



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

**Issued by the Department of Transportation
On the day Twenty-Eighth day of December, 2012**

Scott Air LLC d/b/a Island Air Express

**Violations of 49 U.S.C. §§ 41101 and
41712**

Docket DOT-OST 2012-0002

Served December 28, 2012

CONSENT ORDER

This consent order concerns unauthorized interstate air service provided by Scott Air LLC d/b/a Island Air Express (Scott), a company without economic authority from the Department, that violated 49 U.S.C. § 41101 and constituted an unfair and deceptive practice prohibited by 49 U.S.C. § 41712. This order directs Scott to cease and desist from future violations of these sections and assesses a compromise civil penalty of \$20,000.

Applicable Law

Section 41101 prohibits holding out or providing interstate air transportation unless a carrier has received certificate authority from the Department to operate the service or unless it has received an exemption from that provision.¹ Holding out or providing air service without such economic authority from the Department is in violation of 49 U.S.C. § 41101, as well as 49 U.S.C. § 41712, which prohibits unfair and deceptive trade practices and unfair methods of competition.

The Department has in the past found that scheduled service provided by a carrier between two points within a state was in interstate air transportation, and therefore required economic authority from the Department, by virtue of the fact that the carrier offered its services via its Internet website. (*Simmons Air*, Order 2006-3-18, March 21,

¹ Part 298 of the Department's rules (14 CFR Part 298) provides a limited exemption from the certification requirements of section 41101 for any air taxi operating small aircraft, but requires that an air taxi register with the Department and have in place the requisite insurance coverage. Scott was not a registered air taxi.

2006.) In *Arizona Express Airlines*, Order 2002-5-9, May 9, 2002, the Department also held that the holding out of scheduled service on a third party's website constituted the holding out of service by the carrier. Both the Department and the Civil Aeronautics Board before it have considered the carriage of more than a *de minimus* number of interstate passengers to make an operation interstate for certification purposes. (14 CFR 298.2, fn.1.)

Facts and Conclusions

Scott has safety authority from the Federal Aviation Administration to conduct intrastate operations. However, it holds no economic authority from the Department to provide or hold out interstate air transportation to the public. An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) found that for a period of time since at least July 2012, Scott advertised its scheduled service between Ketchikan International Airport in Alaska and the Klawock Airport, which serves Craig and Klawock, Alaska, on its web site to viewers on the Internet without restriction. This website accepted reservations from passengers outside the State of Alaska via an automated reservations system and collected the advertised fare amount. The website also advertised a toll-free telephone number, 888-387-8989, that could be used to make reservations and is not restricted to intra-Alaskan calls. Scott's website showed that all of its flights in this market were scheduled to conveniently connect to the Alaska Airlines flights at Ketchikan to and from Seattle and beyond. As part of the reservation process, a passenger could enter his or her Alaska Airlines connecting flight information.

Moreover, the websites of various third parties including Ketchikan International Airport, the Prince of Wales Chamber of Commerce, and several fishing lodges, listed a link to Scott's website along with links to the websites of the other carriers serving the local airport or those websites included transportation to and from Ketchikan on Scott as part of their packages. As a result of these practices, Scott carried a significant number of passengers from outside the State of Alaska that were connecting to or from Alaska Airline flights. Scott's operations, therefore, violated 49 U.S.C. §§ 41101 and 49 U.S.C. 41712.

Mitigation

In mitigation, Scott states that it is licensed and operates as an intrastate carrier and that its website has been amended to indicate it is an intrastate operator. Scott further states that it currently is only carrying local traffic. By applications dated October 22, 2012,² Scott filed Certificate and Exemption applications for interstate authority. According to Scott, its IFR ability enables Scott to continue to provide vital air services to the local community during the critical winter season in the prevailing weather conditions.³

² Dockets DOT-OST-2012-0178 and 0179.

³ In light of the steps taken by Scott and the mitigation factors mentioned above, the Enforcement Office will not oppose Scott being found fit and as a matter of prosecutorial discretion will not take enforcement action against Scott while it conducts its present operations until its certificate has been granted.

Decision

The Enforcement Office has carefully considered all of the information available to it, including that provided by Scott, and continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Scott have reached a settlement in this matter. While neither admitting nor denying the above allegations, Scott accepts the findings and conclusions stated herein in order to avoid potential litigation and consents to the issuance of this order to cease and desist from similar violation of 49 U.S.C. §§ 41101 and 41712 and the assessment of \$20,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301.

The Enforcement Office believes that this compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents an effective deterrent against future noncompliance with the Department's licensing provisions by Scott and other sellers of air transportation.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Scott Air LLC d/b/a Island Air Express violated 49 U.S.C. § 41101 by offering for sale and operating interstate air service between the Ketchikan International and the Klawock Airports in Alaska without certificate authority under 49 U.S.C. § 41101 or registration as an air taxi under 14 CFR Part 298;
3. We find that Scott Air LLC d/b/a Island Air Express violated 49 U.S.C. § 41712 by holding out and providing air service between Ketchikan International Airport and the Klawock Airport, as described above;
4. We order Scott Air LLC d/b/a Island Air Express and all other entities owned and controlled by, or under common ownership and control with Scott Air LLC d/b/a Island Air Express, and their successors and assignees, to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712. Failure to comply with this cease and desist provision shall subject the company to further enforcement action;

5. We assess Scott Air LLC d/b/a Island Air Express \$20,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 and 3, above. Of this total penalty amount, \$10,000 shall be due and payable within 30 days of the service date of this order. Any unpaid portion shall become due and payable if, within one year of the date of issuance of this order, Scott Air LLC d/b/a Island Air Express violates this order's cease and desist or payment provisions, in which case Scott Air LLC d/b/a Island Air Express may become subject to additional enforcement action for any violation of the order; and

6. We order Scott Air LLC d/b/a Island Air Express to pay the penalty through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Scott Air LLC d/b/a Island Air Express 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 10 days after its service unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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