.80, like violations of section 41101, are also considered by the Department to violate 49 U.S.C. § 41712.⁸

² A “direct air carrier” is a person or other entity that provides air transportation and that has control over the operational functions involved in providing that transportation.

³ An “indirect air carrier” is a person or other entity that engages indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier.

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

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

⁶ 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. 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.

⁷ E.g., *VI Jets, Inc.*, *Violations of 49 U.S.C. § 41101 and 41712 and 14 CFR Part 399*, Order 2009-10-11 (Oct. 21, 2009).

⁸ E.g., *Luxury Air Jets, Inc.*, *Violations of 49 U.S.C. § 41101 and 41712 and 14 CFR Part 399*, Order 2010-2-17 (February 19, 2010).

Background

I-Jet is a Texas limited liability company that specializes in arranging single-entity charter⁹ air transportation. It does not hold economic authority from the Department to engage directly or indirectly in air transportation. However, an investigation by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that for a period of time in 2011, I-Jet engaged in unauthorized air transportation as an indirect air carrier. Specifically, I-Jet obtained a large portion of its business by bidding, as a principal acting in its own right, on solicitations from various charter customers, all of which were university athletic departments. After winning a bid, I-Jet entered into an agreement with the charterer-university and became contractually bound as a principal to provide charter air transportation to that university. Then, in order to fulfill that contractual obligation, I-Jet entered into a separate agreement with a direct air carrier, which then became contractually responsible to I-Jet, as the charterer, rather than to the university, for operating the charter flights. On all occasions relevant herein, I-Jet was not authorized to act as an agent of the universities or of the direct air carriers that operated the service. Under these circumstances, I-Jet unlawfully engaged in air transportation as an indirect air carrier.

A separate matter concerns I-Jet's violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR 399.80(a). Specifically, I-Jet's Internet website contained language and photos that could have led a consumer to reasonably conclude that I-Jet is a direct air carrier, which it is not. For example, I-Jet's website made numerous references to "our aircraft" and "our 737/200 aircraft," which, along with pictures depicting the exterior and interior of aircraft, can reasonably be read to indicate that I-Jet is a direct air carrier. Moreover, in a written charter service proposal submitted by I-Jet to a university, I-Jet identified itself as an "airline" that operates "737-200" aircraft and holds a "121/125" FAA Certificate.¹⁰ Through statements such as these, I-Jet unlawfully held out air transportation as if it were a direct air carrier when it did not have proper economic authority.

Furthermore, in October 2011, after winning a bid from a university, I-Jet provided the university with the operating certificate and insurance certificate of Clementine Aviation Services, LLC, (Clementine) the direct air carrier that I-Jet proposed to operate these flights. At all times relevant to this matter, Clementine was a large aircraft operator licensed by the FAA under 14 CFR Part 125. Authority under this FAA regulation is limited to private carriage operations.¹¹ Notwithstanding the fact that it knew that Clementine did not have the authority to engage in common carriage and that Clementine specifically declined I-Jet's proposal to engage in any charter service, I-Jet

⁹ A single-entity charter is a charter for the entire capacity of the aircraft, the cost of which is borne by the charterer and not directly or indirectly by the individual passengers.

¹⁰ I-Jet ultimately did not win that bid.

¹¹ 14 CFR 125.11(b) provides that "[n]o certificate holder may conduct any operation which results directly or indirectly from any person's holding out to the public to furnish transportation."

misrepresented to the university Clementine's willingness and availability for such service. Such conduct by I-Jet violates 14 CFR 399.80(c) and constitutes a separate and distinct violation 49 U.S.C. § 41712.

Decision

The Enforcement Office has carefully considered all of the information available to it, and continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and I-Jet have reached a settlement of this matter. Without admitting or denying the violations described above, I-Jet agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712, and to the assessment of \$50,000 in compromise of potential civil penalties otherwise assessable against it. 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 I-Jet and other similarly situated entities.

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

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 I-Jet Aviation, LLC, violated 49 U.S.C. § 41101, as described above, by engaging in air transportation without appropriate economic authority;
3. We find that I-Jet Aviation, LLC, violated 14 CFR 399.80(a), as described above, by misrepresenting itself as a direct air carrier;
4. We find that I-jet Aviation, LLC, violated 14 CFR 399.80(c), as described above, by misrepresenting the quality or kind of service it arranged;
5. We find that, by engaging in the conduct described in paragraphs 2, 3, and 4, above, I-Jet Aviation, LLC, engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
6. We order I-Jet Aviation, LLC, and all other entities owned and controlled by or under common ownership with I-Jet Aviation, LLC, 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;
7. We assess I-Jet Aviation, LLC, a compromise civil penalty of \$50,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, 4, and 5, above. Of this total penalty amount, \$25,000 shall be due and payable in ten (10) equal installments of \$2,500 each, with the first installment due and payable within 30 days of the issuance date of this order, and the remaining nine (9)

installments due and payable within 30 days of the previous payment's due date. The remaining \$25,000 shall become due and payable if, within one year of the issuance date of this order, I-Jet Aviation, LLC, violates the cease and desist provision in ordering paragraph 6, above, or fails to comply with the payment provisions in this ordering paragraph, in which case, the entire unpaid portion of the civil penalty shall become due and payable immediately; and

8. We order I-Jet Aviation, LLC, to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject I-Jet Aviation, LLC, 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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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