



**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 November 2005**

Order 2005-11-1

World Airways, Inc.

Served November 1, 2005

**Violations of 49 U.S.C. § 41712
and 14 CFR Parts 380 and 212**

Docket OST No. 2005-20077

CONSENT ORDER

This consent order concerns activities in connection with charter flights between the United States and Lagos, Nigeria, by World Airways, Inc. ("World"), that violated 49 U.S.C. § 41712 and certain provisions of the Department's rules applicable to Public Charters (14 CFR Parts 380 and 212), and constituted unfair and deceptive practices in violation of 49 U.S.C. § 41712. This order directs World to cease and desist from future violations and assesses compromise civil penalties of \$350,000.

Public Charter operators and direct air carriers must comply with the requirements of 14 CFR Parts 380 and 212. Among the most important requirements of 14 CFR Parts 380 and 212 are the rules designed to prevent the stranding of charter passengers. These rules include the requirements that 1) no charter flight be sold unless there is in place an approved Public Charter prospectus based upon a contract between the charter operator and a direct air carrier covering the transportation to be sold (14 CFR 380.25(a), 380.28(a) and 380.28 (b)), and 2) the airline not undertake any part of the charter flight unless it has been paid for both legs of a round-trip flight prior to departure of the outbound flight (14 CFR 212.3(e) and 380.11). Under the rules, the direct carrier is charged with the responsibility to ensure the return at no additional cost of U.S.-originating, round-trip passengers whom the carrier has transported on their outbound leg (14 CFR 212.3(f)). In addition, a direct carrier is prohibited from performing charter transportation under Part 380 unless it has made a

reasonable effort to verify compliance by the charter operator with the provisions of that part (14 CFR 212.3(d) and 380.40).

World was the direct air carrier in the Public Charter program covered by Public Charter Prospectus 02-249, which involved service between the United States and Lagos that began in May 2003. The Public Charter operator was Ritetime Aviation & Travel Services, Inc. ("Ritime"). Starting in May 2003, World repeatedly wrote to the Department to cancel individual program flights, citing nonpayment by Ritetime as the reason. Nonetheless, it continued the overall program, and at times during the program, World neglected to require payment in full by Ritetime of the total charter price for the round-trip transportation of passengers prior to World's commencement of the outbound portion of many passengers' trips, in violation of 14 CFR 212.3(e). In addition, World also became aware that Ritetime was not placing the total round-trip payment of each passenger in the escrow accounts designated by World and Ritetime as required under 14 CFR 380.34. World thus had early notice that Ritetime was not complying with the Department's Public Charter requirements. Under 14 CFR 212.3(d) and 380.40, World was obligated to increase its vigilance once it became aware of Ritetime's non-compliance with the Public Charter rules.

Public Charter Prospectus 02-249 terminated on December 31, 2003, despite an attempted extension sought by Ritetime on that date, to which World states it did not agree. During the period before the program ended, World either knew or should have known that it was carrying numerous passengers outbound with round-trip tickets that specified return dates after December 31, 2003. Although World had been negotiating an extension of its contract with Ritetime during November and December 2003, World ceased all flights under the program after its December 31 expiration date.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) subsequently learned that, as a result of World's refusal to operate post-December 31 flights to bring back persons holding round-trip tickets whom World had carried outbound, large numbers of Ritetime/World passengers were stranded in Lagos, Atlanta and New York awaiting flights to return them to their respective points of origin. In mid-January 2003, the Enforcement Office received an estimate that approximately 1,221 passengers remained in Lagos and 860 in New York awaiting return transportation. The stranding of hundreds of passengers in the airport in Lagos created a chaotic and dangerous situation.

The Enforcement Office immediately contacted World and Ritetime about the matter. The Enforcement Office repeatedly reminded World in writing and

orally of the carrier's obligations under the law to return to the United States all passengers who purchased round-trip transportation and whom it carried to Lagos during the time period when the program was in effect (pre-December 31, 2003), but who had return dates in January 2004, or thereafter. Nevertheless, World denied it had any legal obligation to provide or ensure return transportation at no additional cost, and initially refused to undertake any action to return stranded passengers.

Pointing in large measure to the fact that PC 02-249 by its terms ended on December 31, 2003, and that it had timely cancelled the last few flights originally scheduled for the end of December 2003, World denied that the company knew or should have known that some of the people it was transporting had tickets for return travel in January 2004 or thereafter, and it denied that World was required to provide return transportation for them under DOT rules.¹

After considerable discussion with the Enforcement Office, World elected to send a single MD-11 aircraft, with a 323-passenger capacity, to Lagos on Sunday, January 19, 2004, on what the carrier termed "a humanitarian gesture of goodwill," and brought 318 passengers back to New York. After the flight, World estimated that, at the time, there remained in Nigeria only 13 passengers needing a return flight, and that there would be 50 to 70 who, in its view, would qualify for return flights later in the month. This number was far lower than the number of strandeers that had been reported to the Enforcement Office as awaiting return trips.

We do not intend here to attempt to resolve the dispute between World and Ritetime over whether a contract existed to extend the U.S.-Lagos Public Charter service beyond December 31, 2003. We do conclude here that World failed to make reasonable efforts to insure compliance by Ritetime with Part 380, thereby violating 14 CFR 380.40 and 212.3(d), and that World knew or should have known that substantial numbers of the passengers whom it was carrying had paid for return transportation scheduled after January 1, 2004.² By failing to do so, and by transporting passengers who paid for round-trip travel without

¹ The Enforcement Office's investigation produced evidence that World was aware that Ritetime was selling round-trip tickets for World return flights to take place after December 31, 2003, and that World had in its possession flight coupons and passenger manifests that evidenced round-trip itineraries with return flights scheduled after December 31, 2003. World admitted that it did perform ticket-collection functions for the outbound flights at issue.

² World had an obligation under section 212.3(f) to return these passengers, or it should have ensured that arrangements for their return travel on another carrier were in place.

having been paid for their return trip, and failing to ensure that the passengers had return travel on World or another carrier, World violated 14 CFR Part 212. World's operation of its charter program in violation of Parts 380 and 212 also constituted an unfair or deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, World states that it never had a contract with Ritetime that provided for the operation of flights after December 31, 2003. World contends that Ritetime acted independently in the sale of tickets to passengers requiring return travel in 2004. World points to the fact that its position has been upheld in an arbitration proceeding which concluded that World properly terminated its business arrangements with Ritetime at the end of December 2003, and that there was no agreement by the parties to conduct flights in 2004. World asserts that, to the extent Ritetime sold tickets in 2003 that included return travel in 2004, Ritetime did not have World's agreement to do so.

World states that while it regrets that any passengers were stranded as a result of Ritetime's actions, it operated a flight in January 2004 to return U.S.-originating passengers who were in Nigeria. World recalls that it used the information available to it at the time to contact all those Ritetime passengers in Lagos who needed return transportation to the United States. It is World's belief that the passengers it returned on the January 2004 flight constituted most of the Ritetime charter participants who had been stranded in Nigeria. World understood that the other passengers who may have been stranded either did not want to return on that date, or preferred to utilize another carrier, or could not be reached at that time.

World also maintains that it arranged for the return of about 21 Ritetime passengers stranded in the United States who wished to return to Nigeria. Although according to World, it had no obligation to return these Ritetime passengers, it did so because in each case, the passenger faced exigent circumstances requiring immediate return travel. World avers that it cooperated with the Department's investigation of the Public Charter program, and has provided significant information regarding its actions and those of Ritetime and its principal, Peter Obafemi.

In addition, World recounts that it has provided assistance to stranded passengers in other charter programs as well. For example, when Ghana Airways lost its operating rights to provide air service from Accra to the United States in July 2004, World supplied aircraft and crew to Ghana Airways on a wet lease basis, which allowed the carrier to return over 1,000 passengers that were stranded in the United States and West Africa. Without World's efforts, the carrier notes, the ability of Ghana Airways to return these passengers

would have required a much more onerous undertaking and could have led to substantially greater consumer harm.

Notwithstanding the mitigating factors described above, we are particularly concerned that a carrier such as World would permit this Public Charter program to deteriorate to the point it did, and that it would not have acted more quickly and fully to correct the problem.³ As noted above, World Airways either knew or should have known that Ritetime was selling round-trip tickets that required return travel in 2004 on World flights. It is not contested that World carried those U.S.-originating passengers on their outbound leg to Lagos. World's actions constituted serious violations of the statutes and the Department's Public Charter rules, and caused significant consumer harm, for which the Enforcement Office believes enforcement action is warranted.

The Enforcement Office and World have reached a settlement in this matter. While neither admitting nor denying the above allegations, World accepts the findings and conclusions of this order to avoid potential litigation. Under this order, World is assessed \$350,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301. Of the total penalty amount, \$175,000 shall be due within 15 days of the date of issuance of this order. The remaining \$175,000 shall be suspended for twelve months after the date of issuance of this order, and then forgiven, unless World Airways violates this order's cease and desist or payment provisions, in which case the entire sum will become due and payable. The Enforcement Office believes that the assessment of a civil penalty of \$350,000 in this instance is warranted in light of the nature and extent of the violations in question and will provide an effective deterrent to such conduct in the future by World and other direct 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;

³ It is apparent that Ritetime, too, has significant responsibility for the consumer harm that occurred, and the Enforcement Office's investigation of that company continues.

2. We find that World Airways, Inc., violated 14 CFR 212.3(d) and 380.40 by failing to make reasonable efforts to ascertain before undertaking Public Charter flights that the charter operator was in compliance with Part 380;
3. We find that World Airways, Inc., violated 14 CFR 212.3(e) and 380.11 by transporting passengers who paid for round-trip charter air transportation on Public Charter flights when World had not been paid for both legs of the passengers' round-trip travel prior to departure of the outbound flight;
4. We find that World Airways, Inc., violated 14 CFR 212.3(f) by refusing to return to his or her point of origin each U.S.-originating passenger who purchased round-trip transportation on its Public Charter flights, and whom World transported on his or her outbound flight;
5. We find that, by engaging in the conduct and violations described in paragraphs 2 through 4 above, World Airways, Inc., engaged in unfair or deceptive practices or unfair methods of competition in violation of 49 U.S.C. § 41712;
6. World Airways, Inc., and all other entities owned and controlled by, or under common ownership and control with World Airways, Inc., and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR Parts 212 and 380 and 49 U.S.C. § 41712;
7. World Airways, Inc., is assessed \$350,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 through 5 of this order. Of the total penalty amount, \$175,000 shall be due within 15 days of the date of issuance of this order. The remaining \$175,000 shall be suspended for twelve months after the date of issuance of this order, and then forgiven, unless World Airways violates this order's cease and desist or payment provisions, in which case the entire sum will become due and payable. Failure to pay the compromise assessment as ordered will subject World Airways, Inc., 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
8. Payment shall be made 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 instructions contained in the Attachment to 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

(SEAL)

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