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

Issued by the Department of Transportation
on the 28th day of March

Twin Town Leasing Company d/b/a Twin Air **Violations of 49 U.S.C. §§ 41101, 41712 41738 and 14 CFR 298.21**	**Docket OST 2005-20077** **Served March 28, 2005**

CONSENT ORDER

This consent order concerns unauthorized service as a commuter air carrier provided by Twin Town Leasing Co., d/b/a Twin Air (Twin Air), an air taxi holding authority under 14 CFR Part 298. By publishing and operating a schedule exceeding its authority as an air taxi, Twin Air provided service as a commuter air carrier in violation of Part 298 and the requirements of 49 U.S.C. §§ 41101 and 41738. The unauthorized service also constituted an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712 in that Twin Air's advertised schedule did not accurately represent its level of service.

Pursuant to 49 U.S.C. § 41101, no person may hold out or operate air transportation without first having been found fit to do so. Part 298 creates an exemption from the certification requirements of 49 U.S.C. § 41101 for air taxi operators, carriers operating small aircraft, which provide either on-demand service or no more than four round-trips per week in any single market pursuant to a published schedule. Scheduled service in excess of this level renders the carrier a commuter for purposes of Part 298. Under 49 U.S.C. § 41738, the Department must find a commuter air carrier fit to provide air service prior to its commencing service to any point covered by the Essential Air Service Program.[1] Recognizing this requirement, section 298.21(d) requires that any air taxi providing service as a commuter to an eligible point must first be found fit to provide its proposed scheduled passenger service. Operating, advertising, or otherwise holding out commuter air service without having the requisite economic authority is in violation of 14 CFR 298.21(d), as well as 49 U.S.C. §§ 41101 and 41738.

At least as early as February 2004, Twin Air advertised a schedule showing six flights per week from Fort Lauderdale to North Eleuthera, a level of service which required it to be found fit as a commuter carrier. In August 2004, Twin Air substituted a revised

[1] *See* 49 U.S.C. § 41731.

schedule on its website which reduced the frequency of flights in the Fort Lauderdale-North Eleuthera market to four, but introduced a number of "Special Eleuthera" flights, which Twin Air asserted were "ad hoc" operations that were operated on demand to any of the three airports on North Eleuthera, at the request of passengers. The carrier further submitted that this revised schedule was a more accurate representation of its actual service during the period in which the February schedule remained on the website. An examination of the carrier's flight records revealed, however, that in fact the carrier had provided the service held out in the February schedule, with six weekly round-trips in the market in question. This service was in violation of the statutory provisions cited above as well as section 298.21 of the Department's regulations.

In mitigation, Twin Air states that it believed that since its revised flight schedule called for only four weekly flights in the Ft. Lauderdale-Eleuthera market, with additional service denominated "Special Eleuthera" flights which could serve any of three airports on the island, it was in compliance with the frequency limitations of Part 298. The carrier, however, has indicated it will promptly remove the schedule displays on its web site and that it intends to submit an application for commuter authority under 14 CFR 204.3.

We acknowledge Twin Air's cooperation in this matter and have taken account of the mitigating factors cited by the carrier; however, we continue to believe that enforcement action is warranted in this instance. Twin Air, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101, 41738 and 41712, as well as 14 CFR 298.21, and to an assessment of $20,000 in compromise of potential civil penalties. Of this amount, one-half will be paid according to the payment provisions described below. The remaining $10,000 shall be suspended for one year following the service date of this order and shall then be forgiven unless, during that period, Twin Air fails to comply with the provisions of this order, including its cease and desist and payment provisions, in which case the entire unpaid portion of the $20,000 assessed penalty shall become due and payable immediately and the carrier will be subject to further enforcement action. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, is intended as a deterrent to future noncompliance with 14 CFR Part 298, and the statutory provisions cited above, on the part of Twin Air, as well as by other air 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;

2. We find that Twin Town Leasing Co., d/b/a Twin Air, violated 49 U.S.C. §§ 41101 and 41738 and 14 CFR Part 298, by operating commuter air service, as defined in 14 CFR Part 298 in certain Ft. Lauderdale-Bahamas markets, as described above, without having been found fit as a commuter air carrier;

3. We find that Twin Town Leasing Co., d/b/a Twin Air, by engaging in the conduct described in ordering paragraph 2 above, engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;

4. Twin Town Leasing Co., d/b/a Twin Air, its successors, affiliates, and assigns, are ordered to cease and desist from further similar violations of 49 U.S.C. §§ 41101, 41712 and 41738 and 14 CFR Part 298;

5. Twin Town Leasing Co., d/b/a Twin Air, is assessed $20,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, of which $10,000 shall be due and payable 30 days after the service date of this order. The remaining $10,000 shall be suspended for one year following the service date of this order and shall then be forgiven unless, during that same period, Twin Air fails to comply with the provisions of this order, including its cease and desist and payment provisions, in which case the entire unpaid portion of the $20,000 assessed penalty shall become due and payable immediately and Twin Air will be subject to further enforcement action; and

6. 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. Failure to pay the penalty as ordered shall also subject Twin Town Leasing Co., d/b/a Twin Air, to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with 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

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