



Served: August 7, 1997

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

Issued by the Department of Transportation
on the 7th day of August 1997

Millon Air, Inc.

**Violations of 49 U.S.C. 41101 and
Order 96-2-33**

CONSENT ORDER

This consent order concerns unauthorized flights operated by Millon Air, Inc. (Millon), a U.S. carrier, between Miami and Ecuador during 1996 in violation of 49 U.S.C. §41101. This order directs Millon to cease and desist from future violations and to pay compromise civil penalties.

Millon ceased all operations in October 1996. As part of its attempt to resume operations in the near future, the carrier has submitted information to reestablish its fitness under 14 CFR 204.3 and has cooperated with the Department in resolving the outstanding enforcement issues stemming from a number of unauthorized operations between Ecuador and Miami that are the subject of this order.

Under the U.S.-Ecuador bilateral aviation agreement, frequencies of scheduled service by U.S. carriers are strictly limited to 15 weekly round-trip flights between the U.S. and Quito or Guayaquil, by way of a number of intermediate points. In addition, U.S. carriers with worldwide charter authority may perform charter service to the extent they receive the appropriate approvals from the Ecuadorian authorities. Millon, by Order 95-2-19, was allocated three weekly frequencies, one of which was limited to a one-year duration. Although the carrier failed to seek timely renewal of its third frequency in February 1996, it continued to provide approximately three weekly scheduled flights between the lapse in its authority and its suspension of operations in October 1996. These operations in excess of the two weekly scheduled flights for which authority remained effective were in violation of 49 U.S.C. §41101 which requires that a

U.S. carrier have appropriate authority prior to providing service. They also represent violations of a previous consent order, Order 96-2-33, which directed the carrier to cease and desist from future violations of section 49 U.S.C. §41101.¹

In mitigation, Millon states that its failure to submit a timely request for extension of its third frequency was entirely inadvertent, that it has cooperated fully with the Department in its investigation of the flights in question and that it has submitted evidence that it fully complied with all Ecuador economic rules pertinent to these operations. Millon further states that at all times the company has acted according to what it believed to be accepted industry standards and that the unauthorized flights resulted from inadvertence rather than intent on Millon's part to circumvent or disregard the Department's rules. In addition, Millon states that it has implemented a complete management change to avoid any recurrence of the problems covered in this order and in recognition that those problems and the prior consent order issues can reflect on the Department's view of the company's compliance disposition. Further, Millon notes that the Department is proposing to remove all of Millon's remaining Ecuadorian frequencies, which the carrier says will impose a severe economic hardship over and above the dollar amount of the civil penalty imposed by this order.

The Enforcement Office has considered the information and arguments presented by Millon but continues to believe that enforcement action is warranted in light of the extent of the unauthorized service in question. The Enforcement Office and Millon have reached a settlement of this matter. In order to avoid litigation, and without admitting or denying the violations described above, Millon consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §41101 and to the assessment of \$80,000 in compromise of potential civil penalties otherwise assessable under the provisions of 49 U.S.C. §46301. Of this amount, Millon shall pay \$40,000 in eight installments of \$5,000 each according to the schedule set forth in the ordering paragraphs below. The remaining \$40,000 shall be suspended for fourteen months following the service date of this order and shall be forgiven unless Millon fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. § 41101 or this order during the year following service of this order, in which case the entire unpaid portion of the \$80,000 assessed penalty shall become due and payable immediately. The Enforcement Office believes that the civil penalty assessment in this instance is warranted in light of the nature and extent of the activities in question and the mitigation presented. This order and the penalty it assesses will provide an incentive to air carriers to comply fully with the requirements of 49 U.S.C. §41101.

¹ Order 96-2-33 related to the performance of unauthorized wet lease service by Millon on behalf of a foreign carrier, in violation of both the cited statutory provision and 14 CFR Part 212.

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 in the public interest;
2. We find that Millon Air, Inc., violated 49 U.S.C. §41101 and Order 96-2-33 by performing unauthorized scheduled service between points in the U.S. and points in Ecuador without the requisite frequencies as described in Order 95-2-19;
3. We order Millon Air, Inc., to cease and desist from further violations of 49 U.S.C. §41101 and Order 96-2-33 as described above;
4. Millon Air, Inc., is assessed \$80,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 of this order. Of this amount, Millon shall pay \$40,000 in eight installments of \$5,000 each. Payments shall be made over a fourteen-month period with the first payment due six months after the service date of this order; the seven subsequent payments shall be due at 30-day intervals after the first payment. The remaining \$40,000 shall be suspended for the duration of the fourteen-month payment period and shall then be forgiven unless Millon fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. § 41101 or this order during the year following service of this order, in which case the entire unpaid portion of the \$80,000 assessed penalty shall become due and payable immediately; and
5. Payments 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 in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Millon Air, Inc., to 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 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)