



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

**Issued by the Department of Transportation
on the 1st day of June 1999**

Served June 1, 1999

Frontier Airlines, Inc.

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

CONSENT ORDER

This consent order concerns advertisements by Frontier Airlines, Inc. (Frontier) that violate 49 U.S.C. 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the Department's regulations. (14 CFR Part 399). This order directs Frontier to cease and desist from future violations and to pay compromise civil penalties.

On November 11, 1998, Frontier published advertisements in the *Dallas Morning News* and other newspapers that promoted fares for each-way travel requiring the purchase of a roundtrip ticket for various destinations.¹ The body of the ads did not state prominently and in close proximity to the advertised fares that the stated fares were each-way fares requiring a roundtrip purchase. The roundtrip purchase requirement was noted only at the beginning of the small print at the bottom of the ads.

As an air carrier, Frontier is subject to the advertising requirements of Part 399 of the Department's rules (14 CFR Part 399). Under 14 CFR 399.84, any advertising by an air carrier that states a price for air transportation is considered to be an unfair or deceptive practice or unfair method of competition in violation of 49 U.S.C 41712 unless the price stated is the entire price to be paid by the customer to the air carrier for such air transportation. For advertisements of each-way fares available only on a roundtrip purchase basis, Department precedent requires that the advertisement prominently disclose the roundtrip purchase requirement in the ad. "Prominently" means in close proximity to the advertised fare and in a type size sufficient to alert

¹ In cooperation with the Department's investigation, Frontier disclosed that ads similar to those in the *Dallas Morning News* appeared in numerous newspapers throughout the United States in mid-November 1998.

the reader to the provision. (See March 9, 1995, letter from this office to U.S. and foreign air carriers). Printing the round trip requirement in fine print below and outside the fare box, as Frontier did, is insufficient notice in a newspaper advertisement and is a violation of section 399.84. (See, e.g., Order 93-3-24).

In mitigation, Frontier states that it inadvertently excised copy that contained the round-trip purchase requirement from the fare box while editing the ad for publication. Further, Frontier offers that, except for this advertising campaign, it has complied with the Department's advertising requirements. In support of this claim, Frontier submits examples of other ads it has published before the ad campaign in question as well as before the Department began its investigation.

The Enforcement Office has carefully considered the information provided by Frontier, but continues to believe that enforcement action is warranted. In this regard, the Enforcement Office and Frontier have reached a settlement of this matter. Frontier consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. 41712 and Part 399 of the Department's regulations and to the assessment of \$18,000 in compromise of potential civil penalties. Of the total penalty amount, \$9,000 shall be due within 15 days of the issuance of this order. The remaining \$9,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Frontier violates this order's cease and desist provision within that one-year period or fails to comply with the order's payment provisions. In that case, the unpaid portion of the \$18,000 penalty shall become due immediately, and the carrier may be subject to further enforcement action. We believe that this compromise assessment is appropriate and serves the public interest. In light of all the circumstances, the terms of this order represent an adequate deterrence to future noncompliance with the Department's advertising requirements by Frontier as well as by other air carriers and foreign air carriers similarly situated.

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 Frontier Airlines has violated 14 CFR 399.84 by publishing deceptive advertisements that failed to comply with the Department's full-fare advertising requirement;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, Frontier has also violated 49 U.S.C. 41712;
4. Frontier, and all other entities owned or controlled by or under common ownership with Frontier, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. 41712 and 14 CFR 399.84;

5. Frontier is assessed \$18,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 above. Of the total penalty amount, \$9,000 shall be due within 15 days of the issuance of this order. The remaining \$9,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Frontier violates this order's cease and desist provision within that one-year period or fails to comply with the order's payment provisions. In that case, the unpaid portion of the \$18,000 penalty shall become due immediately, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will also subject Frontier to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and
6. Payment shall be made by wire transfer within 15 days of issuance of this order 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 instructions contained in the Attachment to 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:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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