



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

**Issued by the Department of Transportation
on the 9th day of February, 2001**

Aloha Airlines, Incorporated

**Violations of 49 U.S.C. § 41712 and 14 CFR
Part 399**

Served February 9, 2001

CONSENT ORDER

This consent order concerns advertisements by Aloha Airlines, Inc., ("Aloha"), that violate 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399). This order directs Aloha to cease and desist from future violations and to pay compromise civil penalties.

Aloha, as an air carrier, is subject to the advertising requirements of Part 399 of the Department's rules (14 CFR Part 399). Under 14 CFR 399.84, any advertising by an air carrier that states a price for air transportation is considered to be an unfair or deceptive practice or unfair method of competition in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the agency for such air transportation. Between October and December 2000, Aloha published and broadcast advertisements offering a \$99 roundtrip fare from several Hawaiian cities to Las Vegas, that failed to meet the requirements of Part 399.

Both the printed and broadcast advertisements in question begin with the statement "Soon Another Big Name Will be Appearing in Las Vegas. Aloha Airlines. Daily flights from Honolulu and Kahalui to Las Vegas. [Coming] Beginning February 14, 2001." In the broadcast version of the ad, the speaker simply says "Fly three segments between now and December 20, 2000, and

receive a special \$99 roundtrip fare to Las Vegas on Aloha Airlines." Subsequently, the words "\$99 Roundtrip (Plus tax)" appear on the screen, superimposed on two playing cards. Neither taxes nor fees are mentioned verbally.

The printed advertisement states that AlohaPass members who fly three roundtrip inter-island flights on Aloha or Island Air between October and December 2000, would receive a "special \$99 roundtrip fare" on Aloha Airlines to Las Vegas. (We refer in this order to such earned fares as a "certificate.") The small print at the bottom of the advertisement states: "Advance reservations required. Fare is plus taxes and subject to availability. * * *"

Under 14 CFR 399.84, any advertising that states a price for air transportation is considered to be an unfair or deceptive practice in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier or ticket agent for such air transportation, tour or tour component. However, as a matter of enforcement policy, the Department has permitted air carriers and agents to state separately from the advertised price taxes and fees, including passenger facility charges, imposed by a government on a per-passenger basis, so long as their amounts appear or are stated in the advertisement. (See, *e.g.*, Order 97-11-14). Taxes and fees imposed on an *ad valorem* basis, however, must be included in the advertised fare, lest consumers be seriously confused about the total amount that must be paid. As published and broadcast, the Aloha advertisements violate section 399.84 of the Department's regulations and 49 U.S.C. § 41712.

In mitigation, Aloha asserts that its policy has always been to provide complete and accurate information in advertising and to comply fully with all applicable laws and regulations. Aloha also states that its special Las Vegas fares were offered to its AlohaPass members to acquaint them with its new service from the Hawaiian Islands to Las Vegas, Nevada. Once the carrier learned that its advertised fares did not properly include the applicable taxes and fees, the carrier worked to correct the matter immediately. To this end, the carrier offered the fare without any additional taxes to all passengers who had already used their certificates to purchase tickets on the desired Las Vegas flights by the closing date of the promotion (December 20, 2000). With regard to the AlohaPass members who later automatically received the special certificates after completing the three segments, Aloha sent additional information with the certificate, which explained to the prospective passenger that the fare would be \$99 plus applicable taxes, and the nature and amount of those taxes. Aloha further states that it will endeavor to resolve any remaining concerns of its customers.

The Enforcement Office has carefully considered the information provided by Aloha but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Aloha have reached a settlement of this

matter. Aloha consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84, and to the assessment of \$20,000 in compromise of potential civil penalties. Of this total penalty amount, \$10,000 shall be due and payable within 15 days of the issuance of this order. The remaining \$10,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Aloha violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$10,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by Aloha, as well as by other airlines, travel agents, and other sellers of air transportation.

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 Aloha Airlines, Inc. violated 14 CFR 399.84 by causing to be published and broadcast advertisements that failed to state the entire price to be paid by the passenger to the carrier for certain air transportation;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, Aloha Airlines, Inc. also violated 49 U.S.C. § 41712;
4. Aloha Airlines, Inc., and all other entities owned and controlled by, or under common ownership and control with, Aloha Airlines, Inc., and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR 399.84 and 49 U.S.C. § 41712;
5. Aloha Airlines, Inc. is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of that penalty amount, \$10,000 shall due and payable within 15 days of the issuance of this order. The remaining \$10,000 shall be suspended for one year following issuance of this order, and then forgiven, unless Aloha Airlines, Inc. violates this order's cease and desist provision within that one-year period, or fails to comply with the order's payment provisions, in which case the entire unpaid portion of the \$10,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. Failure to pay the compromise assessment as ordered will subject Aloha Airlines, Inc. to the assessment of interest,

penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and

6. Payment 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. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to 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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