



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

**Issued by the Department of Transportation
On the Thirteenth day of December, 2010**

JetBlue Airways Corp.

Docket OST-2010-0005

**Violations of 14 CFR Parts 382 and 257 and
49 U.S.C. §§ 41310 41702, 41705, and 41712**

Served December 13, 2010

CONSENT ORDER

This order concerns violations by JetBlue Airways Corp. (JetBlue) of the requirements of 14 CFR Part 382 (Part 382) with respect to providing wheelchair assistance to passengers with a disability, making dispositive responses to written complaints alleging a violation of Part 382, and properly categorizing its disability-related complaints. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. To the extent that the 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; to the extent the violations occurred in foreign air transportation, the incidents would violate 49 U.S.C. § 41310, which, in part, prohibits air carriers and foreign air carriers from unreasonably discriminating against any person in foreign air transportation. Violations of Part 382 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. In addition, this consent order covers violations by JetBlue of the Department's code-share disclosure rule, 14 CFR Part 257 and 49 U.S.C. § 41712. This order directs JetBlue to cease and desist from future violations of Parts 382 and 257 and assesses the carrier \$600,000 in civil penalties.

Department's Rule Protecting Disabled Travelers

Under section 382.39 [now sections 382.91 to 382.105], carriers must provide passengers with disability-related assistance in enplaning and deplaning aircraft. This assistance includes, as needed, help by airline/contractor personnel and the use of wheelchairs, ramps, or mechanical lifts. Section 382.39(a)(3) [now section 382.103] prohibits carriers from leaving passengers who are not independently mobile unattended in a ground wheelchair, boarding wheelchair, or other device for more than 30 minutes.

Section 328.65 [now section 382.155] requires carriers to provide a dispositive written response to a written complaint alleging a violation of Part 382 within 30 days of its receipt. An appropriate dispositive response must specifically discuss the complaint at issue, state the carrier's view of whether a violation occurred, and state that the complainant may refer the matter to the Department for an investigation.

Section 382.70 [now section 382.157] states that carriers must categorize disability-related complaints they receive according to the type of disability and nature of complaint and submit annual reports to the Department detailing the disability complaints received the prior calendar year. If a written complaint contains multiple issues, each issue must be coded separately to adequately account for the number of complaints a carrier receives.

Based on a visit to JetBlue's Salt Lake City office, the Office of Aviation Enforcement and Proceedings (Aviation Enforcement Office) decided to further investigate JetBlue's compliance with the relevant portions of Part 382 by reviewing all disability-related complaints JetBlue received directly from passengers in 2009. The Aviation Enforcement Office also reviewed all disability-related complaints against JetBlue sent directly to the Department in 2009. The records indicated a significant number of apparent violations of section 382.39 [now sections 382.91 to 382.105] during the pertinent time period. A substantial number of these complaints appear to involve egregious violations of Part 382.¹ Additionally, JetBlue's complaint files indicated that in numerous instances, its written response to the complainant did not comply with the requirements of section 382.65 [now section 382.155]. Furthermore, JetBlue violated section 382.70 [now section 382.157] by failing to adequately categorize and account for all the disability-related issues that were raised in the complaints.

Department's Code-share Disclosure Rule

Section 257.4 of the code-share disclosure rule states that the holding out or sale of scheduled passenger air transportation involving a code-sharing arrangement is an unfair and deceptive trade practice in violation of 49 U.S.C. § 41712 unless, in conjunction with that holding out or sale, carriers follow certain requirements, including those of 14 CFR 257.5(b). With regard to oral communications concerning a flight that is part of a code-sharing arrangement, section 257.5(b) states that a ticket agent or carrier must disclose to prospective consumers before they book the flight the existence of the code-share arrangement, the corporate name of the transporting carrier, and any other name under which the flight is held out to the public.

¹ In prior enforcement actions, e.g. Docket OST-2010-0005-0026 (August 31, 2010), the Aviation Enforcement Office explained that it considers the following types of assistance and wheelchair-related disability complaints to be egregious: (1) the passenger was left unattended on an airplane for over 15 minutes after the other passengers deplaned; (2) a nonambulatory passenger was left unattended in a wheelchair for over 30 minutes in the terminal or on a jetway; (3) the carrier failed to provide requested wheelchair service or other assistance entirely, or a long time delay in providing wheelchair service or other assistance resulted in the passenger missing a flight; (4) the passenger was left at the wrong gate resulting in missing his or her flight; (5) the passenger had to wait an hour or more for a wheelchair in the terminal; and (6) other instances where passengers were subjected to significant delay, harm, or inconvenience because of inadequate assistance.

In May 2010, the Aviation Enforcement Office conducted an investigation into JetBlue's compliance with the Department's code-share disclosure rule and this investigation revealed a significant lack of compliance by JetBlue with section 257.5. The investigation consisted of a number of telephone calls to JetBlue's reservation line by Aviation Enforcement Office staff to determine if, as required by section 257.5(b), the carriers' employees were advising consumers of the code-share status of JetBlue flights operated by Cape Air. The JetBlue reservations agent answering those calls failed to disclose the code-share status of the flights in question during a substantial number of those calls.

Mitigation

In mitigation, JetBlue states that it values its disabled customers. Although JetBlue states that its files do not provide adequate information to verify the facts alleged in most, if not all, of the complaint letters received by JetBlue that are the basis of the Aviation Enforcement Office's concerns, JetBlue states that it is committed to improving service to all passengers. JetBlue states that its commitment will be reflected in the initiatives agreed to in this Consent Order and in an additional effort across the airline to improve the service provided to disabled customers. JetBlue points out, as discussed below, that it will launch an Interdepartmental Disability Task Force that will focus attention on the needs of customers who are disabled and coordinate the improvements that arise from its Task Force. JetBlue also states that it will make its website more user-friendly for disabled travelers and create a first-of-its-kind Disability Customer Care Center that will proactively reach out to disabled passengers prior to their travel. JetBlue maintains that these initiatives will greatly enhance its response to the needs of this segment of the traveling public. JetBlue asserts that it has also focused on increased training to ensure that the requirements of Part 257 are met for each passenger who calls to book a code-share flight with JetBlue and any code-share partner. Finally, JetBlue states that it takes its regulatory responsibilities very seriously and believes that the steps to which it has committed in this order will improve the customer experience.

Decision

The Aviation Enforcement Office has carefully considered the information provided by JetBlue and continues to believe that enforcement action is warranted. In order to avoid litigation, JetBlue has agreed to settle this matter with the Aviation Enforcement Office and enter into this consent order directing the carrier to cease and desist from future similar violations of Parts 382 and 257 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712, and assessing JetBlue \$600,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.² This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by JetBlue and other carriers.

² As covered in ordering subparagraphs 11b, 11c and 11d, the \$600,000 assessed civil penalty is subject to offsets of up to \$250,000 for expenditures by JetBlue to provide improved service for disabled passengers above and beyond what is required by Department rules. The actual cost of the initiatives covered by the offsets is substantially greater than the \$250,000 offset amount.

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 JetBlue Airways Corp. violated the requirements of 14 CFR 382.39 [now sections 382.91 to 382.105] by failing to provide adequate and prompt enplaning and deplaning wheelchair assistance to passengers with disabilities;
3. We find that JetBlue Airways Corp. violated the requirements of 14 CFR 382.65 [now section 382.155] by failing to provide dispositive responses to written complaints alleging a violation of Part 382;
4. We find that JetBlue Airways Corp. violated the requirements of 14 CFR 382.70 [now section 382.157] by failing to properly categorize and accurately report its disability-related complaints;
5. We find that JetBlue Airways Corp. in the instances described in ordering paragraphs 2 through 4, above, violated the Air Carrier Access Act, 49 U.S.C. § 41705;
6. We find that to the extent the violations described in ordering paragraphs 2 through 4 occurred in interstate air transportation, the conduct violated 49 U.S.C. § 41702;
7. We find that to the extent the violations described in ordering paragraphs 2 through 4 occurred in foreign air transportation, the conduct violated 49 U.S.C. § 41310;
8. We find that JetBlue Airways Corp. violated the requirements of 14 CFR 257.5(b) by failing to disclose code-sharing arrangements as required;
9. We find that the violations described in ordering paragraphs 2 through 8 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;
10. We order JetBlue Airways Corp. and its successors and assigns to cease and desist from further violations of 14 CFR Parts 382 and 257 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712 by engaging in the conduct described in ordering paragraphs 2 through 9;
11. We assess JetBlue Airways Corp. \$600,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 9, above;
 - a. \$350,000 of the assessed civil penalty shall be due and payable within 30 days of the service date of this order;

- b. Up to \$30,000 of the assessed penalty shall be credited to JetBlue Airways Corp. for funds expended within one year after the date upon which this order becomes final toward the establishment and operation of an Interdepartmental Disability Task Force that will conduct quarterly internal audits and quality control of the carrier's handling of passengers with disabilities in order to improve the traveling experience of such passengers;
 - c. Up to \$200,000 shall be credited to JetBlue Airways Corp. for funds expended within one year after the date upon which this order becomes final toward the establishment of a Disability Customer Care Center that shall consist of a staff of full and part time employees who will proactively reach out to passengers with disabilities prior to travel and will serve as an available information resource for such passengers and other JetBlue personnel; and
 - d. Up to \$20,000 shall be credited to JetBlue Airways Corp. for funds expended toward developing and implementing enhancements to JetBlue's website that would improve the accessibility and quality of the content intended for the disabled community and place information targeted at assisting disabled passengers into one easily-accessible location;
- 12. Within 13 months of the date this order becomes final, JetBlue Airways Corp. shall provide the Department with supporting documentation verifying the cost of the offsets listed in subparagraphs 11(b), 11(c), and 11(d) above. The documentation must contain a detailed explanation of the method used by JetBlue Airways Corp. to determine the cost of the offset, and a sworn statement from an appropriate company official testifying that the descriptions and documentation are true and complete to the best of that official's knowledge and that the official has made a reasonable inquiry to establish the accuracy of the statement;
- 13. To the extent that JetBlue Airways Corp. fails to provide adequate documentation verifying the appropriate expenditures of the \$250,000 in offsets as described in order subparagraphs 11(b), 11(c), and 11(d) and paragraph 12, that amount shall become due and payable within 30 days of the date of the certification required by paragraph 12;
- 14. The offsets described in subparagraphs 11(b), 11(c), and 11(d) may be amended with the approval of the Department's Office of Aviation Enforcement and Proceedings. If JetBlue Airways Corp. intends to seek a change in the type of improvements made, it must notify and obtain approval from the Office of Aviation Enforcement and Proceedings not later than 15 days prior to the date documentation is due pursuant to ordering paragraph 12; and
- 15. Failure to pay the civil penalty as ordered above shall subject JetBlue Airways Corp. to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible additional enforcement action for failure to comply with this order. Payment shall be made by wire transfer through the Federal Reserve Communication

System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions.

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)

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