



**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 May, 2012

People Express Airlines, Inc.

**Violations of 49 U.S.C. § 41101 and
14 CFR 201.5(a)**

Docket OST 2012-0002

Served May 9, 2012

CONSENT ORDER

This order concerns the offer and sale of memberships by People Express Airlines, Inc., (People Express) in its “Club Travelati” in violation of 49 U.S.C. § 41101 and 14 CFR 201.5(a). It directs People Express to cease and desist from future violations of these provisions and assesses People Express a compromise civil penalty of \$10,000.

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. An entity that does not have economic authority may not hold out air transportation. Such conduct would constitute “engaging” in air transportation and would violate 49 U.S.C. § 41101.² In addition, 14

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).

² 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.

CFR 201.5(a) prohibits an applicant for new or amended authority from advertising the air transportation covered by its application until the application has been approved by the Department. Operating, advertising, or otherwise holding out or selling air transportation to the public as a certificated carrier without having such authority violates section 41101 and Part 201.

Background

People Express is a Virginia-based corporation. It does not hold economic authority from the Department to engage in air transportation. On March 19, 2012, People Express applied for authority to engage in interstate scheduled passenger air transportation. Its application is currently pending with the Department. Between February 13 and March 27, 2012, People Express advertised on its Internet website memberships in its “Club Travelati” by offering prospective members, among other things, the opportunity to receive after scheduled service began “ULTRA-LOW discount offers” and discount certificates to be used towards their first “PEOPLEExpress™ ticket for any scheduled flight or fare.” As a result, People Express sold more than 130 memberships through its website. By advertising and selling club memberships offering future discounts before it received effective economic authority for that service, People Express violated 49 U.S.C. § 41101 and 14 CFR 201.5.

Mitigation

In mitigation, People Express states that it takes full compliance with the Department’s consumer protection regulations very seriously. People Express emphasizes that it moved immediately and decisively to address the Department’s issues about its Club Travelati (“Club”), changing its website to eliminate all substantive web content related to the Club within one hour of being informed by the Department of its concerns. People Express believes that this response demonstrates its favorable compliance disposition.

People Express maintains that it was not its intent to advertise, hold out, or sell air transportation. Rather, People Express asserts that the Club membership offered non-air fare and non-air service related benefits, including “first to know” information about the company for Charter Club members, as well as a charter member souvenir pin. People Express states that it intended the Club to promote interest in the company, not to sell airline services.

People Express states that it did not believe that its offerings constituted advertising, sale or holding out of air transportation and that it established safeguards to avoid running afoul of the “pre-sales” prohibition in the Department’s regulations by making clear on its website and in the Club’s Terms and Conditions that Club membership would not become effective (and Club benefits would not arise) until after People Express operated its first scheduled departure (which necessarily means that People Express had received all of its regulatory approvals and certificates to operate air transportation). People Express asserts that its intent was to ensure that no fare or air transportation related benefits would accrue or have validity prior to the receipt of regulatory approvals and the

commencement of service. Quoting from its website, People Express states that the Charter member benefits were limited only to “our pre-launch plans, including all of our exciting announcements and events” and that other benefits would not begin until after the company began scheduled service. With respect to “ULTRA Low-Fare offers” and discount certificates, People Express asserts that only “after we begin our scheduled service” would Club members be entitled to later receive fare “offers” or pay \$15 for a discount certificate.

Finally, People Express states that it has agreed to settle this matter without admitting violations in order to avoid the burden and expense of litigation and to put this issue behind it to avoid any delay to the consideration of its pending application for certificate authority before the Department.

DECISION

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by People Express, but continues to believe that enforcement action is warranted. The Enforcement Office and People Express have reached a settlement of this matter in order to avoid litigation. Without admitting the violations described above, People Express consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41101 and 14 CFR Part 201 and to the assessment of \$10,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. This assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent against future noncompliance with the Department’s requirements governing the conduct of applicants for certificate authority.

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 People Express Airlines, Inc., violated 49 U.S.C. § 41101 and 14 CFR 201.5 by advertising and selling club memberships offering future discounts on air travel without having first been granted the authority to engage in passenger air services;
3. We order People Express Airlines, Inc., and all other entities owned or controlled by or under common ownership with People Express Airlines, Inc., and its successors and assignees to cease and desist from further violations of 49 U.S.C. § 41101 and 14 CFR Part 201;
4. We assess People Express Airlines, Inc., a compromise civil penalty of \$10,000 in lieu of civil penalties that might otherwise be assessed for the violation found in

ordering paragraph 2, above, which amount shall be due and payable within thirty (30) days of the date of the issuance of this order. Failure to pay the penalty as ordered shall also subject People Express Airlines, Inc., 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; and

5. Payment shall be made by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions.

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)

An electronic version of this document is available at
www.regulations.gov