



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

**Issued by the Department of Transportation
on the 3rd day of March, 1999**

Northwest Airlines, Inc.
Code-sharing Violations

Served March 3, 1999

CONSENT ORDER

This Consent Order results from an investigation by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) of the code-sharing disclosure practices of Northwest Airlines, Inc. (Northwest). The order reflects a settlement of the matters disclosed during the investigation.

The Department's code-sharing disclosure rule (14 CFR 399.88) states that it is an unfair or deceptive practice under section 411 of the Federal Aviation Act (now codified as 49 U.S.C. § 41712) for airlines sharing a single carrier designator code to fail to provide reasonable and timely notice to consumers of such an arrangement. Under the rule, adequate notice in direct oral communication with a consumer means that the carrier must inform the consumer that the flight will be performed by a carrier other than the carrier whose code is used and must identify the carrier actually providing the service. This notice must be given to the consumer regardless of whether the consumer makes a reservation.

The Enforcement Office investigation revealed a significant lack of compliance with section 399.88 by Northwest personnel.¹ In a recent telephone survey conducted by Department investigators, Northwest personnel did not provide any notice to the caller of the code-sharing arrangement in a number of calls, even when specifically asked. In several instances, Northwest personnel provided the code-sharing arrangement only after the caller asked specifically for that information and/or the caller requested a specific reservation or had booked a reservation. In just over half the test calls, the caller was properly told prior to

¹ A number of the violations occurred during calls regarding international code-sharing flights, which are subject to the Department's code-sharing rule (14 CFR 399.88) as a condition of approval under the Department's approval of Northwest's code-share agreements.

his or her reservation request that a code-sharing airline would be used during the proposed flight itinerary. Overall, however, there was a substantial number of calls in which the caller was not properly told prior to his or her reservation request, as is required by our notice requirement, of the airline actually operating the code-share service.

Of serious concern to us is the fact that this is the third time the Enforcement Office has found that Northwest has violated the Department's code-sharing regulations. By Order 87-11-33, issued November 16, 1987, Northwest entered into a consent agreement with the Department under which Northwest agreed to the issuance of an order to cease and desist from violations of the code-sharing disclosure rule. By Order 91-8-17, issued August 9, 1991, Northwest entered into a second consent agreement with the Department under which Northwest agreed to pay \$35,000 in compromise of civil penalties and to the issuance of an order to cease and desist from further violations of, among other provisions, the code-sharing disclosure rule. Despite these two earlier enforcement actions, Northwest's compliance rate with our code-sharing disclosure rule during our test calls was inadequate.

In mitigation Northwest states that the survey was conducted during a period of increased agent stress and fatigue due to labor circumstances. In subsequent in-house surveys, Northwest states that compliance rates have been significantly better. Further, Northwest states that it has instituted immediate and comprehensive remedial measures to include numerous reminder notices, updated new-hire training materials, and reemphasized quarterly awareness and incentive campaigns, monthly internal surveys, and letters of commendation to agents who correctly advise customers of code-share information. While not excusing any failure to fully comply with the Department's rules, the carrier states that these circumstances should be considered in mitigation.

We believe that Northwest's failure to adequately disclose code-sharing flights is likely to have caused consumer harm and warrants enforcement action, including a substantial civil penalty payment. We are particularly concerned with Northwest's continued lack of compliance in view of the past consent orders involving Northwest for its similar violations discussed above.

In order to avoid litigation, and without admitting or denying the alleged violations, Northwest has agreed to settle this matter with the Office of Aviation Enforcement and Proceedings and enter into this consent order to cease and desist. The Enforcement Office believes that the assessment of a civil penalty of \$45,000 in this instance is warranted in light of the nature and extent of the code-sharing disclosure problems in question. Northwest has also agreed to the assessment of a \$45,000 civil penalty in compromise of the potential civil

penalties otherwise assessable under 49 U.S.C. § 46301. Of this amount, \$22,500 will be suspended for one year following the service of this order and shall be forgiven unless Northwest fails to comply with the payment provision of this order or commits other violations of 14 CFR 399.88 during that one-year period. This order and the \$45,000 penalty it assesses will provide a strong incentive to all carriers to ensure that they do not violate our code-sharing rules in the future.

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 Northwest Airlines, Inc., has violated 14 CFR 399.88(2) and Orders 87-11-33 and 91-8-17 by failing to provide adequate disclosure of code-sharing arrangements to consumers;
3. We order Northwest Airlines, Inc. to cease and desist from the activities described in paragraph 2 above;
4. Northwest Airlines is assessed \$45,000 as a compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2 of this order. Of this amount, Northwest Airlines, Inc. shall pay \$22,500 within 15 days of the issuance of this order. The remaining \$22,500 shall be suspended for one year after the issuance of this order and shall be forgiven, unless Northwest violates this order's payment or cease and desist provisions, in which case the entire unpaid portion of the \$45,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action; and
5. Payment shall be made within 15 days of the date of issuance of this order 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 enclosed instructions. Failure to pay the penalty as ordered will subject Northwest Airlines, Inc. 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.

This order will become a final order of the Department 10 days after its service 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

(SEAL)

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on the World Wide Web at
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