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STATE OF COLORADO
DEPARTMENT OF LAW

September 1, 2020

The Honorable Elaine L. Chao
U.S. Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Dear Secretary Chao:

As Attorney General of Colorado, I strongly urge the U.S. Department of Transportation (“USDOT”) to examine the flight change policies and customer service practices of Frontier Airlines (“Frontier”)¹ during the COVID-19 pandemic. I also request that you use your authority under federal law to protect consumers by ordering Frontier to stop any unfair and deceptive practices and, where appropriate, seeking civil penalties.² Since March 2020, my office received and reviewed more than one hundred complaints against Frontier from consumers in Colorado and 29 other states—more than about any other company during that time. Consumer reports indicate Frontier violated the federal protections for aviation consumers that you are authorized to enforce.

Federal law calls on the Secretary of Transportation to identify and bring enforcement actions against air carriers who engage in “unfair or deceptive practice[s]” that harm consumers.³ The USDOT:

considers a practice to be unfair to consumers if it (1) causes or is likely to cause substantial injury to consumers, (2) cannot be reasonably avoided by consumers, and (3) is not outweighed by countervailing benefits to consumers or to competition. The [USDOT] considers a practice to be ‘deceptive’ to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter.⁴

¹ Frontier, which is headquartered in Denver and maintains a hub at Denver International Airport, operates flights throughout the United States and select destinations in Canada, Mexico, Central America, and the Caribbean. Frontier advertises itself as a low-cost carrier, using the slogan “low fares done right.”

² 49 U.S.C. § 41712.

³ 49 U.S.C. § 41712. See also USDOT, Second Enforcement Notice—Frequently Asked Questions Regard Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (May 12, 2020),

<https://www.transportation.gov/sites/dot.gov/files/2020-05/Refunds-%20Second%20Enforcement%20Notice%20FINAL%20%28May%2012%202020%29.pdf>.

⁴ USDOT, Second Enforcement Notice, *supra* note 3.

USDOT regulations specify enhanced protections for air travel consumers.⁵ Failure to adhere to these regulations constitutes an unfair and deceptive practice in violation of federal law.⁶ In relevant part, USDOT regulations require airlines to adopt and adhere to customer service plans that ensure compliance with minimum standards and provide mechanisms for real-time resolution of consumer problems.⁷ Airlines also must promptly refund customers when refunds are due, including when the airline cancels or significantly changes or delays a flight.⁸

The COVID-19 pandemic disrupted nearly all aspects of the economy and daily life. Air travel is no exception. During the pandemic, airlines, including Frontier, drastically reduced and altered their flight schedules. Passengers responded to the pandemic by cancelling or postponing flight reservations due to serious health concerns, stay-at home orders, government restrictions on travel, and cancelled events. As the USDOT reiterated in an enforcement notice earlier this year, federal protections for air travel consumers remain in full force during the pandemic and airlines are required adhere to customer protection requirements.⁹ To that end, the USDOT's recent enforcement notices, which clarify airlines' consumer protection obligations, are a step in the right direction.¹⁰ But where carriers continue to use unfair or deceptive practices, further action by the USDOT is necessary to protect aviation consumers.

After reviewing more than one hundred consumer complaints from consumers in Colorado and 29 other states in the past 6 months, my office has reason to believe Frontier violated 49 U.S.C. § 41712 and USDOT regulations by engaging in various practices that cause consumers financial and psychological harm and meet the USDOT's criteria for being "unfair" or "deceptive." Among the most common complaints, summarized here and described in more detail below, consumers report:

- 1. Frontier failed to promptly refund consumers when required by law, including for flights cancelled or significantly changed or delayed by Frontier, or when a refund was promised by Frontier.**

⁵ See Enhancing Airline Passenger Protections, 74 FR 68983 (December 30, 2009), <https://www.govinfo.gov/content/pkg/FR-2009-12-30/pdf/E9-30615.pdf>.

⁶ USDOT, Allegiant Air, LLC Consent Order 2018-4-8, Docket OST 2018-0001, (Apr. 13, 2008), <https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/308481/allegiant-order-2018-4-8.pdf>.

⁷ See 14 CFR § 259.5 et. seq.; Enhancing Airline Passenger Protections, *supra* note 5, 74 FR at 68991 ("[W]e do not mean to imply that carriers should not have in place some mechanism for resolving consumer problems in real time, and failure to do so may require us to revisit this decision in the future.").

⁸ See Enhancing Airline Passenger Protections, 76 FR 23110, 23129 (Apr. 25, 2001), <https://www.govinfo.gov/content/pkg/FR-2011-04-25/pdf/2011-9736.pdf>; *Refunds*, USDOT, <https://www.transportation.gov/individuals/aviation-consumer-protection/refunds> (last accessed Aug. 31, 2020).

⁹ See USDOT, Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel (April 3, 2020), <https://www.transportation.gov/sites/dot.gov/files/2020-04/Enforcement%20Notice%20Final%20April%203%202020.pdf>.

¹⁰ See *id.*; USDOT, Second Enforcement Notice, *supra* note 3.

Under USDOT regulations, an airline must refund customers when the airline cancels or significantly changes or delays a flight.¹¹ As the USDOT reminded airlines in April 2020, the refund requirement does not cease when flight disruptions are caused by factors outside of the carrier's control.¹² Based on consumer complaints and Frontier's own published policies, Frontier has failed to comply with the requirement to offer refunds in certain circumstances. In particular, Frontier's customer service plan indicates that Frontier "do[es] not offer compensation" for any delays or changes "out of Frontier's control."¹³ This stance contravenes the USDOT position that the "longstanding obligation of carriers to provide refunds for flights that carriers cancel or significantly delay does not cease when the flight disruptions are outside of the carrier's control (e.g., a result of government restrictions)"¹⁴ and, therefore, "any contract of carriage provision or airline policy that purports to deny refunds to passengers when the carrier cancels a flight, makes a significant schedule change, or significantly delays a flight to be a violation of the carriers' obligation that could subject the carrier to an enforcement action."¹⁵

Consumer complaints indicate Frontier denied refunds to passengers when the airline cancelled or significantly changed customers' itineraries, including changing departure times by more than seven hours, to a different date, and daytime to overnight, as well as changing itineraries with direct flights to those with significant layovers.

Consumers also report being told by Frontier's customer service representatives ("CSRs") they would receive a refund – for example, where travelers at high risk of severe illness from COVID-19 provided a medical doctor's note indicating the traveler could not fly – only to subsequently have their request for refunds denied. Failure to provide promised refunds is an unfair and deceptive practice.¹⁶

2. Frontier failed to disclose material aspects of its policy regarding flight credits and failed to provide customers a mechanism to promptly redeem credits or vouchers.

Frontier's method of accommodating customers who changed their itineraries because of COVID-19 is both unfair and deceptive. For various reasons, including government restrictions on travel as well as concerns about contracting or spreading COVID-19, many consumers sought to cancel reservations for air travel during the pandemic. For most consumers who voluntarily cancelled reservations, Frontier offered flight credits that expired within 90 days of the cancellation. In some instances, Frontier also offered \$50 travel vouchers to consumers who voluntarily cancelled their reservations. But according to

¹¹ See Enhancing Airline Passenger Protections, *supra* note 8, 76 FR at 23129; *Refunds*, USDOT, *supra* note 8.

¹² See USDOT, Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel, *supra* note 9.

¹³ *Customer Service Plan*, FRONTIER, <https://www.flyfrontier.com/legal/customer-service-plan?mobile=true> (last accessed Aug. 31, 2020).

¹⁴ USDOT, Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel, *supra* note 9.

¹⁵ *Id.*

¹⁶ See *Refunds*, USDOT, *supra* note 8 ("Passengers who purchase non-refundable tickets are not entitled to a refund *unless the airline makes a promise to provide a refund* or the airline cancels a flight or makes a significant schedule change.") (emphasis added).

consumer reports to my office, Frontier’s policies and practices—including material omissions and misrepresentations and a lack of reasonably timely problem-solving mechanisms—prevented many complainants from redeeming the full value of their flight credits and vouchers, and, in some instances, from redeeming any value at all.

Consumers report Frontier failed to consistently and clearly disclose its policy preventing consumers from redeeming flight credit across multiple bookings and confiscating any credit value not used in a single booking. As a result, consumers report involuntarily forfeiting hundreds of dollars’ worth of credits, despite attempting to use their credits within the 90-day deadline. By imposing a single-booking redemption policy, Frontier employed an unfair trade practice by preventing many consumers from recouping the full value of their initial purchase while providing consumers no offsetting benefit. By failing to clearly disclose this material aspect of its policy, Frontier also engaged in a deceptive trade practice. These practices are particularly unfair when viewed in conjunction with Frontier’s refusal to extend the 90-day deadline for consumers to use their flight credits. Unlike other airlines, or other companies, Frontier has failed to treat consumers fairly or honestly—and took advantage of them during a public health emergency.

Consumers also report Frontier’s website rejected valid flight credit and voucher codes, preventing consumers from redeeming their flights credits prior to expiration. Consumers report receiving messages indicating, incorrectly, that their credit or vouchers had zero value or that credits had expired prior to the 90-day deadline. Consumers who notified Frontier of these errors report Frontier offered no recourse or remedy. Frontier’s failure to correctly process flight credits and vouchers online is particularly harmful to consumers because, as more fully discussed below, Frontier’s telephone customer service option is not a reasonable alternative. Consumer reports indicate Frontier’s customer service phone centers are virtually unreachable, with multi-hour hold times and disconnections a regular occurrence. In addition, Frontier charges a \$25 fee for flights reserved via telephone, and Frontier’s CSRs reportedly nudged consumers to use the online booking system.

Additionally, consumers report being misled by Frontier’s CSRs. Some consumers who attempted to obtain extensions of the time in which to use their flight credits beyond 90 days report that Frontier CSRs encouraged them to call back closer to the expiration date to receive an extension. When they called back, Frontier reneged on these specific assurances to extend the credit re-booking period.

3. Frontier’s customer service system failed to provide customers with a mechanism for resolving problems within a reasonable period of time, costing consumers dozens of hours of time and often thousands of dollars’ worth of flight credits.

Although Frontier purports to provide telephone-based customer service “24 hours a day / 7 days a week,”¹⁷ consumer complaints belie an extreme lack of timely and responsive customer service.

Many consumers report calling Frontier dozens of times across consecutive days and weeks—and spending hours listening to busy signals, waiting on hold, or having calls

¹⁷ *Contact Us*, FRONTIER, <https://flyfrontier.custhelp.com/app/frontierairlines> (last accessed Aug. 31, 2020).

dropped completely due to volume—before speaking to a customer service representative. Some consumers who attempted to contact Frontier by telephone report receiving automated responses indicating the call center was closed; other consumers report being disconnected or hung-up on after long wait times. Consumers report similarly long response times for e-mail correspondence and no option to obtain real-time customer service via live online chat.

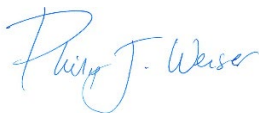
In summary, consumer complaints indicate that Frontier provides consumers with no mechanism for reasonably-timely problem resolution. For consumers seeking to redeem their flight credits before the 90-day expiration deadline, Frontier's failure to promptly serve its consumers via telephone or other means—including in instances where Frontier's website rejected valid flight credits—caused consumers losses of thousands of dollars' worth of flight credit value.

Need for Enforcement of Federal Consumer Protection Laws

The law requires that carriers like Frontier treat consumers fairly and honestly. Consumer reports indicate Frontier's practices and methods violated federal consumer protection requirements under 49 U.S.C. § 41712 and USDOT regulations. The USDOT is empowered to address unfair or deceptive practices¹⁸ and to seek civil penalties of up to \$2,500 per violation.¹⁹ Given the USDOT Office of Aviation Consumer Protection's²⁰ expertise and experience enforcing federal aviation consumer protections and ability to act quickly to address this conduct, USDOT is best suited to take action to protect consumers in this instance. I urge you to carefully review Frontier's practices and, if you find such practices to be unfair or deceptive, to use your authority to protect consumers.

My office is prepared to work with you to support a thorough examination of Frontier's practices and ensure consumers are protected during this precarious time. Thank you for your consideration and protection of consumers.

Sincerely,



Phil Weiser
Attorney General
State of Colorado

¹⁸ 49 U.S.C. § 41712.

¹⁹ 49 U.S.C. § 46301(a)(1)(D).

²⁰ The USDOT's Office of Aviation Consumer Protection was formerly known as the Office of Aviation Enforcement and Proceedings.