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**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

**REVISED ENFORCEMENT POLICY
ON DECEPTIVE PRACTICES REGARDING
SERVICE FEES CHARGED BY TRAVEL AGENTS
IN THE MARKETING AND SALE OF AIRFARES
TO THE PUBLIC VIA THE INTERNET**

NOTICE

The Office of Aviation Enforcement and Proceedings ("Enforcement Office") has revised its enforcement policy on fare advertising in light of the issuance of Order 2001-12-7 (December 7, 2001). The Department granted a conditional exemption from the airfare advertising requirements of 49 U.S.C. §41712 and 14 CFR §§399.80 and 399.84 in this order to allow Orbitz, L.L.C., an on-line travel agent, to list its service fees separately from certain airfares. Consistent with the Department's action, the Enforcement Office will no longer take enforcement action against Internet travel agents that list their service fees separately from airfares, provided that they conform to the limits enumerated in Order 2001-12-7 and set forth below. This revised policy applies only to Internet travel agents:

airlines that list service fees separately from their airfares remain subject to enforcement action.¹

The Department's rule on price advertising, 14 CFR §399.84, states that "any advertising or solicitation by . . . [a travel] agent . . . for passenger air transportation . . . that states a price for such air transportation . . . [is] an unfair or deceptive practice, unless the price stated is the entire price to be paid by the customer to the . . . agent . . . for such air transportation" Over the years, the Enforcement Office has adapted its compliance activities under this rule to take account of new government fees and new advertising approaches in newspapers, television, radio, and on the Internet, but we have consistently interpreted the rule and the statute as prohibiting the separate listing of surcharges imposed by airlines or travel agents:

As a matter of long-standing 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, and are not *ad valorem* in nature, are collected on a per-passenger basis, and their existence and amount are clearly indicated in the advertisement so that the consumer can determine the full price 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.

Order 2001-12-1 at 1-2 (emphasis supplied); *see also* Notice of the Office of Aviation Enforcement and Proceedings, *Prohibition on Deceptive Practices In the Marketing of Airfare to the Public Using the Internet*, <http://www.dot.gov>.

¹ In addition, under 14 CFR §399.84, travel agents who do not sell air transportation over the Internet must continue either (1) to include any service fees they charge in their airline fare quotes to consumers or (2) to quote the fare, the service fee, and the total price, presenting all three elements together. Although the former approach clearly complies with §399.84, the Enforcement (footnote continued on next page)

[gov/airconsumer/20010118.htm](http://www.ftc.gov/airconsumer/20010118.htm), January 18, 2001. We have found that separate listing of these charges can confuse consumers, can keep them from making accurate fare comparisons before deciding what to book and where, and can in some cases constitute "bait-and-switch" marketing.

By Order 2001-12-7, the Department found on balance that notwithstanding the rule and its clear public benefits, consumers may well benefit from knowing the service fees that travel agents are charging for air transportation, provided that safeguards against deception are put in place. While the Department's exemption by its terms applies only to Orbitz, the Enforcement Office does not contemplate taking enforcement action against any other Internet travel agent that lists its service fees separately from airfares on its website, provided that the agent adheres to the following conditions:

- (1) The agent must state the total price to the consumer of purchasing a ticket or tickets, including its service fee, wherever it presents an itinerary that may be purchased.
- (2) No display page may list prices that do not include the agent's service fee unless it also lists itineraries with fares that do include this fee. The agent must place the following statement, prominently and in bold type, between any list on a fare/itinerary display page of prices that do not include its service fee and the display of flight itineraries with fares that do include its service fee:

Prices [above/below] are per person and may not be purchased on [name of agent] without applicable service fees.

The words "service fees" must be linked to a pop-up page that clearly sets forth the agent's fee schedule, including dollar amounts.

Office favors the latter approach, as it provides consumers with more complete information on which to base their purchase decisions.

- (3) The agent must prominently disclose that it charges a service fee on the first page of its website and at a minimum provide a link to its pop-up explanation.
- (4) The agent's service fees may not be *ad valorem* in nature.
- (5) In any list of prices that do not include the agent's service fee, the prices must reflect the airlines' prices to the agent; all other fares displayed on the agent's website must either reflect the full price the consumer must pay to the agent for a ticket or tickets, including any applicable service fee, or be adjacent to a full price that includes such fees.

This revised policy will remain in effect until the Department has had an opportunity to consider the disclosure of service fees more comprehensively in a rulemaking proceeding with input from all interested parties, as it stated in Order 2001-12-7 that it would do. In addition, nothing in that order or in this notice should be construed as requiring any travel agent to list its service fee separately from any airfare. Fare quotes that include any applicable service fees are in compliance with 14 CFR §399.84 and will not be subject to enforcement action. Questions concerning this notice or other issues regarding the applicability of the Department's fare advertising rules may be addressed to the Enforcement Office.

Thank you for your cooperation on this important issue.

By:

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