



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

**Issued by the Department of Transportation  
On the Twenty-Fourth day of February, 2012**

**Twin Air Calypso Limited, Inc.**

**Violations of 49 U.S.C. §§ 41101,  
41712, and 41738, 14 CFR Part 298,  
and Order 2005-3-38**

**Docket OST 2012-0002**

**Served February 24, 2012**

**CONSENT ORDER**

This consent order concerns unauthorized scheduled passenger service as a commuter air carrier by Twin Air Calypso Limited, Inc., (TAC) in violation of 49 U.S.C. §§ 41101, 41712, and 41738 and 14 CFR Part 298, the Department's commuter air carrier requirements, as well as Order 2005-3-38. It directs TAC to cease and desist from further violations of these statutory provisions, federal regulation, and order, and it assesses the carrier a compromise civil penalty of \$70,000.

**Applicable Law**

Pursuant to 49 U.S.C. § 41101, citizens of the United States<sup>1</sup> must have a certificate of public convenience and necessity from the Department prior to engaging in air transportation. Part 298 creates an exemption from the certificate requirement in section 41101 for a class of carriers called air taxi operators, which are carriers that use only small aircraft<sup>2</sup> and perform either on-demand service or no more than four round-trips per week in any single market according to a published schedule. The economic

<sup>1</sup> 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, as well as of the 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).

<sup>2</sup> Small aircraft are aircraft originally designed to have a maximum passenger capacity of 60 seats or fewer or a maximum payload capacity of 18,000 pounds or less. 14 CFR 298.2.

licensing requirements of section 41101 and Part 298 are separate and distinct from the safety-related licensing requirements of the Federal Aviation Administration (FAA). Holding out or operating scheduled service in excess of this level renders the air taxi operator a “commuter air carrier” for purposes of Part 298. Under 49 U.S.C. § 41738, the Department must find a commuter air carrier “fit, willing, and able” prior to commencing such scheduled service. Section 298.21(d) of the Department’s regulations implements the statutory fitness requirement with respect to air taxi operators seeking to provide service as commuter air carriers. Operating, advertising, or otherwise holding out commuter air service without having first been found fit violates section 298.21(d), as well as 49 U.S.C. §§ 41101 and 41738. In addition, violations of this regulation and these statutory provisions also constitute violations of 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.

### **Facts and Conclusion**

TAC is a Florida-based on-demand air carrier registered under 14 CFR Part 298. TAC advertises on-demand air carrier operations between Fort Lauderdale, Florida (FLL), and points in the Caribbean. At all times relevant to this matter TAC did not hold a commuter air carrier authorization from the Department. For a period of time during 2011, TAC regularly operated more than four round-trips per week between FLL and Marsh Harbour (MHH) and Treasure Cay (TCB) in the Bahamas. Additionally, TAC held out a schedule for these flights to investigators who inquired via telephone and in-person at the airport. By holding out and operating these flights more than four times per week, a level of service that required it to be found fit as a commuter air carrier, TAC exceeded the scope of its exemption authority under 14 CFR Part 298, thereby also violating 49 U.S.C. §§ 41101, 41712, and 41738.

We are particularly concerned about these violations since TAC is a successor company to Twin Town Leasing Company d/b/a Twin Air, an on-demand carrier registered under 14 CFR Part 298. On March 28, 2005, Twin Air agreed to the issuance of Order 2005-3-38 for similar violations of 49 U.S.C. §§ 41101, 41712, and 41738, as well as 14 CFR Part 298, was assessed \$20,000 in compromise civil penalties, and was ordered to cease and desist from similar violations in the future. At that time, Twin Air was holding out and operating six flights per week from FLL to North Eleuthera in the Bahamas, a level of service that required it to be found fit as a commuter carrier. The violations described above also constitute violations of Order 2005-3-38.

### **Mitigation**

In mitigation, TAC states that it did not intend to violate the federal aviation statutes, the Department’s economic regulations, and Order 2005-3-38. TAC further states that it cooperated fully with the investigation by the Office of Aviation Enforcement and Proceedings and that it cancelled flights that would have exceeded its economic authority.

### Decision

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by TAC but continues to believe that enforcement action is warranted. The Enforcement Office and TAC have reached a settlement of this matter in order to avoid litigation. TAC consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §§ 41101, 41712, and 41738, as well as 14 CFR Part 298 of the Department's regulations and Order 2005-3-38 and to the assessment of \$70,000 in compromise of potential 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 economic licensing requirements by TAC as well as by 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 Twin Air Calypso Limited, Inc., violated 14 CFR 298.21(d), 49 U.S.C. §§ 41101 and 41738, and Order 2005-3-38 by holding out and operating commuter air service without having first been found fit as a commuter air carrier;
3. We find that by violating 14 CFR 298.21(d), 49 U.S.C. §§ 41101 and 41738, and Order 2005-3-38, as described in ordering paragraph 2, above, Twin Air Calypso Limited, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Twin Air Calypso Limited, Inc., and all other entities owned or controlled by, or under common ownership of Twin Air Calypso Limited, Inc., and its successors and assignees, to cease and desist from future violations of 14 U.S.C. §§ 41101, 41712, and 41738, 14 CFR Part 298, and Order 2005-3-38. Failure to comply with this cease and desist provision shall subject Twin Air Calypso Limited, Inc., and its successors, affiliates, and assignees to further enforcement action;
5. We assess Twin Air Calypso Limited, Inc., \$70,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$35,000 shall be due and payable in seven equal installments of \$5,000. The first installment of \$5,000 is due and payable within 30 days of the issuance date of this order, the

second installment of \$5,000 is due and payable within 60 days of the issuance date of this order, the third installment of \$5,000 is due and payable within 90 days of the issuance date of this order, the fourth installment of \$5,000 is due and payable within 120 days of the issuance date of this order, the fifth installment of \$5,000 is due and payable within 150 days of the issuance date of this order, the sixth installment of \$5,000 is due and payable within 180 days of the issuance date of this order, and the seventh and final installment of \$5,000 is due and payable within 210 days of the issuance date of this order. The remaining \$35,000 shall be due and payable immediately if Twin Air Calypso Limited, Inc., violates this order's cease and desist or payment provisions within one year of the issuance of this order; and

6. We order Twin Air Calypso, Ltd., to remit the payments assessed in 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 in accordance with the instructions contained in the attachment to this order. Failure to pay the penalty as ordered shall subject Twin Air Calypso, Ltd., to the 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 ten 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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