



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

Issued by the Department of Transportation  
on the 5th day of November, 2008

**Frontier Airlines, Inc.**

**Violations of 14 CFR Part 250 and  
49 U.S.C. § 41712**

**Docket OST 2008-0031**

**Served November 5, 2008**

**CONSENT ORDER**

This Consent Order concerns violations by Frontier Airlines, Inc., (Frontier) of the Department's oversales rule, 14 CFR Part 250, and 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, stemming from the carrier's failure to provide cash compensation to passengers who are involuntarily denied boarding. The order assesses Frontier a civil penalty of \$40,000.

The Department's rule on oversales, 14 CFR Part 250, provides for compensation of passengers holding confirmed reservations who are denied boarding involuntarily due to overbooking of a flight. Under section 250.8(a), air carriers must provide passengers involuntarily denied boarding "on the day and place the denied boarding occurs ... cash or an immediately negotiable check for the appropriate amount of compensation provided in § 250.5." Although the Department's regulations allow carriers to offer free or reduced rate air transportation (such as travel vouchers for use on future flights) in lieu of the cash due, carriers that opt to do so must first "[inform] the passenger of the amount of cash compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash payment." 14 CFR § 250.5(b). In other words, passengers who are involuntarily denied boarding must be apprised of their entitlement to cash compensation and given the choice to receive this form of compensation instead of a travel voucher. Violations of 14 CFR Part 250 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

During compliance inspections by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) at Ronald Reagan Washington National Airport (DCA) and Baltimore Washington International Thurgood Marshall Airport (BWI),

several Frontier ticket counter and gate agents, as well as customer service supervisors, were not fully informed of the Department's requirement regarding passengers who are involuntarily denied boarding ("bumped"), indicating that Frontier, at these airports, did not offer cash at the airport as an option. Instead, bumped passengers received travel vouchers redeemable on future Frontier flights in an amount based on the length of delay of the passenger's originally scheduled arrival time. Frontier's airport agents advised passengers who declined the vouchers and insisted on receiving cash compensation to contact Frontier's corporate customer service department.

The Enforcement Office recognizes that Frontier's official policy regarding involuntary denied boarding compensation, as stated in its denied boarding statement and its employee training materials, conforms to the requirements of Part 250. Cash compensation is listed as one of three options available to passengers on Frontier's "Oversales and Involuntary Denied Boarding Compensation" notice, which also provides under the heading "Method of Payment" that "the customer may, however, insist on the cash payment." Frontier's Customer Service Manual confirms that "[a]lthough Frontier offers Transportation Vouchers as compensation, passengers who have been denied boarding involuntarily may request cash compensation." In practice, however, Frontier impedes involuntarily bumped passengers from seeking cash compensation by making such compensation difficult to obtain when a passenger requests cash instead of a transportation voucher. Frontier does so by requiring passengers who request cash compensation to call Frontier's corporate customer service department to obtain that form of compensation. Indeed, Frontier's training manuals provide no guidance regarding how and when cash compensation should be dispensed to eligible passengers who opt for it.<sup>1</sup>

Frontier's failure to offer involuntarily bumped passengers a realistic opportunity to receive cash compensation on the day and at the place the denied boarding occurs violates the requirements of section 250.8(a). In addition, violations of Part 250 constitute violations of 49 U.S.C. § 41712, which prohibits air carriers from engaging in unfair or deceptive practices, as well as unfair methods of competition, in the provision and sale of air transportation.

In mitigation, Frontier states that it is not Frontier's regular business practice to oversell its flights and that a significant number of its denied boarding situations arose during irregular operations. At BWI, where the carrier ceased operations in January 2007, Frontier asserts that no consumers were impacted by its agents' actions. Frontier states that it did not oversell flights in the BWI market, nor did it have any denied boardings

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<sup>1</sup> By contrast, these manuals do contain instructions on issuing automated transportation vouchers. As noted above, section 250.5 (b) requires carriers such as Frontier that offer travel vouchers instead of cash compensation to first inform eligible passengers that they may decline the transportation benefit and receive the cash payment. This provision must be read in conjunction with the requirements of section 250.8(a). Therefore, it is the responsibility of the air carrier to enable passengers who choose cash compensation to obtain it on the day and at the place the denied boarding occurs. Based on the Enforcement Office staff's conversations with Frontier's agents at DCA and BWI airports, Frontier has made no such arrangements, thereby calling into question its compliance with section 250.5(b). Frontier states that it has amended its training manuals to provide instructions for the payment of cash compensation in order to ensure compliance with Part 250.

during the fourth quarter of 2006, nor did it have any involuntary denied boardings during 2006. Frontier adds that it is not aware of any passenger complaint that it failed to provide the Oversales and Involuntary Denied Boarding Compensation written statement, including the offer of compensation under Part 250.8(a). In addition, Frontier states that, subsequent to the Enforcement Office's investigation, it revised its training manuals, provided additional training to its gate agents on how to comply with Part 250, and has directed them to provide a copy of the Oversales and Involuntary Denied Boarding Compensation written statement to passengers denied boarding. Frontier has also implemented an internal audit program to confirm that gate agents have received proper training with respect to denied boarding claims.

The Department's oversales regulation reflects a balance between the right of passengers to obtain the services they purchase and the right of carriers to market their services effectively. Compliance with these requirements is, therefore, essential, and we take seriously any violation of the rule. The Enforcement Office views the explanations given by Frontier's agents at DCA and BWI airports as indicative of a general pattern of noncompliance by Frontier that must be remedied. Therefore, we believe that enforcement action is warranted.

In order to avoid litigation, and, without admitting or denying the violations described above, Frontier Airlines, Inc., agrees to the issuance of this order to cease and desist from future violations of 14 CFR Part 250 and 49 U.S.C. § 41712. Under the order, Frontier Airlines, Inc., is assessed \$40,000 in compromise of potential civil penalties otherwise assessable. The payment provisions of this order have been fashioned to take into account the carrier's bankruptcy proceeding and the fact that the violations covered by this order occurred prior to the carrier filing for bankruptcy and are not a demand for payment to the extent prohibited by section 362(a) of the Bankruptcy Code. Frontier Airlines, Inc., filed for reorganization under the U.S. Bankruptcy Code on April 10, 2008, in the U.S. Bankruptcy Court, Southern District of New York (Chapter 11 Case No. 08-11298). The assessment of this compromise civil penalty is accepted as a pre-petition non-priority general unsecured claim in the carrier's bankruptcy proceeding. The Department will file a general unsecured pre-petition claim with the Bankruptcy Court to reflect the terms of this agreement. Frontier Airlines, Inc., will not object to any necessary approvals of this order from the Bankruptcy Court. The Department of Transportation and the Enforcement Office acknowledge that they do not hold any of the trade creditors of Frontier Airlines, Inc., responsible for causing any of the violations that are the subject of this order. This compromise is appropriate in light of the nature and extent of the violations in question. This order and the penalty it assesses provide a strong incentive to all air carriers to comply with the Department's denied boarding compensation requirements.

This order is issued under the authority contained in 49 CFR 1.57(a) and 14 CFR 385.15.

**ACCORDINGLY,**

1. Based on the above, we approve this settlement and the provisions of this order as in the public interest.
2. We find that Frontier Airlines, Inc., violated 14 CFR 250.8(a) by failing to tender to eligible passengers cash or an immediately negotiable check for the appropriate amount of compensation on the day and place the denied boarding occurs.
3. By engaging in the conduct described in paragraph 2 above, we find that Frontier Airlines, Inc., engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712.
4. We order Frontier Airlines, Inc., and all other entities owned, controlled by, or under common ownership with Frontier Airlines, Inc., to cease and desist from further violations of 14 CFR Part 250 and 49 U.S.C. § 41712.
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 described in ordering paragraphs 2 and 3, above. On April 10, 2008, Frontier Airlines, Inc., and certain of its affiliated companies commenced Chapter 11 cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Southern District of New York, which cases are being jointly administered under Chapter 11 Case No. 08-11298 (RDD)(together the "Cases"). The compromise civil penalty shall be allowed as a non-priority pre-petition general unsecured claim in the Cases under the terms of the Order Authorizing and Approving Procedures for Compromise and Settlement of Certain Claims, Litigation, and Causes of Action entered in the Cases.
6. To the extent permitted by the Bankruptcy Court, we order Frontier Airlines, Inc., to make all payments and/or other distributions on account of the claim allowed hereby pursuant to the terms and conditions established by any plan of reorganization approved by the Bankruptcy Court. In connection with such a plan of reorganization, Frontier Airlines, Inc., shall endeavor to make any cash payments on account of such claim 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 attached instructions. Failure by Frontier Airlines, Inc., to comply with this order's provisions may subject Frontier Airlines, Inc., to 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 unless a timely petition for review is filed or the Department takes review on its own motion.

**BY:**

ROSALIND A. KNAPP  
Deputy General Counsel

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