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Order 2001-8-1

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

Issued by the Department of Transportation
on the 2nd day of August 2001

Northwest Airlines, Inc. **Violations of 49 U.S.C. § 41712 and 14 CFR 399.84**	**Served August 2, 2001**

CONSENT ORDER

This consent order concerns the failure of Northwest Airlines, Inc. (Northwest), an air carrier, to include fuel surcharges, where applicable, in all fares on its 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 constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. This order directs Northwest 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 to the consumer. A primary intent of the rule is to ensure that consumers are given accurate and complete fare information on which to base their airline travel plans. The rule thus helps protect consumers against "bait and switch" or similar tactics where they are lured into examining what appears to be a lower air fare only to later discover charges which should have been disclosed initially. As we have indicated in prior consent orders, these requirements apply to advertisements on Internet sites.[1] In recent 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 approved or levied by a government entity, are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in the

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[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.

advertisement so that the consumer can determine the full fare to be paid. However, any fuel surcharges, as well as *ad valorem* taxes or any additional carrier or vendor fees, must be included in the advertised fare.

On Northwest's website, the principal violations of the full-price requirement occurred on a flexible-date search feature, known as "Lowest Fare Finder," in which the inquirer did not specify travel dates but merely requested the lowest fares in a city-pair market. The flexible-date search path produced a fare display stating that surcharges are not included and referring the consumer to a separate screen under "more rules," which stated that a fuel surcharge of $9.30 each way applied. However, the booking page, which the prospective purchaser reached only after selecting specific flights, included the fuel surcharge, so that the consumer could not actually book a flight without seeing the full fare. Nonetheless, the flexible-date search path did violate the requirements of section 399.84, and was deceptive and unfair, by failing to include the fuel surcharges on the first screen that stated a price for the air transportation involved.

In mitigation, Northwest states that it has brought its website into full compliance with section 399.84. The carrier noted in correspondence with the Enforcement Office that technical difficulties prevented it from correcting the discrepancy more promptly. Despite these delays in amending its displays, Northwest contends that the actual consumer harm was minimal since the consumer could not book a flight without being provided the actual fare.

We consider any advertisements which 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. Northwest, 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 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 Northwest 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 Northwest, 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 Northwest Airlines, Inc., violated 14 CFR 399.84 by advertising fares on its Internet site which failed to state the full fare to be paid by consumers, as described above;

3. We find that by engaging in the conduct described in paragraph 2, above, Northwest Airlines, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;

4. Northwest Airlines, Inc., is ordered to cease and desist from further similar violations of 14 CFR 399.84 and 49 U.S.C. § 41712;

5. Northwest Airlines, Inc., is assessed $50,000 in 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 Northwest 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 Northwest may be subject to further enforcement action; and

6. Payment shall be made within 15 days of the service date of this order 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 Northwest Airlines, 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:

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Deputy General Counsel

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