



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

Issued by the Department of Transportation
on the 13th day of November, 2003

Frontier Airlines, Inc.

**Violations of 14 CFR Part 382 and 49 U.S.C.
§§ 41702, 41705 and 41712**

Served: November 13, 2003

Docket OST 2003-14194

CONSENT ORDER

This order concerns violations of 14 CFR Part 382 by Frontier Airlines, Inc. (Frontier). Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. ACAA and Part 382 violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. Finally, to the extent that the apparent ACAA and Part 382 violations occurred in interstate air transportation, the incidents are also violations of 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation. This order directs Frontier to cease and desist from future violations of the ACAA and Part 382 and assesses a compromise civil penalty of \$100,000 for such violations.

BACKGROUND

Frontier commenced operations on July 5, 1994, and currently operates 15 Airbus 319s, each with 132 coach seats, and 22 Boeing 737s, with seating capacities ranging from 118 to 136 seats.

While conducting a Part 382 compliance review in October 2002, the Department of Transportation's Office of Aviation Enforcement and Proceedings (Enforcement Office) discovered several statements on Frontier's website and in its contract of carriage that appeared to depart from 14 CFR Part 382. The statements at issue addressed Frontier's: (1) stowage of one passenger's folding wheelchair on its aircraft, 14 CFR § 382.21(a)(2); (2) carriage and stowage of wheelchair batteries, 14 CFR § 382.41(g); (3) liability for loss, damage or destruction of wheelchairs and other assistive devices, 14 CFR § 382.43(b); and (4) carriage of assistive devices, 14 CFR § 382.41(d).

With regard to the stowage of one passenger's folding wheelchair inside the cabin under section 382.21(a)(2), Enforcement Office staff made several telephone calls to Frontier's reservations system as consumers to determine what information Frontier employees were providing to

passengers on this issue. In all of these calls, the reservations agents stated that Frontier's aircraft could not accommodate a passenger's folding wheelchair inside the cabin.¹

With regard to wheelchair batteries, Enforcement Office staff made several calls to Frontier's reservations center inquiring as to the removal and packaging of non-spillable wheelchair batteries. In all but one of these calls, the reservations agent indicated that Frontier would disassemble the battery from the chair and box it in a leak proof container, even if the battery is marked "non-spillable."²

With regard to liability for lost, damaged, or delayed delivery of assistive devices, Frontier's contract of carriage stated: "The wheelchair will be carried in the cargo compartment of the aircraft and will be subject to the liability limitation in Rule 230." In turn, Frontier's Rule 230 stated that liability, if any, for the loss of, damage to, or delay in delivery of, any personal property, or baggage would not be more than \$2,500.00 per ticketed passenger unless the passenger elects to pay for higher liability as provided for in Paragraph C. Paragraph C stated that a passenger may, when checking baggage for a flight, declare a value higher than \$2,500.00 up to a maximum of \$5,000.00. The passenger would have to pay \$1.00 for each \$100.00 of higher declared value, in which case Frontier's liability would be limited to the higher declared value. In addition, during calls made by Enforcement Office staff to Frontier's reservation agents to determine the carrier's policy on lost, damaged, or delayed delivery of wheelchairs, all of the reservation agents stated that wheelchairs were considered checked baggage and the liability limit was \$2,500 for wheelchairs. In addition, the majority of Frontier's reservations agents stated that a passenger must or probably would have to sign a waiver or limited release for the wheelchair.

Finally, Frontier's contract of carriage appeared to limit the number of assistive devices that a passenger with a disability may transport, stating: "Frontier will accept, at no charge, one wheelchair per passenger."

The Enforcement Office's concern about these issues prompted a teleconference with Frontier, during which the office notified the carrier of these four problem areas. The Enforcement Office followed this meeting with a letter requesting information addressing all four areas of concern, and Frontier responded to this request.

In its response to the request for information, Frontier addressed each area of concern. With regard to in-cabin wheelchair stowage, Frontier stated that its aircraft "do not currently have a designated stowage space for at least one passenger's standard-sized folding wheelchair in the

¹One of the Enforcement Office's Transportation Industry Analysts ("TIA") made several telephone calls to Frontier's reservations center and spoke with a number of different reservations agents over two days, October 17 and 25, 2002. During each call, the TIA represented that he was traveling with his collapsible folding wheelchair and would like to stow it inside the cabin of the aircraft. In response to these representations, all of the agents stated that the wheelchair would have to be stowed in the belly of the aircraft.

² Several calls were made on October 17 and 25, 2002. In all but one of these calls, the Frontier reservations agent indicated that Frontier would remove and box the battery in a leak proof container, even if marked non-spillable. One agent stated that the battery would be boxed and fastened to the wheelchair.

passenger cabin." To create such a space for wheelchairs, Frontier proposed to secure one passenger's folding wheelchair atop the last row of passenger seats.³

With regard to the carriage of wheelchair batteries, Frontier stated that its practice is "to accept battery-powered wheelchairs and mobility devices with non-spillable batteries attached for transport. If the battery is spillable, or the passenger cannot prove that the battery is non-spillable, then it must be removed from the device prior to loading, and the battery removed from the device and placed in an approved Frontier Airlines Battery Box." Frontier pledged to undertake a thorough review of all its training and operating manuals, its website, and contract of carriage to make certain that its "practices which currently are in compliance with all provisions in [14 CFR Part 382] are accurately reflected in all policies."

With regard to its liability for lost, damaged or delayed assistive devices, Frontier asserted that its actual practice is not to limit in any way liability for lost or damaged wheelchairs and other assistive devices. Frontier further asserted that its contract of carriage did not accurately reflect its policies and practices to date. Again, Frontier pledged to correct its contract of carriage to ensure that "its practices which currently are in compliance with this regulation are accurately reflected in all policies."

With regard to the acceptance of assistive devices, Frontier asserted that it does not, in implementing carry-on baggage policies, count toward a limit on carry-on items any assistive device brought into the cabin by an individual with a disability. Frontier stated that it would modify its training documents to more clearly delineate this policy and practice.

APPLICABLE SECTIONS OF 14 CFR PART 382

The ACAA, 49 U.S.C. § 41705, and 14 CFR Part 382 forbid discrimination in the provision of air transportation against qualified individuals with disabilities. See 14 CFR § 382.7(a)(1). It contains several directives, of which four are relevant to this case. These deal with the provision of space to stow one passenger's folding wheelchair in the cabin, the carriage of wheelchair batteries, a carrier's liability for lost, damaged or delayed wheelchairs and other assistive devices, and the number of assistive devices a carrier must carry.

The primary issue in this consent order is section 382.21(a)(2), which requires that "[a]ircraft with 100 or more passenger seats shall have a priority space in the cabin designated for stowage of at least one folding wheelchair."⁴ Under this section, the term "folding" refers to the accordion-like movement of a wheelchair, where the two sides of the frame are brought together. The term "folding" does not anticipate disassembly, including the removal of the large or small

³Frontier stated that in both its A319s and the Boeing 737s, the wheelchair would be placed in the last row of seats on the right side of the aircraft using a seat belt extension-type mechanism as a restraining device. Frontier has received FAA approval for the stowage method and the program was fully implemented by August 1, 2003.

⁴Section 382.21(a) explains that this requirement applies to "new aircraft operated under 14 CFR part 121 and ordered by the carrier after April 5, 1990 or delivered to the carrier after April 5, 1992," (hereinafter referred to as "new" aircraft).

wheels of the wheelchair.⁵ The term "wheelchair" refers to standard-size wheelchairs.⁶ Taking these terms together, section 382.21(a)(2) requires that all new aircraft with 100 or more seats maintain a space that is large enough to stow one passenger's standard-size folding wheelchair on a priority basis.

Addressing the carriage of wheelchair batteries, section 382.41(g) forbids carriers from removing and separately packing non-spillable wheelchair batteries that have been labeled as such by the manufacturer. This same provision also forbids the removal and separate packaging of spillable batteries from wheelchairs that can be loaded, stored, secured and unloaded in an upright position.

Section 382.43(b) excepts a carrier's liability on domestic flights for loss, damage, or delay concerning wheelchairs or other assistive devices from the liability limits established by 14 CFR Part 254. Because there is no limit to a carrier's liability for the loss, damage, or destruction of wheelchairs on domestic flights, a carrier's limit is determined by the original purchase price of the device. 14 CFR § 382.43(b).

Finally, at issue are the Part 382 requirements that address the carriage of assistive devices inside the cabin of aircraft. Carriers must allow passengers with disabilities to stow assistive devices on board the aircraft in close proximity to their seats.⁷ Assistive devices carried into the cabin of an aircraft by a passenger with a disability may not be counted toward any carry-on baggage limit. 14 CFR § 382.41(d).

In addition to the violations of the ACAA and Part 382, the issues described above appear to involve unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. To the extent that the apparent ACAA and Part 382 violations occurred in interstate air transportation, the incidents are also violations of 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation.

ANALYSIS

This order covers four issues: (1) the stowage of one passenger's folding wheelchair inside the cabin of Frontier's Airbus 319s and Boeing 737s, which are new aircraft; (2) the carriage and stowage of wheelchair batteries on Frontier's aircraft; (3) Frontier's liability for the loss, damage or destruction of wheelchairs and other assistive devices; and (4) the carriage of assistive devices

⁵ This understanding relies on the plain meaning of the word "folding." For example, Webster's Ninth New Collegiate Dictionary defines the term "folding" as: "to lay one part over another part of . . . to reduce the length or bulk of by doubling over . . . to clasp together . . . a part doubled or laid over another part"

⁶ Our interpretation of "wheelchair" as used in § 382.21(a)(2) is within the meaning of the generic term "wheelchair," which has no limitation as to size in and of itself, or as used in the regulation (other than folding). A major wheelchair manufacturer has represented to the Department of Transportation that the following dimensions characterize a standard-size wheelchair, when folded: 13 inches wide by 36 inches high by 42-50 inches long.

⁷ Such stowage must comport with FAA safety regulations.

in the cabin of Frontier's aircraft.

With regard to the last three of these issues, the Enforcement Office's investigation revealed evidence of policies in contravention of Part 382. In an apparent breach of section 382.41(g), Frontier's reservations agents informed passengers that all electric wheelchair batteries would be removed even if non-spillable. In addition, diverging from the no limit on liability standard set by section 382.43(b), Frontier's contract of carriage limited its liability to \$2,500 for lost, damaged, or destroyed assistive devices. Frontier's contract of carriage also appeared to limit the number of assistive devices that a passenger with a disability could transport. When notified of these apparent lapses by the Enforcement Office, Frontier asserted that even though its contract of carriage contained statements contrary to the mandates of Part 382, its actual policies and practices were in compliance. Frontier provided convincing evidence in support of this assertion and dedicated itself to quickly correcting the errors in its contract of carriage.⁸

With regard to wheelchair stowage, Frontier admitted that prior to this investigation its new aircraft did not contain a space for the stowage of one passenger's standard-size wheelchair. After notification of this omission by the Enforcement Office, Frontier has implemented an FAA-approved stowage method, by which it will stow one passenger's folded wheelchair on top of the last row of passenger seats on the right side of its aircraft if requested by a disabled passenger.⁹ Although the Enforcement Office appreciates Frontier's willingness to quickly create a space to stow a passenger's standard-size folding wheelchair, the office views the carrier's admitted failure initially to provide the proper accommodation under 14 CFR § 382.21(a)(2) seriously.

In mitigation of this admitted violation, Frontier states that it believed in good faith that it was in compliance with the onboard stowage requirements set forth in 14 CFR §§ 382.21(a)(2) and 382.41(e)(2) and (3). Frontier notes that when informed that it was not in compliance, it immediately began cooperating with the DOT and correcting the issues surrounding its website, contract of carriage, and onboard wheelchair stowage. Frontier states that it is committed to better serving its passengers with disabilities.

After careful consideration of all the facts involved, including the explanation set forth by Frontier, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, Frontier has agreed to settle this matter and enter into a consent order to cease and desist from future similar violations.

By this order, the Department finds that Frontier failed to act in accordance with the ACAA and Part 382 in failing to provide for a space to stow one passenger's standard-size folding wheelchair inside the cabin on new aircraft with at least 100 seats. This order directs Frontier to

⁸ For the reasons stated above and in the interest of settling this matter, the investigation relating to the other alleged violations discussed above is being terminated with the corrective action noted.

⁹ These seats will be available for assignment to passengers at airport check-in only. Any passenger who specifically requests to sit in such seats or who is assigned to sit in such seats on the day of flight will be notified that his or her seat or flight may be changed in order to accommodate a wheelchair.

cease and desist from similar violations in the future and assesses a civil penalty of \$100,000 in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301. Frontier will be credited \$90,000 for its past and future work to improve air service to passengers with disabilities above and beyond the requirements of Part 382. To better assist passengers with disabilities, Frontier has pledged that it will stow at least one passenger's standard-size folding wheelchair on-board its entire fleet of Boeing aircraft, even those aircraft that do not fall within the definition of "new" aircraft. Frontier has also created a Disabled Passenger's travel section in its In-flight magazine and plans to create a Field Advocate position to emphasize the importance of regulatory compliance and service to passengers with disabilities. Further, Frontier intends to establish a Consumer Advisory Group, which will meet annually to discuss issues affecting passengers with disabilities.

In addition to imposing a civil penalty, this order directs Frontier to provide for a space to stow at least one passenger's standard-size folding wheelchair on its new aircraft with at least 100 passenger seats. This order also directs that Frontier notify the Enforcement Office within 30 days if it changes its designated space for the stowage of passengers' standard-size folding wheelchairs. Finally, this order directs that Frontier complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order.

We believe that this consent agreement and the penalty it assesses will provide a strong incentive for Frontier and other carriers to comply with the ACAA and 14 CFR Part 382.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 382.15.

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 Frontier Airlines, Inc. violated the requirements of 14 CFR § 382.21(a)(2) by failing to provide space to stow at least one passenger's standard-size folding wheelchair in the passenger cabin of its aircraft, ordered by the carrier after April 5, 1990, or delivered to the carrier after April 5, 1992, with at least 100 passenger seats;
3. We find that Frontier Airlines, Inc., in the instances described in ordering paragraph 2, violated the Air Carrier Access Act, 49 U.S.C. § 41705;
4. We find that to the extent the violations described in ordering paragraph 2 occurred in interstate air transportation, the conduct violated 49 U.S.C. § 41702;
5. We find that the violations described in ordering paragraph 2 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;
6. We order Frontier Airlines, Inc. and its successors and assigns to cease and desist from further violations of 14 CFR Part 382 and 49 U.S.C. §§ 41702, 41705, and 41712 by engaging in the conduct described in ordering paragraph 2;

7. Frontier Airlines, Inc. is assessed a civil penalty of \$100,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, of which:
 - a. \$10,000 shall be due and payable 30 days after the service date of this order;
 - b. \$15,000 shall be credited to Frontier Airlines, Inc. for the cost of establishing and operating a Consumer Advisory Group, which will meet annually to specifically address issues affecting transportation by individuals with disabilities.
 - c. \$35,000 shall be credited to Frontier Airlines, Inc. for the cost of including a disabled passenger's travel section in Frontier's In-flight magazine dedicated to issues and concerns of air travelers with disabilities.
 - d. \$40,000 shall be credited to Frontier Airlines, Inc. for the cost of establishing and maintaining a Frontier Field Advocate position whose primary responsibilities would be to train and test employees regarding Frontier's regulatory compliance and service towards passenger's with disabilities.
8. Within 30 days of the service date of this order, Frontier Airlines, Inc. shall provide DOT with a statement with supporting documentation verifying the cost of each offset listed in paragraph 7 above. The statement shall show the projected or actual cost of each offset, detailed explanation of the method used by Frontier to determine the projected or actual cost of each offset, and a sworn and certified statement from an appropriate company official testifying that the descriptions and documentation are true and complete to the best of that officials knowledge;
9. Within one year after the service date of this order, Frontier shall provide written certification to the Office of Aviation Enforcement and Proceedings that it has funded and implemented the accommodation programs described in ordering paragraphs 7(b), (c) and (d). If by this date Frontier has not made the expenditures covered in ordering paragraphs 7(b), (c), (d) in full, it shall pay the amounts not expended in accordance with paragraph 13, within 30 days of the date of the certification required by this paragraph;
10. Frontier Airlines, Inc. shall notify the Enforcement Office within 30 days if it changes in any manner its designated space to stow passengers standard-size folding wheelchairs, which currently consists of a row of passenger seats;
11. Frontier Airlines, Inc. shall complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order;
12. Frontier Airlines, Inc. shall ensure that its written training materials, website, contract of carriage, and all other written materials for internal or public use comply with 14 CFR Part 382; and

13. Payments are required to be made pursuant to this order 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 in accord with the attached instructions. Failure to pay the penalty as ordered will subject Frontier Airlines to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

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:

ROSALIND A. KNAPP
DEPUTY GENERAL COUNSEL

(SEAL)

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp