

BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, D.C.

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)	
Benjamin Edelman,)	
third-party complainant)	
)	
v.)	Docket DOT-OST-2015-_____
)	
British Airways Plc)	
)	
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COMPLAINT OF BENJAMIN EDELMAN

Comments with respect to this document should be addressed to:

Benjamin Edelman
169 Walnut St.
Brookline, MA 02445
E-mail: ben@benedelman.org

Dated: January 13, 2015

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1. This complaint arises out of the British Airways web site advertising low taxes and carrier-imposed fees on certain award flights in an initial fare quote, only to substitute higher charges on a further screen just seconds later.

2. Effective January 26, 2012, the Department’s “Enhancing Airline Passenger Protections” require that the first price quote presented must be the full price, including all taxes, fees, and carrier surcharges. See 14 CFR 399.84 (“The Department considers any advertising solicitation by a direct air carrier ... to be an unfair and deceptive practice in violation of 49 USC 41712, unless the price stated is the entire price to be paid by the customer”), 76 Fed. Reg. 23110, 23143 (rejecting various arguments why the proposed rule should not be implemented).

3. Notwithstanding this clear rule, the British Airways USA-English web site, https://www.britishairways.com/travel/home/public/en_us, widely presents initial

price quotes below the entire amount British Airways requires for travel on the specified routes. It appears that affected itineraries include most or all intercontinental award travel on flights operated by US Airways.

I. British Airways' False Initial Statements of Applicable Charges

4. For example, on January 9, 2015, I used BA's site to quote one-way award travel PHL-MUC on March 23, 2015. After I selected US 716, PHL-MUC nonstop, BA's site quoted a "Total Price" "Incl. all taxes fees and carrier charges" of "25000 Avios + \$ 23" (Attachment 1). I pressed "Continue" and received a screen that then requested "Taxes, fees and carrier charges* per person" of \$285.80 (Attachment 2). I clicked the "i" icon to see details about the taxes, fees and carrier charges; the resulting screen detailed a "carrier imposed charge" of \$258.00 as well as three "government, authority and airport charges" totaling \$27.80. Notably, even that \$27.80 exceeded the \$23 indicated in the first fare quote, Attachment 1. I proceeded further and British Airways asked for a credit card to collect \$285.80.

5. On January 9, 2015, I used BA's site to quote one-way travel PHL-TLV on March 22, 2015. The first fare quote was 30000 Avios + \$23 (Attachment 4). The second fare quote was \$330.80 (Attachment 5), a price increase of \$307.80.

6. On January 9, 2015, I used BA's site to quote one-way travel PHL-TLV on April 5, 2015. The first fare quote was 38750 Avios + \$338 (for travel PHL-LHR-TLV with first segment operated by US Airways and the second segment as in BA World Traveler Plus) (Attachment 6). The second fare quote was 38750 Avios plus \$575.11 (Attachment 7), a price increase of \$237.11.

7. On January 9, 2015, I used BA’s site to quote round-trip travel PHL-TLV-
PHL on April 5, 2015 and April 17, 2015. The first fare quote was 68750 Avios + \$399
(for travel PHL-LHR-TLV with first segment operated by US Airways and the second
segment as in BA World Traveler Plus; return TLV-PHL nonstop operated by US)
(Attachment 8). The second fare quote instead sought \$939.67 for “taxes, fees and
carrier charges” (Attachment 9), a price increase of \$540.67.¹

8. On January 13, 2015, I used BA’s site to quote one-way travel PHL-CDG
on January 23, 2015. The first fare quote was 20000 Avios and \$23 (Attachment 10).
The second fare quote instead sought \$285.80 of “taxes, fees and carrier charges”
(Attachment 11), a price increase of \$262.80.

II. The Scope and Size and of BA’s False Statements about Applicable Charges

9. Thus, I have demonstrated that British Airways’ false statements about
applicable charges extend to both one-way and round-trip journeys, for travel both
originating in the US and originating overseas, for travel between the US and Europe as
well as between US and the Middle East, for travel solely on US Airways as well as for
travel that combines travel on multiple carriers of which US Airways is one. In other
testing, I confirmed that similar false statements occur for both single-passenger and
multi-passenger journeys. All of these false statements are made on BA’s USA-English
web site, marketed to US customers.

10. The misstatements at issue are large relative to charges otherwise
applicable for these journeys. For example, the total dollar payment sought for the PHL-

¹ Attachment 9 also notes a “Price per person” of \$185.00. Consistent with the display at the top of
Attachment 9, “How many Avios do you want to use for your flight?”, this charge was imposed because
my Avios account lacked sufficient points to cover the full 68750 quantity required for this journey. It
seems a passenger with sufficient Avios would not be charged this additional fee. This fee is not part of my
complaint, and I do not contend that it is improper.

MUC journey, \$285.80 (Attachment 2), is more than twelve times the \$23 indicated in the first fare quote (Attachment 1). The dollar payment sought for PHL-TLV, \$330.80 (Attachment 5), is more than 14 times the \$23 indicated in the first fare quote (Attachment 4). The dollar payment sought for PHL-TLV-PHL, \$939.67 (Attachment 9), is more than double the \$399 indicated in the first quote (Attachment 8), and the increase is more than \$540, nearly half the cost of ordinary coach travel for this trip. (US Airways offered simple nonstop round-trip coach travel PHL-TLV-PHL at \$1,175 for these dates.)

11. In some instances, the screenshots described herein are only partially self-authenticating. For example, Attachment 2 does not show the specific itinerary at issue and thus does not immediately confirm that it corresponds with the itinerary requested in Attachment 1. I therefore prepared motion video screen-capture files preserving my observations. These are electronic files which I can provide to the Department or British Airways upon request. I will also make them available on my web site, linked from <http://www.benedelman.org/airfare-advertising/>.

III. Literal Falsity and Damages

12. British Airways' initial statement of "Total Price" is literally false. On information and belief, British Airways was never willing to sell the listed tickets at the listed prices.

13. It is unfair and deceptive to claim that a journey may be booked at a "Total Price" when in fact the carrier does not allow booking of that journey at that price.

14. In the context of award bookings, passengers are particularly likely to rely on British Airways' initial quotes. A passenger might see the initial fare quote, as in Attachment 1, and initiate a conversion of points or miles from another program into

British Airways Avios,² or a transfer of Avios from another member,³ in order to obtain enough Avios to complete the redemption. After performing such a transfer, the passenger would then re-request the award booking, proceed to the second fare quote and be surprised to learn of the much higher charges as disclosed in Attachment 2 and similar. Moreover, conversions from another program to Avios usually are (or are presented as) irreversible, such that the passenger cannot merely return the miles or points to the program from which they originate. While a transfer from one member's Avios account to another could be undone with a further transfer, this would incur a significant additional fee (for the second transfer). Thus, such a passenger incurs harm directly as a result of British Airways' false initial fare quote, and the correct subsequent fare quote does not cure that harm. Indeed, I first learned of BA's false statements in this area due to an affected customer in exactly this circumstance.

15. On information and belief, there are other circumstances, perhaps difficult for BA or the Department to anticipate, in which BA's false statements could further distort consumers' decisions or cause additional damages.

IV. Anticipated Defenses

16. British Airways may seek shelter in the statement, in the initial fare quote (Attachment 1 and similar) that "You will see exact cost after you click 'Continue'." Indeed, in my testing, even beyond the routes affected by the large discrepancies detailed here, BA's initial quotes (Attachment 1 and similar) often vary from BA's subsequent

² British Airways prominently advertises conversion of points from other programs into Avios as a benefit of the Avios program. These programs include Club Carlson Gold Points, Hilton HHonors Points, Hyatt Gold Passport points, HIS Rewards Club Points, Shangri-La Golden Circle Award Points, Marriott Rewards Points, Jin Jiang International J-Club Points, Le Club Accorhotels points, Starpoints (from <http://www.britishairways.com/en-us/executive-club/collecting-avios/hotels/convert-your-points>) and Heathrow Rewards (from <http://www.britishairways.com/en-us/executive-club/collecting-avios/shopping>).

³ See rules at http://www.britishairways.com/travel/share-avios/public/en_us.

quotes (Attachment 2 and similar) by \$5 to \$10. I do not know the reason for that variation. But applicable regulation appears to disallow such variation. See 14 CFR 399.84: “The Department considers any advertising solicitation by a direct air carrier ... to be an unfair and deceptive practice in violation of 49 USC 41712, unless the price stated is the entire price to be paid by the customer.” This requirement makes no allowance for any change, large or small, from the first fare quote. Nor does this requirement allow a carrier to escape the obligations of the requirement through a statement that correct information will be provided some subsequent point.

17. British Airways may argue that the initial fare quotes were unrealistically low. But these are award redemptions, in which passengers understand that their primary form of payment for travel is frequent flier points earned through prior travel. Indeed, historically such redemptions were completely free of a monetary co-payment. Moreover, US Airways and American Airlines offer the same flights for award redemption with total cash payment comparable to the initial British Airways quotes. A customer seeing the fare quotes in Attachment 1, and similar, has zero reason to expect that those fare quotes are anything other than accurate.

18. I ask that the Department of Transportation:

- (1) Exercise its authority under 49 USC 41712 to open an investigation of British Airways for having engaged in, and continuing to engage in, the unfair and deceptive practices described above;

- (2) Pursuant to such investigation, order British Airways to refund to ticket purchasers all monies charged to ticket purchasers above and beyond the amounts specified on the first fare quote;
- (3) Impose appropriate civil penalties on British Airways.

Pursuant to Title 18 United States Code Section 1001, I certify that I have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years, or both.

Respectfully submitted,
/s/
Benjamin Edelman

Attachment 1

The screenshot shows the British Airways website's flight selection process. At the top, a flight is selected with a departure time of 18:35 on 23 Mar from PHL and an arrival time of 07:45 on 24 Mar at MUC. The carrier is US Airways (flight US0716) in Economy class. The cabin is marked as 'Cabin not operated on this flight' and is 'Not Available'. Below this, 'Outbound connecting flight options' are shown, including British Airways flights: PHL to LHR (BA0066) on 24 Mar and LHR to MUC (BA0950) on 24 Mar. The total journey time is 11 hours 20 minutes. At the bottom, a 'Journey summary' shows the selected one-way journey and a 'Total Price' of 25000 Avios + \$ 23. A red 'Continue' button is visible.

Attachment 2


The screenshot displays the 'Your price quote' page on the British Airways website. It features the 'Avios price options' section with a selection of 25000 Avios + \$ 285.80. The user's current Avios balance is 62,606, and the household balance is 66,327. A summary table at the bottom provides a breakdown of the price quote.

	Avios per person	Price per person	Taxes, fees and carrier charges* per person	Inclusive total
1 Adult	25000	\$ 0.00	\$ 285.80	\$ 285.80
			Total	25000 Avios + \$ 285.80

* The price of your ticket may include a carrier imposed charge per flight levied by the carrier.

Attachment 3

The screenshot shows the British Airways website interface. At the top, the British Airways logo and the oneworld logo are visible. The main heading is "Charges applied to your flight". Below this, there is a paragraph explaining that certain taxes, fees, and carrier charges are applied to the booking. The charges are presented in two tables. The first table, titled "Government, authority and airport charges", lists: Transportation Tax (Departure) - USA (USD 17.70), Passenger Civil Aviation Security Service Fee - USA (USD 5.60), and Passenger Facility Charge (USD 4.50), with a total of USD 27.80. The second table, titled "British Airways fees and carrier charges", lists: carrier imposed charge (USD 258.00) and Total British Airways fees and carrier charges (USD 258.00). A summary row at the bottom states "Total taxes, fees and carrier charges per person" for USD 285.80. To the right, a sidebar shows "Avios points" and a "Hold Avios: 66,327" indicator. A yellow box highlights a total charge of "\$ + \$ 285.80".

BRITISH AIRWAYS 

Charges applied to your flight

There are certain taxes, fees and carrier charges that are applied to your booking by British Airways, airport operators, governments or other authorities. Here you will find a full breakdown and explanation of the taxes, fees and carrier charges applied to your booking.

Government, authority and airport charges	Per adult
Transportation Tax (Departure) - USA	USD 17.70
Passenger Civil Aviation Security Service Fee - USA	USD 5.60
Passenger Facility Charge	USD 4.50
Total government, authority and airport charges*	USD 27.80
More information	

British Airways fees and carrier charges	Per adult
carrier imposed charge	USD 258.00
Total British Airways fees and carrier charges	USD 258.00
More information	

Total taxes, fees and carrier charges per person **USD 285.80**

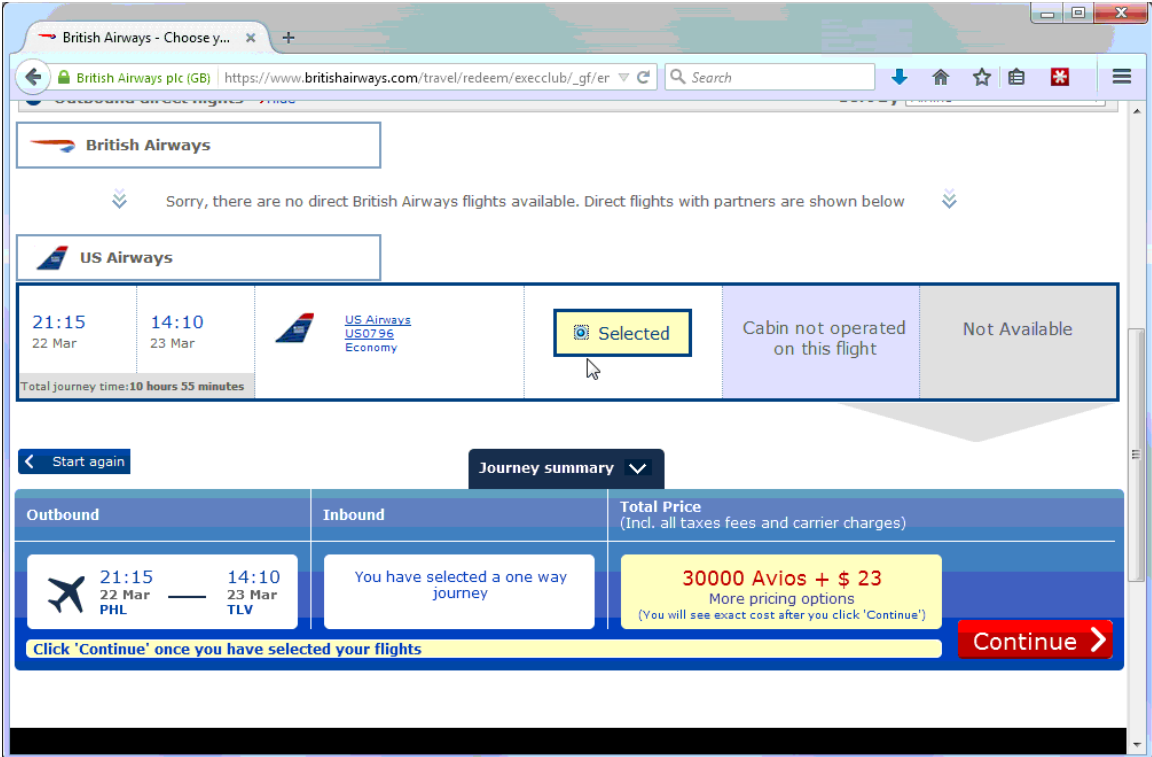
Avios points

Hold Avios: 66,327

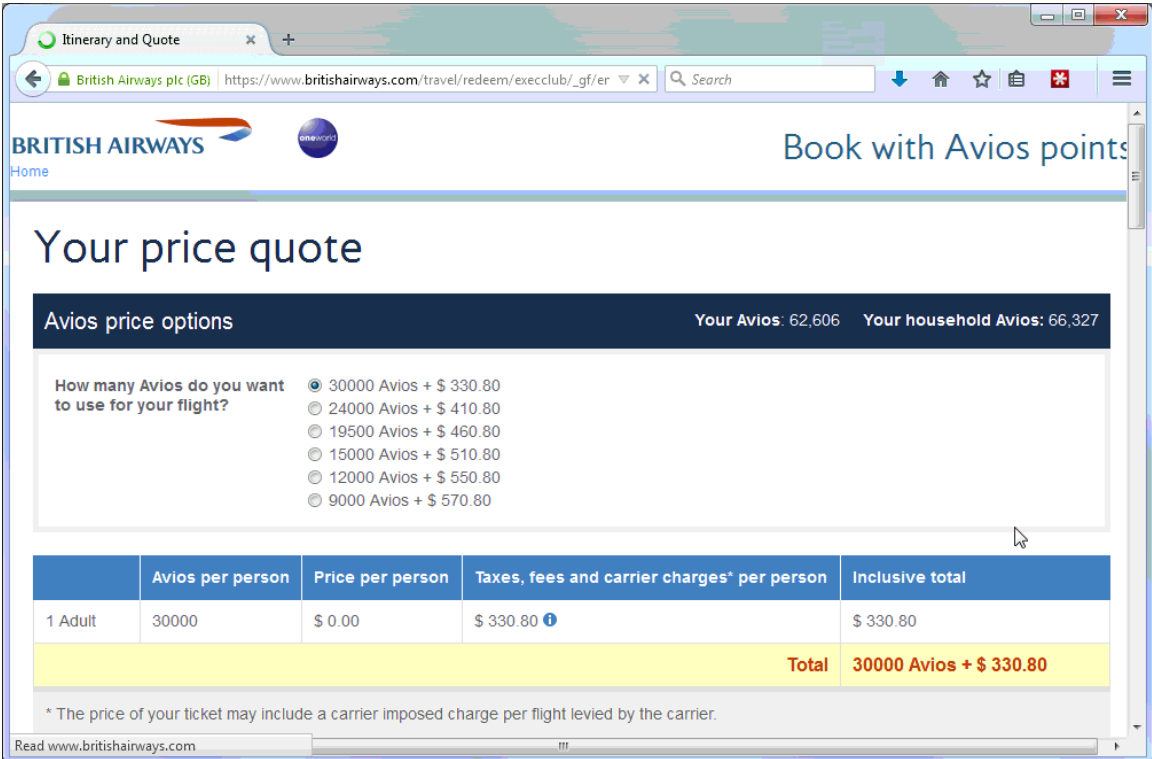
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s + \$ 285.80

Attachment 4



Attachment 5



Attachment 6

The screenshot shows the British Airways website interface for selecting connecting flights. The browser address bar shows 'British Airways - Choose y...' and the URL 'https://www.britishairways.com/travel/redeem/execclub/_gf/er'. The page title is 'Outbound connecting flight options'. Below the title, there are two flight options:

Outbound	Connection	Inbound	Status
20:45 5 Apr PHL	09:00 6 Apr LHR US Airways PHL - LHR US0728 Economy	Not Available	Not Available
16:40 6 Apr LHR	23:45 6 Apr TLV British Airways LHR - TLV BA0167 World Traveller Plus	Not Available	Selected

Below the flight options, it states '1 Connection; Total journey time: 19 hours 55 minutes'. A 'Journey summary' section shows:

Outbound	Inbound	Total Price
20:45 5 Apr PHL	23:45 6 Apr TLV	38750 Avios + \$ 338 More pricing options (You will see exact cost after you click 'Continue')

A red 'Continue' button is visible at the bottom right of the journey summary.

Attachment 7

The screenshot shows the 'Your price quote' page on the British Airways website. The browser address bar shows 'Itinerary and Quote' and the URL 'https://www.britishairways.com/travel/redeem/execclub/_gf/er'. The page title is 'Book with Avios points'. The main heading is 'Your price quote'. Below this, there is a section for 'Avios price options' with the following information:

Your Avios: 62,606 Your household Avios: 66,327

How many Avios do you want to use for your flight?

- 38750 Avios + \$ 575.11
- 31000 Avios + \$ 680.11
- 26150 Avios + \$ 740.11
- 21250 Avios + \$ 790.11
- 17400 Avios + \$ 840.11
- 13500 Avios + \$ 870.11

Below the options is a table summarizing the price quote:

	Avios per person	Price per person	Taxes, fees and carrier charges* per person	Inclusive total
1 Adult	38750	\$ 0.00	\$ 575.11	\$ 575.11
			Total	38750 Avios + \$ 575.11

* The price of your ticket may include a carrier imposed charge per flight levied by the carrier.

Attachment 8

The screenshot shows the British Airways website interface for a flight search. The browser address bar displays "British Airways - Choose y..." and the URL "https://www.britishairways.com/travel/redeem/execclub/_gf/er". The search results are filtered for "Outbound direct flights" and "Outbound connecting flight options".

Outbound direct flights: A message states "Sorry, there are no direct flights available. Flights with connections are shown below".

Outbound connecting flight options: The results are sorted by "Departure time".

Departure	Arrival	Flight Operator	Economy	Premium Economy	Business Class
20:45 5 Apr PHL	09:00 6 Apr LHR	US Airways PHL - LHR US0728 Economy	Not Available	<input checked="" type="checkbox"/> Selected	Not Available
16:40 6 Apr LHR	23:45 6 Apr TLV	British Airways LHR - TLV BA0167 World Traveller Plus			

1 Connection; Total journey time: 19 hours 55 minutes [Hide journey details](#)

Inbound Flight: Tel Aviv - Philadelphia, Friday 17 April 2015. A "Change" button is visible.

Navigation: Previous Week, View calendar of BA availability, Next Week. A "Journey summary" tooltip is active over the "Fri" tab.

The screenshot shows the British Airways website interface for an inbound flight search. The browser address bar displays "British Airways - Choose y..." and the URL "https://www.britishairways.com/travel/redeem/execclub/_gf/er". The search results are filtered for "Inbound direct flights" and "Inbound connecting flight options".

Inbound direct flights: A message states "Sorry, there are no direct British Airways flights available. Direct flights with partners are shown below".

Inbound connecting flight options: The results are sorted by "Departure time".

Departure	Arrival	Flight Operator	Economy	Premium Economy	Business Class
23:30 17 Apr TLV	05:18 18 Apr PHL	US Airways US0737 Economy	<input checked="" type="checkbox"/> Selected	Cabin not operated on this flight	Not Available
07:30 17 Apr TLV	10:50 17 Apr LHR	British Airways TLV - LHR BA0162			

Total journey time: 12 hours 48 minutes [Only 1 reward seat\(s\) left](#)

Total Price: 68750 Avios + \$ 399 (Incl. all taxes fees and carrier charges). More pricing options. (You will see exact cost after you click 'Continue')

Outbound Summary: 20:45 5 Apr PHL — 23:45 6 Apr TLV

Inbound Summary: 23:30 17 Apr TLV — 05:18 18 Apr PHL

[Click 'Continue' once you have selected your flights](#) [Continue](#)

Attachment 9

The screenshot shows a web browser window with the URL https://www.britishairways.com/travel/redeem/execclub/_gf/er. The page title is "Avios price options". At the top right, it displays "Your Avios: 62,606" and "Your household Avios: 66,327".

Under the heading "How many Avios do you want to use for your flight?", there are five radio button options:

- 68750 Avios + \$ 939.67
- 55000 Avios + \$ 1,124.67
- 45650 Avios + \$ 1,234.67
- 36250 Avios + \$ 1,334.67
- 29400 Avios + \$ 1,424.67
- 22500 Avios + \$ 1,474.67

Below this is a table with the following data:

	Avios per person	Price per person	Taxes, fees and carrier charges* per person	Inclusive total
1 Adult	55000	\$ 185.00	\$ 939.67 ⓘ	\$ 1,124.67
Total				55000 Avios + \$ 1,124.67

Below the table, there is a note: "* The price of your ticket may include a carrier imposed charge per flight levied by the carrier." with links for "More details" and "Conditions of carriage".

An information icon ⓘ is followed by the text: "Details of your baggage allowance and any applicable charges are lower down this page".

At the bottom of the screenshot, the heading "Your flights" is partially visible.

Attachment 10

The screenshot shows the British Airways website interface for a flight search. The main heading is "Outbound Flight Philadelphia - Paris Friday 23 January 2015". Below this is a calendar showing flight availability for the week of January 20-26, 2015. The selected date is Friday, January 23, 2015.

The flight options are categorized into "Outbound direct flights" and "Outbound connecting flight options".

Outbound direct flights:

- British Airways: No direct flights available.
- US Airways: One flight option is shown for January 23, 2015, from Philadelphia (PHL) to Chicago (CDG) at 18:25, arriving at 07:55 on January 24. The flight is operated by US Airways US0754 in Economy class. It is currently selected. The cabin is noted as "Cabin not operated on this flight". Only 1 reward seat is left.

Outbound connecting flight options:

- British Airways flights: Two options are shown.
 - Option 1: Depart PHL at 18:35 on Jan 23, arrive LHR at 06:40 on Jan 24. Flight BA0066. Status: Available.
 - Option 2: Depart LHR at 08:55 on Jan 24, arrive CDG at 11:10 on Jan 24. Flight BA0306. Status: Not Available.
- Summary: 1 Connection; Total journey time: 10 hours 35 minutes.
- Option 3: Depart PHL at 22:05 on Jan 23, arrive LHR at 10:05 on Jan 24. Flight BA0066. Status: Not Available.

Journey summary:

- Outbound:** 18:25 on Jan 23 from PHL to 07:55 on Jan 24 at CDG.
- Inbound:** You have selected a one way journey.
- Total Price:** 20000 Avios + \$ 23 (Incl. all taxes fees and carrier charges). More pricing options are available.

A "Continue" button is visible at the bottom right of the summary section.

Attachment 11

BRITISH AIRWAYS Book with Avios points

Your price quote

Avios price options Your Avios: 62,606 Your household Avios: 66,327

How many Avios do you want to use for your flight?

- 20000 Avios + \$ 285.80
- 16000 Avios + \$ 340.80
- 13000 Avios + \$ 375.80
- 10000 Avios + \$ 405.80
- 8000 Avios + \$ 430.80
- 6000 Avios + \$ 445.80

	Avios per person	Price per person	Taxes, fees and carrier charges* per person	Inclusive total
1 Adult	20000	\$ 0.00	\$ 285.80 ⓘ	\$ 285.80
Total				20000 Avios + \$ 285.80

* The price of your ticket may include a carrier imposed charge per flight levied by the carrier.
[More details](#)
[Conditions of carriage](#)

i Details of your baggage allowance and any applicable charges are lower down this page

Your flights

Outbound - Friday 23 January 2015

18:25 23 Jan	07:55 24 Jan	Philadelphia International (PA)	Charles de Gaulle (Paris)	US0754	US Airways	Economy
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[Change flights](#)

> [Your baggage allowance](#) show +

> [More information about your flights](#) show +

Donate

Changing Lives: One Child at a Time

Flying Start is our global charity partnership with Comic Relief UK.
Together we aim to transform the lives of children living

Donate to Flying Start

No thanks

Certificate of Service

I hereby certify that I have, this 13th day of January, 2015 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

James Blaney

jim.blaney@ba.com

Blane Workie

blane.workie@dot.gov

Kimberly Graber

kimberly.graber@dot.gov

/s/

Benjamin Edelman