



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

Issued by the Department of Transportation  
On the Twelfth day of July, 2012

**Vision Airlines, Inc.**

**Violations of 14 CFR 382 and 399 and  
49 U.S.C. §§ 41705 and 41712**

**Docket OST 2012-0002**

**Served July 12, 2012**

**CONSENT ORDER**

This order concerns violations by Vision Airlines, Inc., (Vision) of the Department's full-fare advertising rule, 14 CFR 399.84, as well as 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices. It also covers violations by Vision of 14 CFR Part 382 and 49 U.S.C. § 41705 with respect to the carrier's failure to timely and accurately file annual reports detailing disability-related complaints received by the carrier. The order directs Vision to cease and desist from future violations of Parts 382 and 399 and sections 41705 and 41712 and assesses the carrier a compromise civil penalty of \$75,000.

**Violations of the Department's Full-Fare Advertising Rule**

As an air carrier, Vision is subject to the advertising requirements of Part 399 of the Department's rules. Pursuant to 14 CFR 399.84, advertisements specifying airfares must state the full price to be paid by the consumer. Under long-standing enforcement case precedent that expired on January 25, 2012,<sup>1</sup> the Department allowed taxes and fees

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<sup>1</sup> On April 20, 2011, the Department issued a rule changing its enforcement policy with respect to section 399.84 to require that airlines and ticket agents comply with the rule as written. Under this new enforcement policy, which became effective January 26, 2012, airlines and ticket agents must include all government taxes and fees in every advertised fare. The Department's long-standing prohibition, as

collected by carriers and ticket agents, such as passenger facility charges and departure taxes, to be stated separately from base fares in advertisements so long as such taxes and fees were levied by a government entity, were not *ad valorem* in nature, i.e., not assessed as a percentage of the fare price, were collected on a per-passenger basis, and their existence and amounts were clearly indicated at the first point in the advertisements where a fare was presented so that consumers could immediately determine the full fare to be paid. Carrier or ticket agent-imposed charges, such as fuel surcharges and administrative fees were not permitted to be stated separately from the advertised fare. Thus, for example, fare advertisements that 1) failed entirely to identify the existence and amount of separate additional taxes and fees at the first point at which a fare was displayed, 2) included only general statements regarding the existence of such taxes and fees, or 3) separately stated carrier-imposed fees did not comply with section 399.84, or the Department's enforcement case precedent. Violations of section 399.84 constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

With respect to Internet fare listings, additional charges that properly may be stated separately from the advertised fare were allowed to be disclosed through a prominent link placed adjacent to the stated fares that noted that taxes and fees were extra. The link was required to directly take the viewer to the bottom of the screen, to a pop-up, or to a place on a separate screen where the nature and amount of taxes and fees were prominently and immediately displayed.<sup>2</sup>

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that Vision advertised air fares that were followed by asterisks that referred consumers to a general statement below each fare alerting consumers, without further elaboration, that the fares "exclude[ed] taxes and fees," but gave no information as to the nature or amount of those taxes and fees. Consumers were then required to input a proposed itinerary on Vision's website to determine the associated taxes and fees for the fares advertised on its homepage. Accordingly, Vision's advertisements violated the Department's full-fare advertising rule, 14 CFR 399.84, and the prohibition against unfair and deceptive practices and unfair methods of competition, 49 U.S.C. § 41712.

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described above, on omitting carrier- or agent-imposed charges, such as fuel surcharges or convenience fees, from advertised fares remains in effect.

<sup>2</sup> For example, under the enforcement policy in effect prior to January 26, 2012, a carrier or ticket agent could advertise a flight in the following manner: \$260 + Taxes and Fees with the taxes and fees language as a hyperlink that took the viewer directly to the bottom of the screen, or to the place on a separate screen, where the nature and amount of taxes and fees were prominently and immediately displayed. See Department notices entitled "Disclosure of Air Fare Variations: Web vs. Other Sources, Surcharges that May be Listed Separately in Advertisements," dated November 4, 2004; "Disclosure of Additional Fees, Charges and Restrictions on Air Fares in Advertisements, Including 'Free' Airfares," dated September 4, 2003; and "Prohibition on Deceptive Practices in the Marketing of Airfares to the Public Using the Internet," dated January 18, 2001, available at: <http://airconsumer.ost.dot.gov/rules/guidance.htm>.

## **Violation of the Department's Rule Requiring Reports of Disability-Related Complaints**

Under 14 CFR 382.157, covered carriers (i.e., U.S. and foreign air carriers operating passenger service to, from, or within the United States with at least one aircraft having a design capacity of more than 60 passenger seats) must, among other things, submit an annual report to the Department summarizing the disability-related complaints that they received during the previous calendar year.<sup>3</sup> The annual report to the Department is due each year on the last Monday in January. The annual report for calendar year 2009 was due on January 25, 2010, and the annual report for calendar year 2010 was due on January 31, 2011.

The Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, among other things, requires that the Secretary of Transportation “regularly review all complaints received by air carriers alleging discrimination on the basis of disability and report annually to Congress on the results of such review.” The Enforcement Office has made efforts to ensure that carriers file disability-related reports in compliance with section 382.157 by providing carriers and carrier associations information about the disability reporting requirements and posting a copy of the disability reporting rule on its Aviation Consumer Protection Division’s website.

Vision is a U.S. covered carrier for the purposes of section 382.157. Vision failed to submit its annual report detailing disability-related complaints to the Department for calendar year 2009 and it submitted its report for calendar year 2010 on May 25, 2011, nearly four months late. In doing so, Vision violated section 382.157(d) and the ACAA.

### **Mitigation**

In mitigation, Vision states that it had just begun to operate large aircraft scheduled service during the covered period. Vision asserts that it addressed both of the violations as soon as practicable after it became aware of them, and these violations are not of the type that are likely to be repeated.

With respect to the violations of the Department’s old full-fare advertising rule, Vision asserts that it had been in regular communications with Enforcement Office staff regarding advertising compliance and remedied any observed deficiencies as soon as it became aware of them. Moreover, the carrier states that it was only due to a technical problem that the appropriate information on taxes and fees was not available through an active hyperlink.

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<sup>3</sup> In addition, the rule requires a carrier to record complaints that it receives alleging discrimination or inadequate accessibility on the basis of a disability. The complaints are to be categorized according to the passenger’s type of disability and the nature of the complaint. The rule also requires that covered carriers retain a copy of each disability-related complaint that the carrier receives and a record of the action taken on the complaint for three years.

Regarding the violations of the Department's disability-reporting regulations, Vision states that the first calendar year for which Vision was required to report disability complaints was 2009. Vision explains that it did not receive any disability complaints that year and misunderstood its obligation to file negative reports. Vision further explains that not having previously filed any disability reports, Vision inadvertently missed its January 2011 filing deadline for reporting any 2010 complaints – of which there was only one. Vision states that it is now appropriately registered for disability reporting and has since began submitting its required reports.

### **Decision**

The Enforcement Office has carefully considered the information provided by Vision and continues to believe that enforcement action is warranted. The Department views compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office and Vision have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Vision consents to the issuance of this order to cease and desist from future violations of 14 CFR Parts 399 and 382 and 49 U.S.C. §§ 41705 and 41712, and to the assessment of \$75,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.<sup>4</sup>

This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future similar unlawful practices by Vision and by all air carriers.

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<sup>4</sup> Although Vision and the Enforcement Office have agreed to settle this matter under the terms specified in this order, this order does not absolve Vision of its responsibility to comply with the requirements of 49 U.S.C. § 40117 and 14 CFR Part 158 concerning the collection and remittance of passenger facility charges (PFCs), a matter the Enforcement Office also reviewed.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.  
ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Vision Airlines, Inc., violated 14 CFR 399.84 by failing to disclose taxes and fees required to be paid in connection with advertised fares;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Vision Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We find that Vision Airlines, Inc., violated 14 CFR 382.157 by failing to timely submit to the Department of Transportation its annual reports detailing the disability-related complaints it received in calendar years 2009 and 2010;
5. We find that Vision Airlines, Inc., in the instances described in ordering paragraph 4, above, violated the Air Carrier Access Act, 49 U.S.C. § 41705;
6. We order Vision Airlines, Inc., and all other entities owned or controlled by, or under common ownership and control with Vision Airlines, Inc., their successors, affiliates, and assigns, to cease and desist from further violations of 14 CFR 399.84, 14 CFR 382.157, and 49 U.S.C. §§ 41705 and 41712;
7. We assess Vision Airlines, Inc., \$75,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 4, above. Of this total penalty amount, \$37,500, shall be due and payable within 30 days of the date of issuance of this order. The remaining \$37,500 shall be due and payable within 90 days of the date of issuance of this order; and
8. We order Vision Airlines, Inc., to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Vision Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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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**Assistant General Counsel for  
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(SEAL)

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