



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

Issued by the Department of Transportation
on the 15th day of September, 2008

Allegiant Air, LLC

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

Docket OST 2008-0031

Served September 15, 2008

CONSENT ORDER

This consent order concerns fare displays by Allegiant Air, LLC (Allegiant) on its website (www.allegiantair.com) that failed to comply with the Department's rule on full fare advertising, 14 CFR 399.84, and the related statute, 49 U.S.C. § 41712(a). The carrier assessed a "convenience fee" on all ticket purchases except those made at one of the carrier's airport ticket offices. Under section 399.84, this fee should have been included in initial fare quotes on Allegiant's website. This order assesses a compromise civil penalty of \$50,000 and directs the carrier to cease and desist from future similar violations.

To ensure that consumers receive accurate and complete information on available air fares, section 399.84 of the Department's rules (14 CFR 399.84) requires that fare advertisements by air carriers or their agents state the full price to be charged the consumer. This requirement extends to advertisements on Internet sites. Under its enforcement case precedent, the Department has allowed certain government taxes and fees to be stated separately in fare advertisements, provided that the consumer is informed of these charges in conveniently accessible text.¹ However, because Allegiant's convenience fee, a non-government fee, applied to the large majority of ticket

¹ Fees or charges may be listed separately, under Department precedent, provided that they are 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 advertisement so that the consumer can determine the full fare to be paid. Examples of such additional charges are passenger facility charges (PFCs) and international departure taxes. On Internet displays, these charges may be noted through a prominent link, placed adjacent to the stated fare, that takes the viewer to the bottom of the screen, or to a separate screen, where the nature and amount of such fees are displayed.

purchases using the carrier's website,² the fee should have been included in the initial fare quotes appearing on the website.

In this manner, the Allegiant website, in the Enforcement Office's view, violated Department requirements by displaying fares which on their initial presentation did not include the carrier-assessed convenience fee as described above. Inclusion of the fee in the quoted fare did not occur until the latter stages of the website booking process. As with other carrier-imposed fees that are mandatory for on-line bookings, convenience fees must be included in initial base fares displayed in website advertisements, or in a range of lowest to highest fares inclusive of the fee, both on the carrier's site and on the sites of secondary vendors.

In mitigation and explanation, Allegiant states that it takes compliance with government requirements very seriously. Consistent with that approach, Allegiant believes strongly that its practice of disclosing the convenience fee in a like manner as checked baggage fees and other non-mandatory fees complied fully with Department rules, guidance and precedent applicable to such fees. Allegiant states that its passengers have been free at all times to purchase transportation at its airport ticket offices without incurring the fee, and that on average over 1,400 per week choose to do so. Availability of that purchase option was and continues to be disclosed repeatedly and clearly on Allegiant's website, with a complete list of the specific locations and times of operation of the airport ticket offices readily accessible via conspicuous hyperlinks. Thus Allegiant believes that since the convenience fee, like a checked baggage fee, is non-mandatory, Allegiant at all times provided consumers with full and accurate fare information in compliance with Department rules, guidance and precedent.

Allegiant states that despite its strongly-held conviction that no violation occurred, it has cooperated fully with the Department's investigation, including participation in extensive discussions with the Enforcement Office concerning the latter's desire for changes to the content, format and layout of various pages of the Allegiant website. Allegiant states that it has voluntarily resolved each Enforcement Office concern, many of which went well beyond the scope of the convenience fee matter.

We acknowledge that Allegiant has cooperated in our investigation and has responded positively to the Enforcement Office's requests for revisions to the carrier's website; however, we believe that enforcement action is nonetheless warranted in this instance. Principal among the modifications Allegiant has agreed to make to its website, the initial presentation of its fare quotes will include a range of fares available in the market selected by the consumer, with the convenience fee included in the high and low fares quoted on the initial screen.³ In addition, Allegiant, in order to avoid litigation and without admitting the alleged violations, agrees to the issuance of this order to cease and

² The convenience fee (currently \$11.50) was assessed on all non-ticket counter sales, except that for travel originating from new markets, Allegiant did not assess the fee until such time as its local airport ticket office opened for business.

³ Allegiant states that it expects the website revisions to be in place within 60 days of the service date of this order.

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 this total penalty amount, \$25,000 shall be payable within 75 days following the service date of this order. Eligible website reprogramming costs may be offset against up to \$15,000 of the assessed penalty.⁴ The remaining \$25,000 shall be paid if Allegiant violates this order's cease and desist or payment provisions within the 15-month period following issuance of this order, in which case the entire unpaid amount shall become due and payable immediately and Allegiant may be subject to further enforcement action. 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 the Department's advertising regulations and section 41712 by Allegiant, 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 this order as being in the public interest;
2. We find that Allegiant Air, LLC, violated 14 CFR 399.84 by failing to include additional fees, referred to as convenience fees, in fares initially presented on its website;
3. We find that Allegiant Air, LLC, violated 49 U.S.C. § 41712(a) by failing to include additional fees, referred to as convenience fees, in fares initially presented on its website;
4. Allegiant Air, LLC, its successors, affiliates, and assigns, are ordered to cease and desist from further violations of 14 CFR 399.84 and 49 U.S.C. § 41712(a) relating to full fare advertising;
5. Allegiant Air, LLC, is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3. Of this total penalty amount, \$25,000 shall be due and payable 75 days after the service date of this order. Up to \$15,000 of that amount may be offset for verified website reprogramming expenditures, as described in the order. Allegiant Air shall submit within 65 days of the service date of this order, a statement, sworn to by a responsible airline official, detailing its expenses for which it claims an offset. The remaining \$25,000 shall be paid if Allegiant violates this order's cease and desist provisions during the 15 months following the service date of this order, and Allegiant may be subject to further enforcement action; and

⁴ Allegiant is being credited up to \$15,000 for reprogramming and related review, approval and implementation expenses, including the cost of changes related to certain optional services offered on the carrier's website. However, the offset does not extend to similar expenses related to the inclusion of the convenience fee in initial fare quotes. The carrier shall submit a statement of its expenses within 65 days of the service date of this order to avail itself of offsets.

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 Allegiant Air 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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For Aviation Enforcement and Proceedings

(SEAL)

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