



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

Issued by the Department of Transportation
On the First day of August, 2013

Frontier Airlines, Inc.

**Violations of 14 CFR 399.84(a)
and 49 U.S.C. § 41712**

**Docket OST 2013-0004
Served August 1, 2013**

CONSENT ORDER

This order concerns violations by Frontier Airlines, Inc., (Frontier) of the full-fare advertising rule, 14 CFR 399.84(a), and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. It directs Frontier to cease and desist from future similar violations and assesses the carrier \$80,000 in civil penalties.

Applicable Law

On April 25, 2011, the Department issued a set of rules designed to enhance protections for air travel consumers that, among other things, required airlines to comply with the Department's full-fare advertising rule as written. The full-fare rule mandates that the price advertised for passenger air transportation include all government-imposed taxes and fees and all mandatory airline- and ticket agent-imposed fees. This provision was codified in 14 CFR 399.84(a), which took effect on January 26, 2012. Although charges included within the single total price listed, e.g., government taxes, may be stated separately or through links or "pop ups" on websites that display the total price, such charges may not be false or misleading, may not be displayed as prominently as the total price, may not be presented in the same or larger size as the total price, and must provide cost information on a per-passenger basis that accurately reflects the cost of the item

covered by the charge. Violations of 14 CFR 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

In July 2011, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) conducted forums on the new consumer rules, providing guidance to carriers and agents on compliance. One topic discussed in depth at the forum and then later addressed in the Enforcement Office's Frequently Asked Questions guidance document published on September 6, 2011, and updated on October 19, 2011, January 11, 2012, and June 15, 2012, as well as in a Notice published on May 17, 2012, was how a carrier should display the "fare" for an award ticket under a frequent flyer program to avoid potential enforcement action for violating the full fare rule. The Enforcement Office advised carriers that, in the case of an award ticket, the full fare required to be stated should be the total amount of miles (or credits) a consumer needs to redeem for the award ticket plus any monetary amount the consumer must pay in order to obtain the award ticket. Therefore, the mileage (or credits) amount and the cash amount should be equally prominent in the display, as they are both components of the full fare. The monetary amount must include any mandatory charge that the carrier imposes in order to redeem the award amount, including service/processing charges and fuel surcharges as well as taxes and fees.

Facts

From July 2012 through March 2013, Frontier conducted an advertising campaign by mail and e-mail to Frontier customers, online at www.flyfrontier.com, onboard Frontier aircraft, and at airports to promote its World MasterCard. Some of the advertisements included the following statement: "Get up to 45,000 miles with qualifying transactions. That's enough for a roundtrip award ticket!"

Those advertisements with the language above failed to note that consumers would have to pay certain taxes and fees to redeem the "roundtrip award ticket." Specifically, consumers were not informed that the 45,000 miles could be redeemed for domestic air travel only if the consumer paid the September 11th Security Fee of up to \$5.00 each way. In addition, consumers were not informed that credits redeemed for international air travel were also subject to the U.S. Customs User Fee of \$5.50, the U.S. Animal and Plant Health Inspection Fee of \$5.00, the U.S. Immigration User Fee of \$7.00, and applicable taxes imposed by foreign governments. These mandatory charges were not disclosed anywhere in the advertisements described above, including in the footnotes.

Frontier has advised the Department that it believes that approximately 25 percent of the World MasterCard accounts opened between July 1, 2012, and March 20, 2013, were opened via the web page containing the advertisements that did not disclose the taxes and fees.

By not disclosing the taxes and fees applicable to the "roundtrip award ticket" offered to new Frontier World MasterCard cardholders, Frontier failed to state the entire price to be paid by the consumer to the air carrier as required by 14 CFR 399.84(a). By violating

section 399.84(a), Frontier also committed an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Mitigation

Frontier states that it takes compliance with the Department's consumer regulations seriously, including the Department's advertising and website display requirements and guidelines. Frontier also states that it is committed to fully and properly informing its customers about the various means through which they can accumulate and use miles in Frontier's Early Returns frequent flyer program.

With respect to the advertisements that are the subject of this order, Frontier states that its intent in advertising this program was to advise consumers of the number of miles that they would need to achieve award status and believes that the language at issue conveys that message when fairly read in context. Frontier states that there was never any intent on Frontier's part to deceive consumers about the award travel benefits associated with obtaining a World MasterCard or to imply that they could redeem awards only with miles. In this regard, Frontier states that the Early Returns reward chart on Frontier's website clearly displayed specific tax/fee information proximate to the amount of miles needed for an award redemption. Frontier further states that only a few of the advertisements for the World MasterCard campaign used the language "Earn a Roundtrip Flight."

Frontier also states that upon learning of the Department's concerns, Frontier immediately (on the same day) changed the applicable advertisements. Frontier also asserts that it has not received any written complaints from passengers or customers about the disclosure of taxes/fees that would need to be paid in addition to miles for award travel. Frontier further states that a very large percentage of Frontier's award travel is for domestic air transportation, and that the applicable taxes/fees involved with such travel are also very modest (\$2.50 to \$10).

Decision

The Department takes compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by Frontier but continues to believe that enforcement action is warranted. The Enforcement Office and Frontier have reached a settlement of this matter in order to avoid litigation. Frontier consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84(a) and to the assessment of \$80,000 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 to future noncompliance with the Department's consumer protection requirements.

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 this order as being in the public interest;
2. We find that Frontier Airlines, Inc., violated 14 CFR 399.84(a) by quoting a price for air transportation without stating the entire price to be paid by the consumer to the air carrier;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Frontier Airlines, 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 Frontier Airlines, Inc., and all other entities owned or controlled by, or under common ownership and control with Frontier Airlines, Inc., and its successors, affiliates, and assignees, to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84. Failure to comply with this cease and desist provision shall subject Frontier Airlines, Inc., and its successors, affiliates, and assignees to further enforcement action; and
5. We assess Frontier Airlines, Inc., \$80,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above, as follows:
 - a. Up to \$40,000 shall be credited to Frontier Airlines, Inc., contingent on it providing within sixty (60) days after the issue date of this order a travel voucher to World MasterCard cardholders who opened accounts through the distribution channel described in this order, between July 1, 2012, and January 10, 2013, and upon submission of supporting documentation including detailed accounting verifying the issuance of the travel vouchers. The documentation must be accompanied by a sworn statement from a company official attesting to the accuracy of the documentation, including the accounting, within ninety (90) days after the issue date of this order. These vouchers must be transferable and may be used to acquire transportation or to pay toward taxes and fees for such transportation, on Frontier Airlines, Inc. The Department will credit Frontier for eighty (80) percent of the total face value of the travel vouchers;
 - b. Any portion of the \$40,000 not credited pursuant to paragraph 5.a, above, shall become due and payable within one-hundred-twenty (120) days after the issue date of this order; and
 - c. The remaining portion of the civil penalty amount, \$40,000, shall become due and payable immediately if, within one year of the date of issuance of this order, Frontier Airlines, Inc., violates this order's

cease-and-desist provisions or fails to comply with the order's payment provisions, in which case Frontier Airlines, Inc., may be subject to additional enforcement action for violation of this order.

6. We order Frontier Airlines, Inc., to pay the penalty through Pay.gov set forth in paragraph 5.b or 5.c, if applicable, to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Frontier Airlines, Inc., 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 ten days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

SAMUEL PODBERESKY

Assistant General Counsel for
Aviation Enforcement and
Proceedings

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