



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

Issued by the Department of Transportation
On the Third day of May, 2012

Air India, Limited

Docket OST 2012-0002

**Violations of 49 U.S.C. § 41712 and
14 CFR 259.6 and 399.85(d)**

Served May 3, 2012

CONSENT ORDER

This consent order concerns violations by Air India, Limited, (Air India) of 14 CFR Parts 259 and 399 and the statutory prohibition against unfair and deceptive practices and unfair methods of competition, 49 U.S.C. § 41712. It directs Air India to cease and desist from future violations of those regulations and section 41712 and assesses the carrier a compromise civil penalty of \$80,000.

Applicable Law

On April 25, 2011, the Department issued a set of rules designed to enhance protections for air travel consumers that, among other things, require “covered carriers,” which include foreign air carriers that operate scheduled passenger service to or from the United States with at least one aircraft with a design capacity of 30 or more passenger seats, to adopt and adhere to contingency plans for lengthy tarmac delays and customer service plans.¹ The new rules also require covered carriers, on their respective websites, to post those plans and to prominently disclose their fees for optional services. The effective date for these rules was August 23, 2011.

I. Contingency Plan for Lengthy Tarmac Delays

Pursuant to 14 CFR 259.4, covered carriers are required to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each U.S. large hub airport, medium hub airport, small hub airport, and non-hub airport at which they operate scheduled or

¹ 76 Fed. Reg. 23110 (April 25, 2011).

public charter air service, including planned diversion airports. Pursuant to 14 CFR 259.6(a), each covered carrier that has a website marketed to U.S. consumers and that is required to adopt a contingency plan for lengthy tarmac delays is required to post its current contingency plan on its website in easily accessible form. A covered carrier's failure in either regard violates the applicable rule and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

II. Customer Service Plan

Pursuant to 14 CFR 259.5, covered carriers are required to adopt and follow customer service plans. Pursuant to 14 CFR 259.6(b), each covered carrier that has a website marketed to U.S. consumers and that is required to adopt a customer service plan is required to post its current customer service plan on its website in easily accessible form. A covered carrier's failure in either regard violates the applicable rule and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

III. Notice of Fees for Optional Services

Pursuant to 14 CFR 399.85(d), foreign air carriers that have a website marketed to U.S. consumers must prominently disclose on the homepage of their website a clear and conspicuous hyperlink that takes the viewer directly to a page or a place on a page where all fees for optional services that they may charge, including baggage fees, are disclosed. A foreign air carrier's failure in this regard violates the applicable rule and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Facts and Conclusions

Air India is a foreign air carrier holding economic authority pursuant to 49 U.S.C. § 41301 that operates scheduled passenger service to and from the United States using aircraft with a design capacity of 30 or more passenger seats. The carrier also has a website marketed to U.S. consumers. As such, Air India is a covered carrier subject to the requirements of 14 CFR Part 259 pertaining to the posting of tarmac delay contingency and customer service plans, and it is also subject to the optional fee notice requirement of 14 CFR 399.85(d). Nevertheless, Air India failed to post its tarmac delay contingency and customer service plans on its website by August 23, 2011, as required. Additionally, Air India failed to place by August 23, 2011, a clear and conspicuous hyperlink on its website homepage that directly links to a page or a place on a page where all optional services and related fees are disclosed.

Mitigation

In mitigation, Air India states that it takes its obligation to comply with DOT rules very seriously and further states this is reflected by a perfect compliance record for over 50 years of serving the U.S.-India market. It states that while it had uploaded its tarmac

delay and customer service plans to its website, they apparently did not properly appear due to a technical problem that had to be repaired. Air India points out that it does not impose extra charges for any of the services listed in section 399.85(d) – namely, for carry-on bags, first and second checked bags, advanced seat selection, and on-board meals and beverages; nor does it charge for phone reservations. Accordingly and given its traditional inclusive pricing policy, the company asserts that the delay in implementing the optional services link from its homepage was due to its misunderstanding that charges for the few optional services it does charge for, such as for excess or overweight bags, were required to be included in a single location. Air India maintains that the additional charges for these services have always been easy to locate on Air India’s website under “Before You Fly – Baggage.” Finally, Air India maintains that fixing the website was delayed by the unfortunate and unexpected death of the employee responsible for making the changes.

Decision

The Enforcement Office has carefully considered the information provided by Air India, Limited, but continues to believe that enforcement action is warranted. The Enforcement Office and Air India, Limited, have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Air India, Limited, consents to the issuance of this order to cease and desist from future violations of 14 CFR 259.6 and 399.85(d) and 49 U.S.C. § 41712 and to the assessment of \$80,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

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 noncompliance by Air India, Limited, and other carriers and ticket agents with the Department’s consumer protection disclosure regulations.

This order is issued under the authority 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 Air India, Limited, violated 14 CFR 259.6(a) by failing to post its current contingency plan for lengthy tarmac delays on its website in easily accessible form;
3. We find that Air India, Limited, violated 14 CFR 259.6(b) by failing to post its current customer service plan on its website in easily accessible form;
4. We find that Air India, Limited, violated 14 CFR 399.85(d) by failing to prominently disclose on its website homepage a clear and conspicuous hyperlink that takes the

viewer directly to a page or a place on a page where all fees for optional services that it may charge are disclosed;

5. We find that by engaging in the conduct described in ordering paragraphs 2 through 4, above, Air India, Limited, engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
6. We order Air India, Limited, and all other entities owned or controlled by, or under common ownership and control with Air India, Limited, their successors and assignees, to cease and desist from further similar violations of 14 CFR 259.6 and 399.85(d) and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Air India, Limited, and its successors and assignees to further enforcement action;
7. We assess Air India, Limited, \$80,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total penalty amount, \$40,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$40,000 shall be due and payable immediately if Air India, Limited, violates this order's cease and desist or payment provisions within one year of the issuance of this order; and
8. We order Air India, Limited, to remit the payment ordered in paragraph 7 above by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the instructions contained in the attachment to this order. Failure to pay the penalty as ordered shall subject Air India, Limited, to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to additional 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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Deputy General Counsel

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