



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

**Issued by the Department of Transportation
On the Twelfth day of August, 2011**

Air Charters, Inc., d/b/a Air Flamenco

Docket OST 2011-0003

**Violations of 49 U.S.C. §§ 41101, 41712, and
41738 and 14 CFR Part 298**

Served August 12, 2011

CONSENT ORDER

This consent order concerns unauthorized scheduled passenger service as a commuter air carrier by Air Charters, Inc., d/b/a Air Flamenco (Air Flamenco) in violation of 49 U.S.C. §§ 41101, 41712, and 41738 and 14 CFR Part 298, the Department's commuter air carrier requirements. It directs Air Flamenco to cease and desist from further violations of these statutory provisions and federal regulation and assesses the carrier a compromise civil penalty of \$30,000.

Applicable Law

Pursuant to 49 U.S.C. § 41101, citizens of the United States¹ must have a certificate of public convenience and necessity from the Department prior to engaging in air transportation. Part 298 creates an exemption from the certificate requirement in section 41101 for a class of carriers called air taxi operators, which are carriers that use only small aircraft² and perform either on-demand service or no more than four round-trips per week in any single market according to a published schedule. The economic licensing requirements of section 41101 and Part 298 are separate and distinct from the safety-related licensing requirements of the Federal Aviation Administration (FAA). Scheduled service in excess of this level renders the air taxi operator a "commuter air carrier" for purposes of Part 298. Under 49 U.S.C. § 41738, the Department must find a

¹ A "citizen of the United States" includes a corporation organized in the United States that (1) meets certain specified standards regarding the citizenship of its president, officers and directors, and holders of its voting interest and (2) is under the actual control of citizens of the United States. 49 U.S.C. § 40102(a)(15).

² Small aircraft are aircraft originally designed to have a maximum passenger capacity of 60 seats or fewer or a maximum payload capacity of 18,000 pounds or less. 14 CFR 298.2.

commuter air carrier “fit, willing, and able” prior to commencing such scheduled service. Section 298.21(d) implements this statutory fitness requirement with respect to air taxi operators seeking to provide service as commuter air carriers. Operating, advertising, or otherwise holding out commuter air service without having first been found fit violates 14 CFR 298.21(d), as well as 49 U.S.C. §§ 41101 and 41738. In addition, violations of this regulation and these statutory provisions also constitute violations of 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.

Facts and Conclusion

Air Flamenco is a Puerto Rico-based air taxi registered under 14 CFR Part 298. Air Flamenco advertises air-taxi operations between points within Puerto Rico and other destinations in the Caribbean area. At all times relevant to this matter, Air Flamenco did not hold a commuter air carrier authorization from the Department. At least as early as August 2010, Air Flamenco regularly operated more than four flights per week between Culebra, Puerto Rico, and various other points including Vieques, Puerto Rico, Ceiba, Puerto Rico, and Isla Grande, Puerto Rico. Additionally, Air Flamenco held out a schedule for these flights to investigators who inquired via telephone, email, and in person at the airport about scheduled service to these destinations. Air Flamenco performed the marketed round-trip scheduled services more than four times per week, thus exceeding the scope of its exemption authority under 14 CFR Part 298, thereby also violating 49 U.S.C. §§ 41101, 41712, and 41738, and constituting a level of service that required it to be found fit as a commuter air carrier.

Mitigation

In October 2007, Air Flamenco states that a Federal Aviation Administration (FAA) review of the carrier’s operations that are the subject of this order found no violations of Federal Aviation Regulations. Air Flamenco asserts that it conducted its subsequent operations relying on the results of this review.

Department’s Response

While Air Flamenco may have believed that it was in compliance with FAA safety regulations in 2007, it remains clear that Air Flamenco exceeded its authority under the Department’s economic regulatory requirements under 49 U.S.C. § 41101 and 14 CFR Part 298 when it operated more than four flights per week according to a published schedule between Culebra, Puerto Rico, and various other points including Vieques, Puerto Rico, Ceiba, Puerto Rico, and Isla Grande, Puerto Rico.

Decision

The Office of Aviation Enforcement and Proceedings (the Enforcement Office) has carefully considered the information provided by Air Flamenco but continues to believe that enforcement action is warranted. The Enforcement Office and Air Flamenco have

reached a settlement of this matter in order to avoid litigation. Air Flamenco consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §§ 41101, 41712, and 41738 and 14 CFR Part 298 of the Department's regulations, and to the assessment of \$30,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent to future noncompliance with the Department's economic licensing requirements by Air Flamenco as well as by other 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 Air Charters, Inc., d/b/a Air Flamenco violated 14 CFR 298.21(d) and 49 U.S.C. §§ 41101 and 41738 by holding out and operating commuter air service without having first been found fit as a commuter air carrier;
3. We find that by violating 14 CFR 298.21(d) and 49 U.S.C. §§ 41101 and 41738 as described in ordering paragraph 2, above, Air Charters, Inc., d/b/a Air Flamenco has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order Air Charters, Inc., d/b/a Air Flamenco and all other entities owned or controlled by or under the common ownership of Air Charters, Inc., d/b/a Air Flamenco and its successors and assignees, to cease and desist from violations of 49 U.S.C. §§ 41101, 41712, and 41738 and 14 CFR Part 298;
5. We assess Air Charters, Inc., d/b/a Air Flamenco a compromise civil penalty of \$30,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total amount, \$15,000 will become due and payable in two equal installments of \$7,500. The first installment of \$7,500 is due and payable within 15 days of the issuance date of this order and the second and final \$7,500 is due and payable within 180 days of the issuance date of this order. The remaining \$15,000 shall become due and payable if Air Charters, Inc., d/b/a Air Flamenco violates this order's cease and desist provisions or the payment provisions within one year following the date of the issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately; and
6. We order Air Charters, Inc., d/b/a Air Flamenco to remit the payment assessed in paragraph 5 above by wire transfer through the Federal Reserve Communications

System, commonly known as "Fed Wire," 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 Air Charters, Inc., d/b/a Air Flamenco to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible 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 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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