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

Issued by the Department of Transportation
on the 5th day of December, 2003

United Air Lines, Inc.

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

Served: December 5, 2003

Docket OST 2003-14194- 27

CONSENT ORDER

This order concerns certain alleged violations by United Air Lines, Inc., (United) of the requirements of 14 CFR Part 382, with respect to providing assistance to passengers in wheelchairs and dispositive responses to persons who complained to the carrier about its failure to comply with Part 382. 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 also represent violations of 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; and the ACAA and Part 382 violations are unfair and deceptive practices in violation of 49 U.S.C. § 41712. The order directs United to cease and desist from future violations of Part 382 and the ACAA and assesses the carrier \$1.1 million in compromise of civil penalties that might otherwise be assessed against the carrier for such violations, subject to offsets and penalty reductions for improved compliance of up to \$1 million.

Part 382 requires air carriers to provide passengers with disabilities assistance in aircraft enplaning and deplaning and imposes specific requirements in doing so. Under 14 CFR 382.39 (a) and (b), several requirements are listed regarding the quality of service carriers must provide when assisting passengers in wheelchairs. Moreover, 14 CFR 382.65 requires a carrier to respond to a customer's complaint about a disability-related issue in a dispositive manner within 30 days of the date the carrier receives a written complaint. This order finds that on a number of occasions, as revealed both in complaints filed with the Department and directly with United, the carrier has failed to comply with these requirements.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated United's compliance with the relevant provisions of Part 382 by requesting that the carrier provide copies of all complaints it received from passengers directly since April 5, 2000, which alleged a failure to provide adequate wheelchair assistance. The Enforcement Office reviewed other similar complaints against United sent directly to the Department. The records indicated a significant number of apparent violations of section 382.39 during the pertinent time period (April 5, 2000, through September 2002). Virtually all of the complaints involved incidents occurring after April 5, 2000, the effective date of the increase in civil penalties for ACAA violations enacted by AIR 21.¹

A number of complaints, furthermore, appear to reflect serious deficiencies on the part of the carrier in meeting the requirements of section 382.39, including instances of prolonged delays in obtaining wheelchairs or of stranding individuals alone in wheelchairs or on board aircraft for extended periods of time. Additionally, United's complaint files indicated that in numerous instances it did not provide a written response to the complainant that complied with the requirements of section 382.65, which requires that the carrier must provide a "dispositive response" within 30 days of receipt of every disability-related complaint postmarked within 45 days of the complained of incident. An appropriate response must specifically discuss the complaint at issue, state the carrier's view of whether a violation occurred, along with an explanation of the carrier's view if no violation occurred or what corrective action was taken, if a violation is admitted. The response must also state that the complainant may refer the matter to the Department.

In response to these allegations, United maintains that, even assuming some number of the incidents described above suggest performance by United or its contractors falling short of what Part 382 requires, under the totality of the circumstances, enforcement action by the Department is unwarranted. United further maintains that, under no circumstances, could any of the incidents alleged herein constitute a violation of sections 41702, 41310 or 41712 of the statute. Nonetheless, United has agreed to settle this matter because it believes its long-term financial recovery will be better secured through a negotiated settlement of the Enforcement Office's concerns, rather than protracted litigation. United believes further that the settlement it has agreed to is fully consistent with the company's long standing awareness of and sensitivity to the unique challenges faced by passengers with disabilities and will assist United to work diligently to improve the services it provides to passengers with disabilities. In maintaining that enforcement action here is unnecessary, United notes that, at its four largest airports alone, United provides wheelchair service to approximately 3,000 customers each day. United also notes that it provides assistance to more than 30,000 customers with disabilities who are not wheelchair users but travel throughout its global network. Despite a high volume of special service requests, United contends that its efforts to improve its services for persons with disabilities have resulted in a decrease in the number of disability complaints filed with the Department since 2000. In both calendar year 2001 and calendar year 2002, United had almost 50% fewer complaints filed with the Department than were

¹ Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21; Pub. L. 106-181; 114 Stat. 61; April 5, 2000). Section 707(b) of AIR-21 amended 49 U.S.C. §46301(a)(3) to apply a \$10,000 maximum civil penalty for each violation of the ACAA.

filed during calendar year 2000. United further notes that year-to-date 2003 it has almost 30% fewer complaints filed with the Department than during the same period in 2002.

United further states that the provision of quality service to passengers with disabilities is a top priority at United. According to United, it was one of the first airlines to publish the implementing rules under the Air Carrier Access Act (i.e., 14 CFR Part 382) on both the Internet (united.com) and its intranet (SkyNet) websites as a quick reference for its customers and employees. In fact, United states that it had this information on its websites before the Department had it on its website. United also states that it was an active charter member of a self-directed Airline Committee on Disabilities that has expanded its scope and now includes regular working group meetings with the Air Transport Association and other interested member carriers. This group has worked collaboratively with the National Council on Disability to address issues faced by passengers with disabilities. According to United, it volunteered to be the team leader for the airlines for the first collaborative project that resulted in a new service animal guidance document which is available on United's internet website, Skynet. United indicates that it will continue to keep abreast of new initiatives and take every opportunity to work with the disability community. For example, United points out that it participated in testing the Department's Hotline for Passengers with Disability-Related Problems. United also states that it is an active participant on an Airline Panel at an annual global disabilities conference sponsored by the Society for Accessible Travel and Hospitality. Additionally, according to United, it proudly coordinates travel for large groups of disabled veterans who come from all over the country to attend annual sporting events. In sum, United strongly believes that it has compiled a firm, respectable record regarding assistance to passengers with disabilities.

We view seriously the failure by carriers to provide proper wheelchair service to passengers pursuant to 49 U.S.C. § 41705 and Part 382. After carefully considering all the facts in this case, including those set forth above by United, the Enforcement Office believes that enforcement action is warranted. However, the Enforcement Office believes that expenditures for certain measures United has implemented after this investigation began in 2001 and plans to implement in the future should be allowed as offsets to reduce a substantial portion of the assessed civil penalty. In order to avoid litigation and without admitting the alleged violations, United has agreed to settle these matters with the Enforcement Office and enter into this consent order to resolve the Enforcement Office's findings that United has, on numerous occasions, failed to provide adequate assistance to passengers in wheelchairs in violation of the ACAA and 14 CFR 382.39, and has failed to comply with the dispositive response requirements of 14 CFR 382.65. Additionally, while the civil penalty assessed in this consent order is for violations occurring between April 5, 2000, and December 9, 2002, this consent order will settle any and all other complaints that could be asserted against United alleging violations of 14 CFR 382.39, arising out of or relating to the provision of wheelchair service, and 14 CFR 382.65, arising out of or relating to dispositive reply and complaint resolution requirements, occurring at any time prior to the service date of this order.

The order, in addition, directs the carrier to cease and desist from similar violations in the future and assesses a civil penalty of \$1.1 million in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301, subject to credit offsets of up to \$1 million and to the

payment schedule set forth below. The penalty assessment provisions of this order have been fashioned to take into account United's bankruptcy proceedings and are not a demand for payment to the extent prohibited by section 362(a) of the Bankruptcy Code. The Department filed a pre-petition proof of claim regarding this matter on June 3, 2003, with the U.S. Bankruptcy Court for the Northern District of Illinois. The Department's claim is secured by funds the Internal Revenue Service holds pursuant to the Stipulation and Agreed Order Under Fed. R. Bankr. P. 9019 Approving the Settlement of Controversy Between the Debtors and the United States of America. This agreement is without prejudice to any other right to set-off against this claim any federal debts owed to debtors by this or any other federal agency. The Department and the Enforcement Office acknowledge that they do not hold any of the trade creditors of United responsible for causing any of the violations that are subject to this order.

We believe that this consent order and the penalty that it assesses provide a strong incentive for all 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 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 United Air Lines, Inc., on a number of occasions violated the requirements of 14 CFR 382.39 by failing to provide prompt and proper enplaning and deplaning assistance, primarily to passengers having mobility impairments;
3. We find that United Air Lines, Inc., on a number of occasions violated the dispositive response requirements of 14 CFR 382.65 in connection with the violations described in ordering paragraph 2;
4. We find that United Air Lines, Inc., in the instances described in ordering paragraphs 2 and 3 violated the Air Carrier Access Act, 49 U.S.C. § 41705;
5. We find that, to the extent that the instances described in ordering paragraphs 2 and 3 occurred in foreign air transportation, United Air Lines, Inc., violated 49 U.S.C. § 41310;
6. We find that, to the extent that the instances described in ordering paragraphs 2 and 3 occurred in interstate air transportation, United Air Lines, Inc., violated 49 U.S.C. § 41702;
7. We find that the violations described in ordering paragraphs 2 and 3 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;
8. We order United Air Lines, Inc., and its successors and assigns to cease and desist from further violations of 14 CFR Part 382 and 49 U.S.C. §§ 41310, 41702, 41705 and

41712 by engaging in the conduct described in ordering paragraphs 2 through 7;

9. United Air Lines, Inc., is assessed a civil penalty in the amount of \$1.1 million in compromise of the civil penalties that might otherwise be assessed by the Department of Transportation for the violations occurring prior to December 9, 2002, as found in ordering paragraphs 2 through 7 of this order. The Department of Transportation shall have an allowed, prepetition claim against United Air Lines, Inc., in the amount of \$1.1 million.
10. The civil penalty assessed in ordering paragraph 9 shall be satisfied in the following manner:
 - a. Within fifteen days of the service date of this order, United Air Lines, Inc., shall file a motion in the United States Bankruptcy Court for the Northern District of Illinois seeking relief from the automatic stay to allow the United States to set off \$100,000 held by the Internal Revenue Service pursuant to Paragraph 1 of the Stipulation and Agreed Order Under Fed. R. Bankr. P. 9019 Approving the Settlement of Controversy Between the Debtors and the United States of America (Stipulation and Agreed Order), against \$100,000 of the amount owed the Department of Transportation pursuant to ordering paragraph 9. If United Air Lines, Inc., fails to file the required motion or if United Air Lines, Inc., is unable to obtain a final, unappealable order allowing setoff within 90 days of the service date of this order, the Department of Transportation may, in its discretion, declare this order null and void. The Department of Transportation has filed a proof of claim in the United Air Lines, Inc., bankruptcy proceeding, designated as Claim No. 42439 (the "DOT Claim"). Once United Air Lines, Inc., obtains a final, unappealable order allowing setoff, the DOT Claim shall be deemed to be amended to claim \$1,100,000.00.
 - b. In recognition of expenditures United Air Lines, Inc., has made to improve its quality of service to air travelers with disabilities above what is required by 14 CFR Part 382 since the initiation of the investigation giving rise to this order, \$150,000 of the allowed claim of the Department of Transportation set forth in ordering paragraph 9 shall be deemed satisfied upon completion of the setoff identified in subparagraph 10(a). This amount shall not be deemed satisfied unless the setoff identified in subparagraph 10(a) is effectuated. Upon the effectuation of the setoff referred to above, the DOT Claim shall be deemed to be amended to claim \$850,000.00.
 - c. United Air Lines, Inc., shall make the expenditures described in ordering paragraphs 11 and 12, below, to improve its quality of service to air travelers with disabilities.² United Air Lines, Inc., shall further document its expenditures in the manner described in ordering paragraphs 11 and 12, below.

² United Air Lines, Inc., and the Department of Transportation acknowledge that the commitments agreed to in ordering paragraphs 11 and 12 are not expressly required by the text of 14 CFR Part 382.

Thirty six months after the service date of this order, the remaining \$850,000 of the allowed claim of the Department of Transportation set forth in ordering paragraph 9 shall be deemed satisfied if United Air Lines, Inc., has made and documented the expenditures described in ordering paragraphs 11 and 12, below. Upon the satisfaction of the claim referred to above, the DOT Claim shall be deemed to be expunged. If the satisfaction of the claim referred to above does not occur, the Department of Transportation shall have an Allowed Administrative Claim for \$850,000.00, payable in accordance with United Air Lines, Inc.'s plan for reorganization.

11. The improvements shall, in part, consist of the hiring of specialized supervisory personnel for wheelchair service personnel at the following United Air Lines, Inc.'s hubs: Chicago (ORD), Denver (DEN), Dulles (IAD), and San Francisco (SFO). United Air Lines, Inc., shall have up to 36 months to make this improvement. Within 12 months of the service date of this order, and every 12 months thereafter for two subsequent years, United Air Lines, Inc., shall submit:
 - a. a statement, with supporting documentation, showing the total expenditures for specialized supervisory personnel for wheelchair service personnel at United Air Lines, Inc.'s four hubs;
 - b. a detailed explanation of the method used by United Air Lines, Inc., to determine the total expenditures on specialized supervisory personnel at United Air Lines, Inc.'s four hubs; and
 - c. a sworn and certified statement from an appropriate company official, demonstrating that the total expenditures were properly expended;
12. The improvements shall also consist, in part, of the purchase of or contracting for communication devices, such as, but not limited to, Nextel phones, to be used by wheelchair service personnel at United Air Lines, Inc.'s four hubs. United Air Lines, Inc., shall have up to 24 months to make this improvement. Within 12 months of the service date of this order, and 12 months thereafter, United Air Lines, Inc., shall submit:
 - a. a statement, with supporting documentation, showing the total expenditures for the communication devices;
 - b. a detailed explanation of the method used by United Air Lines, Inc., to determine the total expenditures on the communication devices; and
 - c. a sworn and certified statement from an appropriate company official, demonstrating that the total expenditures were properly expended;
13. The above described improvements may be amended with the approval of the Enforcement Office. If United Air Lines, Inc., intends to seek a change in the type of improvement made, it must notify and obtain approval from the Enforcement Office

60 days prior to the date documentation is due pursuant to ordering paragraphs 11 and 12; and

14. Any failure by United Air Lines, Inc. to make the expenditures in accordance with ordering paragraphs 9, 10, 11, 12 and 13 or to document them adequately to the Enforcement Office shall constitute a violation of this consent order and subject United Air Lines, Inc., to enforcement action.

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 initiative.

BY:

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(SEAL)

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