



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

Issued by the Department of Transportation  
on the **31st day of July, 2003**

**America West Airlines, Inc.**

**Violations of 49 U.S.C. § 41712  
and 14 CFR Part 399**

**Docket OST-2003-14194**

**Served: July 31, 2003**

**CONSENT ORDER**

This consent order concerns advertisements published by America West Airlines, Inc. (America West), a certificated air carrier, that violate 49 U.S.C. § 41712, which prohibits unfair and deceptive practices, and the advertising requirements specified in Part 399 of the Department's regulations (14 CFR Part 399). This order directs America West to cease and desist from future violations and to pay compromise civil penalties.

America West, as an air carrier, is subject to the advertising requirements of Part 399 of the Department's rules. Under 14 CFR 399.84, any advertising by an air carrier that states a price for air transportation is considered to be an unfair or deceptive practice or unfair method of competition in violation of 49 U.S.C. § 41712 unless the price stated is the entire price to be paid by the customer to the air carrier for such air transportation. America West caused to be published in October 2002 advertisements over the Internet that promoted America West service from Pittsburgh to various destinations, but failed to meet the requirements of Part 399.

The text of the advertisements stated: "Fares as low as \$123 each way for travel to/from Pittsburgh. Sale ends October 29." During its investigation of this matter, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) staff learned that the \$123 fare advertised as an "each way" fare could not be purchased unless a consumer purchased a round-trip ticket in

connection with the fare. The body of the ads did not, as required, state prominently and in close proximity to the advertised fare that the fare is an each-way fare requiring a round-trip purchase. America West also failed to note the round-trip purchase requirement in the fine print of the advertisement. America West's ads thus failed adequately to disclose the fact that this significant restriction applies to the fare advertised.

The Enforcement Office has as a matter of enforcement policy permitted the listing in price advertisements of fares on an each-way basis, provided that any round-trip purchase condition is prominently displayed. "Prominently" means in close proximity to the advertised fare and of a type size sufficient to alert the reader to the provision (*i.e.*, larger than the fine print usually found at the bottom of ads). See, *e.g.*, Order 93-3-24. The body of the America West ads at issue here fails to disclose anywhere near the advertised fare that the fare is restricted to purchases of round-trip tickets, and would lead a reasonable consumer to believe that a one-way ticket could be purchased at the advertised price, when that is not the case. As published, the advertisements violate section 399.84 of the Department's regulations. Any violation of 14 CFR 399.84 also constitutes a violation of 49 U.S.C. § 41712.

In mitigation, America West states that its policy is to comply with all Department rules, including Section 399.84, and it has a procedure for reviewing all advertising to ensure compliance. The carrier states that it ran an Internet special to introduce new Pittsburgh service, to correspond with a print ad. Both ads, as noted above, stated "fares as low as \$123 each way for travel to/from Pittsburgh." Although the print ad included the required "roundtrip" language, in this isolated instance, the carrier recounts that the Internet advertisement accidentally appeared without being reviewed in accordance with the carrier's procedures.

America West believes that consumers who saw the quoted language would have understood that there was a round-trip requirement, and that those consumers that clicked on the advertisement would have been sent instantly to another screen (prior to the booking screen) that clearly stated that the fare required a round-trip purchase. Moreover, America West points out that when the Department contacted the carrier, it immediately took steps to include the round-trip language in the initial box of the advertisement, thereby limiting any alleged harm to consumers. America West states that it never intended to mislead or otherwise deceive consumers, and that it is not aware of any complaint concerning the advertisement.

The Enforcement Office has carefully considered the information provided by America West but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and America West have reached a

settlement of this matter. America West consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 399.84 and to the assessment of \$20,000 in compromise of potential civil penalties. Of that penalty amount, \$10,000 shall be due within 15 days of the issuance of this order. The remaining \$10,000 shall be suspended for one year from the date of issuance of this order, and then forgiven, unless America West violates this order's cease and desist or civil penalty payment provisions during that time period. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's advertising requirements by America West, as well as by other air carriers and foreign 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 America West Airlines, Inc. violated 14 CFR 399.84 by causing to be published an advertisement that failed to state the entire price to be paid by the customer to the air carrier, or agent, for certain air transportation;
3. We find that by engaging in the conduct and violation described in paragraph 2 above, America West, Inc., also violated 49 U.S.C. § 41712;
4. America West Airlines, Inc., and all other entities owned or controlled by or under common ownership with America West Airlines, Inc., and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41712 and 14 CFR 399.84;
5. America West Airlines, Inc., is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of that penalty amount, \$10,000 shall be due within 15 days of the issuance of this order. The remaining \$10,000 shall be suspended for one year from the date of the issuance of this order, and then forgiven, unless America West Airlines, Inc., violates this order's cease and desist or civil penalty payment provisions during that time period. Failure to pay the compromise assessment as ordered will subject America West 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; 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.

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**

**(SEAL)**

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