



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

Issued by the Department of Transportation
on the 30th day of May, 2001

US Airways, Inc.

Violations of 49 U.S.C. § 41712
and 14 CFR 399.84

Served May 30, 2001

CONSENT ORDER

This consent order concerns the failure of US Airways to incorporate surcharges, applicable to fares in certain markets, into the base fare initially displayed through one fare search feature on its Internet website. The omission of these surcharges violated the full-price advertising requirements of section 399.84 of the Department's rules (14 CFR 399.84) and, in addition, violated 49 U.S.C. § 41712, the statutory provision that is the basis for that consumer protection rule. This order directs US Airways to cease and desist from future similar violations and to pay a compromise civil penalty.

Under 14 CFR 399.84, fare advertisements by air carriers or their agents must state the full price charged the consumer. A primary intent of the rule is to ensure that consumers are given complete, accurate and comparable fare information on which to base their airline travel plans. As we have indicated in prior consent orders, these requirements apply to advertisements on Internet sites.¹ Through enforcement case precedent, the Department has allowed taxes and fees collected by carriers and other sellers of air transportation, such as passenger facility charges (PFCs) and departure taxes, to be stated separately in fare advertisements so long as the charges are levied by a government entity, are not *ad valorem* in nature, are collected on a per-

¹ See, e.g.: *Northwest Airlines Violations of 49 U.S.C. 41712 and 14 CFR 399.84*, Order 99-8-23; *Delta Air Lines Order 97-7-24*; *American Express Travel Related Services Company, Inc.*, Order 96-11-19. This long-standing policy has also been emphasized in notices to the airline and travel industries. See March 18, 1996 and January 18, 2001 notices, found at <http://www.dot.gov/airconsumer/01-index.htm>.

passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full fare to be paid. However, any fuel surcharges, as well as other carrier-imposed fees, must be included in the fare.

The alleged violations of the full-price advertising requirement at issue here occurred on the US Airways website's flexible-date fare search feature where an inquirer does not specify travel dates but merely requests the lowest fares in a city-pair market. Prior to its correction, the flexible-date search path produced a fare display in which a fuel surcharge, which was to be paid in addition to the displayed fare, was mentioned at the bottom of the display together with other applicable charges. The footnote stated that a fuel surcharge might apply but the consumer could not determine whether it in fact did apply to a particular purchase until he or she selected an itinerary and went to the booking page. The booking page, which the prospective purchaser reached after selecting specific flights, did ultimately include the fuel surcharge in the fare, however, so that the consumer could not actually book a flight without seeing the full fare.

The flexible-date fare search path violated the requirements of 14 CFR 399.84 by failing to include any applicable fuel surcharges on the first screen as part of the price for the air transportation involved. The search path appeared in this form on the US Airways website from March 22, 2000, to January 19, 2001, when the program was revised to include the fuel surcharges in the advertised fares. Furthermore, the pertinent surcharges were omitted in certain displays of US Airways' fares on the websites of its agents, in particular Travelocity.com and Expedia. As the principal, US Airways is responsible vicariously for the incomplete or deceptive fare listings appearing on these and other website locations of its agents.²

In mitigation, US Airways states that it worked with its computer system contractor, Sabre, to reprogram its website to incorporate fuel surcharges in the base fare displayed by the flexible-date fare search path, as the Department requires under its interpretations of section 399.84. The carrier noted in correspondence with the Enforcement Office that it worked diligently to address the problem once it was discovered, but that it was required to work with Sabre, which complicated and delayed its efforts to modify the flexible-date fare search path displays.³ US Airways states that technical difficulties prevented Sabre from correcting the discrepancy more promptly. The carrier also states that the majority of its website viewers used its fixed-date search

The displays of US Airways fares on the websites of its agents were derived from fare data submitted by the carrier to the major computer reservations systems. The carrier, therefore, shares direct responsibility for these displays as well as for those on its own site.

³ US Airways also points out that it has on its own initiative reviewed its website to ensure that other surcharges are not being improperly excluded from the base fares listed and it has taken steps to correct the treatment of several surcharges it discovered.

path, which always incorporated fuel surcharges into the base fare, and that even the flexible-date fare search path would alert the consumer of the full fare, including any fuel surcharge, prior to allowing the consumer to book the fare. Moreover, the carrier points out that the flexible-date fare search path provides consumers with a unique option for finding lower fares available on alternative travel dates without having to conduct dozens of iterative searches. In light of these factors, the carrier contends that the consumer was actually benefited by the availability of this alternative search path.

We consider any advertisements that do not comply with the full fare disclosure requirements to be a violation of both section 41712 and section 399.84, and we believe that enforcement action is warranted in this instance. US Airways, for its part, 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. § 41712 and 14 CFR 399.84 on its Internet site and to an assessment of \$50,000 in compromise of potential civil penalties. Of the assessed penalty of \$50,000, \$25,000 shall be paid as described below. The remaining \$25,000 shall be suspended for one year following the service date of this order and shall then be forgiven unless US Airways fails to comply with the provisions of this order, including its cease and desist and payment provisions, during the suspension period, in which case the entire unpaid portion of the \$50,000 assessed penalty shall become due and payable immediately. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future noncompliance with our advertising regulations and section 41712 by US Airways, as well as by 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 the order as being in the public interest;
2. We find that US Airways, Inc., violated 14 CFR 399.84 by advertising fares on its Internet site which failed to include certain surcharges, as described above;
3. We find that by engaging in the conduct described in paragraph 2, above, US Airways, Inc., violated the provisions of 49 U.S.C. § 41712;
4. US Airways, Inc., is ordered to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712;

5. US Airways, Inc., is assessed \$50,000 in a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Payment of \$25,000 of the assessed penalty is due within 15 days after the service date of this order; the remaining \$25,000 of the penalty shall be suspended for one year following the service date of this order and shall be forgiven unless US Airways fails to comply with the payment provisions of this order or commits other similar violations of 14 CFR 399.84, 49 U.S.C. § 41712 or this order, during the year following service of this order, in which case the entire unpaid portion of the \$50,000 assessed penalty shall become due and payable immediately and US Airways may be subject to further enforcement action; 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. Failure to pay the penalty as ordered shall also subject US Airways, Inc., to an 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 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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*An electronic version of this document is available on the World Wide Web at
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