



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

**Issued by the Department of Transportation  
on the 11<sup>th</sup> day of May, 2005**

**Friendship Airways Inc. d/b/a Yellow Air Taxi**

**Docket OST 2005-20077**

**Violations of 49 U.S.C. §§ 41101, 41712, and  
41738 and 14 CFR 298.21**

**Served May 11, 2005**

**CONSENT ORDER**

This consent order concerns unauthorized scheduled passenger service as a commuter air carrier by Friendship Airways Inc., doing business as Yellow Air Taxi (Yellow Air) that constitutes violations of 49 U.S.C. §§ 41101, 41712, and 41738 and 14 CFR Part 298. This consent order directs Yellow Air to cease and desist from further violations of these statutory provisions and federal regulation and assesses a compromise civil penalty of \$30,000.

Yellow Air is an air taxi operator registered under 14 CFR Part 298, which exempts direct air carriers that do not operate large aircraft<sup>1</sup> and otherwise comply with its conditions from, among other things, the certificate requirement found in 49 U.S.C. § 41101. An air taxi operator that carries passengers on at least five round-trips per week on at least one route between two or more points according to a flight schedule that specifies the times, days of the week, and places between which those flights are performed is a "commuter air carrier" as defined in 14 CFR 298.2. Although air taxi operators hold economic authority from the Department in the form of an exemption, 49 U.S.C. § 41738 nonetheless authorizes the Department to subject air taxis that seek to operate as commuter air carriers to a formal fitness proceedings. Accordingly, 14 CFR 298.21(d) provides that an air taxi operator shall not provide scheduled passenger service as a commuter air carrier without holding economic authority from the Department after being found "fit, willing, and able" to provide such service. Yellow Air has nonetheless engaged in extensive commuter air service operations without having first been found fit.

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<sup>1</sup> Large aircraft are those aircraft that have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

Operating, advertising, or otherwise holding out commuter air service without having the requisite economic authority is a violation of 14 CFR 298.21(d) and 49 U.S.C. §§ 41101 and 41738. Moreover, Yellow Air's unauthorized commuter air service constitutes an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.<sup>2</sup>

Yellow Air has two Cessna 402(c) aircraft which seat between six and nine passengers. The carrier specializes in frequent flights between Fort Lauderdale and Treasure Cay, Marsh Harbor, and several other Bahamian destinations. The carrier has been engaging in unauthorized commuter air service using these aircraft since at least May 2004. The carrier has operated pursuant to a schedule posted on Yellow Air's Internet website which listed flight dates and departure and arrival times, yet included a disclaimer that stated, "Yellow Air Taxi is an on-demand charter carrier. Charter dates and times are for reference purposes and subject to change." Ultimately, on several routes, the carrier conducted a significant number of weekly flights as held out in its schedule—a number well in excess of the four-flight-per-route weekly maximum allowed for air taxis that have not been found fit by the Department to provide scheduled passenger service as a commuter air carrier. In addition, the Office of Aviation Enforcement and Proceedings (Enforcement Office) has reviewed copies of Yellow Air's Departure Manifests and Aircraft Flight Logs which clearly indicate that Yellow Air has operated at least five round-trips per week on at least one route between two or more points.

Yellow Air contends that it did not, in fact, "publish" a flight schedule, since the carrier claims its flights were only placed on the website after at least one passenger booked a charter and the site itself stated that the carrier is an on demand carrier and the posted schedule is for reference purposes. Yellow Air also states that the website in question is old and was discarded because it was for demonstration purposes only. These arguments are unconvincing. A scheduled flight is one in which the departure time and route are offered publicly by a carrier in advance and not specifically negotiated by the customers, which is precisely the manner in which Yellow Air held out and operated its services. Yellow Air cannot render permissible as "on demand" its otherwise scheduled operations simply by claiming to be an on-demand carrier and conditioning its published schedule with a disclaimer. Were this practice to be deemed permissible, it would render meaningless the Department's requirement that air taxis undergo a fitness proceeding before undertaking commuter air service. Additionally, it would allow carriers to engage in unrealistic scheduling practices that would otherwise constitute violations of 14 CFR 399.81 and 49 U.S.C. § 41712 since they could advertise any number of flights without necessarily having the intention or the resources available to operate those flights.

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<sup>2</sup> Under Department enforcement case precedent, violations of 49 U.S.C. § 41101 and the Department's licensing requirements constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. See, e.g., *Aviation Ventures, Inc. d/b/a Vision Air, Violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Parts 201 and 298*, Order 2002-7-30 (Jul. 24, 2002); *Arizona Express Airlines, Inc., Violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Parts 201 and 298*, Order 2002-5-9 (May 9, 2002).

In mitigation, Yellow Air asserts that it held a good-faith belief that it was operating only on-demand charter flights in full compliance with all applicable aviation laws and regulations, and that on its internet website, it's descriptions of the flights and services it offered were in compliance with the type of authority it held under Part 298. Yellow Air further states that any non-compliance by it was inadvertent and that it modified its website in order to come into full compliance with the Department's regulations when the Enforcement Office brought its concerns to Yellow Air's attention. Yellow Air is currently taking steps to apply to the Department for the appropriate economic authority to conduct commuter operations. Yellow Air asserts that it has fully cooperated with the Enforcement Office's investigation into this matter and that it has otherwise exhibited a good compliance disposition.

The Enforcement Office has carefully considered the facts in this case, including the information provided by Yellow Air, but continues to believe that enforcement action is warranted. Yellow 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, 41712, and 41738 and 14 CFR 298.21 and to the assessment of \$30,000 in compromise of potential civil penalties. This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest as a deterrent to future unauthorized commuter air service operations by Yellow Air, as well as by other similarly situated companies.

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 Friendship Airways Inc., d/b/a Yellow Air Taxi violated 49 U.S.C. §§ 41101 and 41738 and 14 CFR 298.21 by engaging in scheduled air transportation as a commuter air carrier without having been found fit, willing and able by the Department to provide scheduled passenger service as a commuter air carrier;
3. We find that that by engaging in the conduct and violations described in ordering paragraph 2, above, Friendship Airways Inc., d/b/a Yellow Air Taxi engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order that Friendship Airways Inc., d/b/a Yellow Air Taxi and all other entities owned or controlled by Friendship Airways Inc., d/b/a Yellow Air Taxi and their successors and assignees, cease and desist from further similar violations of 49 U.S.C. §§ 41101, 41712, 41738 and 14 CFR 298.21;

5. We assess Friendship Airways Inc., d/b/a Yellow Air Taxi a compromise civil penalty of \$30,000 in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of this total penalty amount, \$5,000 is due and payable within 30 days of the date of issuance of this order, \$5,000 is due and payable on September 30, 2005, and \$5,000 is due and payable on December 30, 2005. The remaining \$15,000 shall be suspended for two years following the date of issuance of this order, and then forgiven, unless Friendship Airways Inc., d/b/a Yellow Air Taxi violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Friendship Airways Inc., d/b/a Yellow Air Taxi may be subject to further enforcement action;
6. Friendship Airways Inc., d/b/a Yellow Air Taxi shall make the payments set forth in ordering paragraph 5, above, within 30 days after the issuance date of the order, by wire transfer through the Federal Reserve Communications System, otherwise 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; and
7. Failure to pay the compromise assessed civil penalty as ordered shall subject Friendship Airways Inc., d/b/a Yellow Air Taxi 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**

**(SEAL)**

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