



**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 April 2008

**US Airways, Inc.**

**Violations of 49 U.S.C. §§ 41712 and  
14 CFR Part 234**

**Docket OST 2008-0031**

**Served April 2, 2008**

**CONSENT ORDER**

This consent order is the result of an investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) which revealed the failure of US Airways, Inc. (US Airways) to provide on-time performance information to consumers in violation of 14 CFR Part 234 and 49 U.S.C. § 41712. This order directs US Airways to cease and desist from future similar violations of Part 234 and section 41712, and assesses the carrier \$50,000 in civil penalties.

Section 234.8 of the Department's regulations, 14 CFR 234.8, requires carriers reporting on-time performance information, including US Airways, to assign an on-time performance code to flights covered by that section. Additionally, section 234.9 sets out the guidelines by which carriers must report on-time performance codes to the vendors of computer reservation systems. Under section 234.11, a carrier must disclose to a consumer during the course of a reservation inquiry and upon request the on-time performance information for any flight which has been assigned an on-time performance code under Part 234. Violations of Part 234 constitute unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

The Enforcement Office's investigation revealed a lack of compliance with section 234.11 by US Airways employees. In a telephone survey conducted, in November 2006, by this office, US Airways reservation agents failed to provide the requested on-time performance information to callers during a number of test calls. In other calls, US Airways reservation agents indicated they did not have on-time performance information or were unfamiliar with its availability.<sup>1</sup>

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<sup>1</sup> US Airways also did not comply with section 234.11 with respect to calls made to US Airways' reservation agents regarding the on-time performance of flights operated by US Airways' connection carrier, Mesa Air Group. This order covers those violations.

In mitigation, US Airways states that it takes the requirements to provide on-time performance data to consumers very seriously. US Airways states that its website automatically provides the on-time performance information when a customer selects additional details about a particular flight. US Airways also notes that its commitment to providing consumers these data was further amplified by a US Airways press release on November 13, 2007, where US Airways reiterated that on time performance data is available via phone or internet.

As for the specific instances referenced by the Department, US Airways avers that it was not provided sufficient detail to exactly identify the root cause of the inability of agents to provide the requested data. According to US Airways, an internal US Airways investigation suggests the reason for the inability of agents to provide the requested data may be tied to the fact that at the time of the phone inquiries US Airways and America West had not yet migrated the two separate reservation systems to a single reservation platform. As a result, US Airways believes that it is possible that different terminology used in the two separate reservation systems training protocols may have caused newer agents not to properly identify the requested data.

US Airways states that, upon inquiry from the Department, it moved aggressively to correct any confusion by updating training protocols, retraining where necessary, and ensuring back-up web access to the on-time performance data in all US Airways and America West reservation centers. US Airways also states that since the Department's inquiry, US Airways and America West migrated to a single reservation platform and all agents have been trained on the protocols necessary to provide the data in response to customer requests. US Airways notes that it continues to remind its reservations agents of how to access the data, and continues to make its own test calls to its reservation agents to ensure compliance.

Despite the existence of these mitigating factors, we view seriously US Airways' failure to disclose on-time performance information as required by Part 234. Accordingly, after carefully considering all of the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted.

By this order, the Department finds that US Airways failed to disclose the on-time performance of its flights in violation of 14 CFR Part 234 and 49 U.S.C. § 41712. In order to avoid litigation, US Airways agrees to settle these matters with the Enforcement Office through the issuance of this consent order directing it to cease and desist from future similar violations of Part 234 and 49 U.S.C. § 41712 and assessing it \$50,000 in compromise of potential civil penalties otherwise due and payable. Of this amount, \$30,000 will be paid under the terms described in the ordering paragraph below. The remaining \$20,000 will be suspended and forgiven after one year, provided the company commits no further violations during that period. This compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's reporting requirements by US Airways, as well as by other air carriers.

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 US Airways has violated 14 CFR 234.11 by failing to disclose on-time performance information as required;
3. We find that by engaging in the conduct and violation described in ordering paragraph 2 above, US Airways has engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. US Airways, and all other entities owned or controlled by or under common ownership with US Airways, its successors and assignees are ordered to cease and desist from further violations of 14 CFR Part 234 and 49 U.S.C. § 41712;
5. US Airways is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 and 3 above. Of the total penalty amount, \$30,000 shall be due and payable within 15 days of the date of issuance of this order. The remaining \$20,000 shall be suspended for 12 months after the date of issuance of this order and then forgiven, unless, during this time US Airways violates this order's cease and desist or payment provisions, in which case the entire amount shall become due and payable immediately and US Airways shall be subject to additional enforcement action; and
6. Payment shall be made by wire transfer through the Federal Reserve Communication 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 US Airways 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.

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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