



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

Issued by the Department of Transportation
on the 23rd day of December, 2008

US Airways, Inc.
Violations of 14 CFR Part 250 and
49 U.S.C. § 41712

Docket OST 2008-0031

Served December 23, 2008

CONSENT ORDER

This Consent Order concerns violations by US Airways, Inc., (US Airways) of the Department's oversales rule, 14 CFR Part 250, and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. The violations stem from the carrier's failure 1) to solicit volunteers before involuntarily denying boarding to passengers on oversold flights, 2) to furnish the required written notice to passengers who were denied boarding ("bumped") involuntarily, and 3) to provide in a timely manner bumped passengers with the appropriate amount and type of denied boarding compensation (DBC). The order assesses US Airways a civil penalty of \$140,000.

Under certain circumstances, 14 CFR Part 250 mandates that a carrier pay DBC to passengers who hold "confirmed reserved space" on a flight, have complied with the carrier's contract of carriage, have met the carrier's requirements with respect to check-in time and appearing at the gate, and have been bumped involuntarily from the flight because it was oversold ("eligible passengers"). In addition, before bumping passengers involuntarily, the carrier must first solicit volunteers.¹ If there are not enough volunteers, the carrier may deny boarding to other passengers against their will, provided *inter alia* "on the day and [at the] place the denied boarding occurs," the carrier pays all eligible passengers with "cash or an immediately negotiable check for the appropriate amount of compensation... ."² The appropriate amount of DBC varies for each passenger depending

¹ 14 CFR 250.2b(a).

² 14 CFR 250.8(a). The provision of denied boarding compensation does not relieve carriers from their obligation to perform the transportation promised under their contract of carriage with passengers. Therefore, in addition to receiving DBC, eligible passengers are entitled to keep their original ticket and use it on another flight. Or, if they choose to make their own arrangements, they can request an

on the planned time of arrival at his or her destination of substitute transportation arranged (or offered to be arranged) by the carrier, the value of the unused portion of the passenger's ticket to his or her destination, and whether the flight segment on which the bumping occurred was between U.S. points, or from the U.S. to a foreign point.³ Although Part 250 permits a carrier to offer free or reduced rate air transportation in the form of travel vouchers for use on future flights in lieu of a cash payment, the carrier must first "[inform] the passenger of the amount of cash compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash payment."⁴ In other words, eligible passengers who are involuntarily denied boarding must be apprised of their entitlement to cash compensation and be given the choice to receive this form of compensation instead of a travel voucher. In order to ensure that these passengers have the ability to make informed decisions regarding the various DBC options available to them, a carrier is required to furnish them with a written statement "explaining the terms, conditions, and limitations of denied boarding compensation... ."⁵ Violations of 14 CFR Part 250 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

A recent review of US Airways' passenger complaint records from July 2007 to July 2008 conducted by the Office of Aviation Enforcement and Proceedings (Enforcement Office) and of passenger complaints involving US Airways during the same period sent directly to the Enforcement Office revealed numerous instances in which the carrier bumped passengers, but did not follow one or more of the provisions of 14 CFR Part 250, as outlined above.

In mitigation, US Airways states that it did ultimately compensate all of the passengers identified by the Department. In addition, US Airways states that it has revamped its applicable training program to ensure that all airport staff are current on all Part 250 rules. US Airways is also reexamining its policies and procedures relating to overbooking to ensure a smoother process at the airport when it becomes necessary to seek volunteers or deny boarding.

The Department's oversales rule reflects a carefully crafted balance between the right of individual passengers to obtain the services they purchase and the right of carriers to market their services effectively. Part 250 permits airlines to sell more tickets for a flight than there are seats on the aircraft. This allows carriers to fill seats that would otherwise have gone empty due to "no shows," thereby resulting in efficiencies for carriers, including revenue enhancement, and benefits for passengers as a whole by enabling carriers to offer them lower fares. In exchange for this privilege, the rule mandates compensation and other protections for eligible passengers who are involuntarily denied

"involuntary refund" for the ticket for the flight from which they were bumped. DBC is a separate right and is intended to compensate passengers for their inconvenience.

³ 14 CFR 250.5(a).

⁴ 14 CFR 250.5(b).

⁵ 14 CFR 250.9(a).

boarding. The Enforcement Office views the violations uncovered during its review of oversales-related complaints against US Airways as indicative of broader noncompliance that must be remedied. Therefore, we believe that enforcement action is warranted.

In order to avoid litigation and without admitting or denying the violations described above, US Airways, Inc., agrees to the issuance of this order to cease and desist from future violations of 14 CFR Part 250 and 49 U.S.C. § 41712. US Airways, Inc., further agrees to the assessment of \$140,000 in compromise of potential civil penalties otherwise assessable against it. The Enforcement Office believes that this compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and provides a strong incentive to all airlines to comply with the Department's denied boarding regulation.

This order is issued under the authority contained in 49 CFR 1.57(a) 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 US Airways, Inc., violated 14 CFR 250.2b(a), as described above, by failing to solicit volunteers before involuntarily denying boarding to passengers on oversold flights;
3. We find that US Airways, Inc., violated 14 CFR 250.8(a), as described above, by failing to tender to eligible passengers cash or an immediately negotiable check for the appropriate amount of compensation on the day and at the place the denied boarding occurs;
4. We find that US Airways, Inc., violated 14 CFR 250.5(a), as described above, by failing to pay eligible passengers the amount of denied boarding compensation specified in the rule;
5. We find that US Airways, Inc., violated 14 CFR 250.5(b), as described above, by failing to inform eligible passengers offered travel vouchers of the amount of cash compensation that would otherwise have been due to them;
6. We find that US Airways, Inc., violated 14 CFR 250.9(a), as described above, by failing to furnish eligible passengers with a written statement explaining the terms, conditions, and limitations of denied boarding compensation;
7. By engaging in the conduct described in ordering paragraphs 2, 3, 4, 5, and 6, above, we find that US Airways, Inc., engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;

8. We order US Airways, Inc., and all other entities owned, controlled by, or under common ownership with US Airways, Inc., to cease and desist from further violations of 14 CFR Part 250 and 49 U.S.C. § 41712;

9. We assess US Airways, Inc., a compromise civil penalty of \$140,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 7, above; and

10. We order US Airways to pay the compromise civil penalty assessed in ordering paragraph 9, above, within 30 days of the issuance of this order. Said 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 subject US Airways, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to 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 initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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