



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

Issued by the Department of Transportation
on the **26th day of March, 2003**

US Airways, Inc.

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

Served: March 26, 2003

OST-2003-14194

CONSENT ORDER

This order concerns certain alleged violations by US Airways, Inc., (US Airways) of the requirements of 14CFR Part 382, with respect to its failure to provide 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. By failing to provide adequate wheelchair assistance and other required assistance, US Airways also engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712. The order directs US Airways to cease and desist from future violations of Part 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712 and assesses the carrier \$550,000 in compromise civil penalties for such violations.

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 US Airways, the carrier has failed to comply with these requirements.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated US Airways' compliance with the relevant provisions of Part 382 by requesting that the carrier provide copies of all complaints it received directly from passengers between April 5, 2000,

and June 20, 2002, that alleged a failure to provide adequate wheelchair assistance. In addition, the Enforcement Office also reviewed similar complaints against US Airways that consumers sent directly to the Department. The records indicated a significant number of apparent violations of section 382.39 during the pertinent time period. 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 a dereliction 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, US Airways' complaint files indicate 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 give a "dispositive response" to each complaint postmarked within 45 days of the complained of incident and the dispositive written response must be made by the carrier within 30 days of receipt of the complaint. 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, and state that the complainant may refer the matter to the Department's consumer office.

In mitigation, US Airways states that it has worked diligently to improve the service it provides passengers with disabilities, developing a number of programs and making several changes to its disability-related procedures over the past several years. For example, with the help of a leading disability advocacy organization, US Airways states that it organized and hosted a disability forum at which customer service personnel were instructed on disability-related issues and how US Airways could better serve its passengers with disabilities. US Airways points out that it has created an internal Consumer Affairs Passenger Assistance & Regulatory Compliance Team (Compliance Team) to oversee and address, among other things, the company's procedures for handling requests for assistance by passengers with disabilities, responding to disabled passenger concerns and complaints, and ensuring compliance with the requirements of Part 382. The company has created a specific managerial position to lead the Compliance Team. According to the carrier, this individual is devoted full-time to dealing with consumer matters, including compliance with the Department's disability regulations.

Additionally, US Airways maintains that it has implemented an around-the-clock link between its consumer affairs and regulations staffs to facilitate consultation on Part 382 compliance issues. US Airways asserts that it has enhanced its Complaint Resolution Officer (CRO) training materials and redeveloped its CRO recurrent training program to emphasize Part 382 compliance. This enhanced training program includes discussions of real life scenarios that CROs may face in dealing with disability-related service issues and complaints from passengers with disabilities. US Airways notes that it has also provided disability

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.

sensitivity training for its front-line personnel (i.e., Special Service Representatives and Customer Service Agents) in every station throughout its entire system. US Airways states that it has developed an informational brochure to raise flight attendant awareness of disability issues and has enhanced its procedures to improve the boarding and deplaning process for passengers with disabilities. According to the company, it has added two members of the disability community to its Consumer Advisory Board, which meets regularly to discuss customer service issues. It has also included a discussion of disability complaints and potential Part 382 violations as part of its Weekly Quality Review Program—a senior level, system-wide review of all consumer-related issues. US Airways points out that it recently created a new quality assurance committee that is devoted solely to overseeing the company's policies, practices, and procedures concerning passengers with disabilities. US Airways states that it has spent in excess of \$450,000 since June 2002,² to improve its performance with respect to passengers with disabilities, above and beyond what is required under Part 382. US Airways believes that it has compiled a strong record regarding assistance to passengers with disabilities.

Above and beyond the efforts described above, US Airways is committed to providing the best possible service it can to its customers with disabilities. Accordingly, US Airways is willing to work together with the Department to develop and implement additional measures to better serve passengers with disabilities. For example, US Airways will increase its expenditures on programs related to passengers with disabilities by \$400,000 over what otherwise would be the normal level. Specifically, US Airways will increase its wheelchair assistance services. It will develop and implement a system-wide program whereby each US Airways' airport station must develop a work plan to review and handle special assistance requests. Finally, US Airways will implement procedures system-wide whereby each airport station documents, records, and reviews each special assistance request and the service provided in connection with that request. The Enforcement Office recognizes the extreme financial difficulties being faced by US Airways, which is currently engaged in a Chapter 11 restructuring, and by all air carriers in this industry at this time and believes that these measures should be allowed as offsets for a portion of the assessed civil penalty.

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 US Airways, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation and without admitting or denying the alleged violations, US Airways has agreed to settle these matters with the Enforcement Office and enter into this consent order to cease and desist from future violations of the ACAA and Part 382.³ By this order, the Department finds that US Airways has, on numerous occasions, failed to provide adequate assistance to passengers in wheelchairs in violation of the ACAA and 14 CFR 382.39, and finds that the carrier has failed to comply with the dispositive response requirements of 14 CFR 382.65. The order, in addition, directs the carrier to cease and desist from similar violations in the future and assesses a civil penalty of \$550,000 in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301. The penalty assessment provisions of this order have been

² The investigation giving rise to this order was instituted in June 2002.

³ This consent order will enable settlement of all violations of the ACAA and Part 382 that US Airways and all US Airways Express Carriers may have committed up until the date that this order becomes final.

fashioned to take into account US Airways' 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 general unsecured proof of claim regarding this matter on January 6, 2003, with the U.S. Bankruptcy Court for the Eastern District of Virginia and will file an amended general unsecured pre-petition proof of claim with the Bankruptcy Court to reflect the terms of this agreement within 15 days of the issuance of this order. US Airways will seek any necessary approvals of this order from the Bankruptcy Court. The Department and the Enforcement Office acknowledge that they do not hold any of the trade creditors of US Airways responsible for causing any of the violations that are the subject of this order. We believe that this consent agreement 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 US Airways, 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 US Airways, 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 US Airways, 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, US Airways, 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, US Airways, 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 US Airways, 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. US Airways, Inc., is assessed a civil penalty in the amount of \$550,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 7 of this order, of which:
 - a. \$100,000 shall be credited to US Airways for expenditures above normal

levels that it has made to improve its quality of service to disabled air travelers since the initiation of the investigation giving rise to the order, which the Enforcement Office has already reviewed;

- b. \$300,000 shall be credited in accordance with ordering paragraphs 10, 11, and 12 of this order⁴; and
 - c. \$150,000 shall be allowed as a non-priority, pre-petition general unsecured claim to be administered pursuant to the First Amended Plan of Reorganization of US Airways Group, Inc., and its affiliated debtors and debtors-in-possession filed on January 17, 2003, in the U.S. Bankruptcy Court for the Eastern District of Virginia.
10. The amount spent by US Airways for increased wheelchair assistance services⁵ shall be credited towards the amount of the assessed civil penalty under paragraph 9(b) above provided that:
- a. Within 90 days of the issuance of this order, US Airways submits to the Enforcement Office:
 - i. a statement showing the total expenditures on wheelchair assistance services for calendar year 2002;
 - ii. the method used by US Airways to determine the total expenditures on wheelchair assistance services for calendar year 2002; and
 - iii. supporting documentation showing the total expenditures on wheelchair assistance services for calendar year 2002;
 - b. Within 12 months of the date of issuance of this order, US Airways submits to the Enforcement Office:
 - i. a statement showing the total expenditures on wheelchair assistance services for calendar year 2003;
 - ii. the method used by US Airways to determine the total expenditures on wheelchair assistance services for calendar year 2003; and
 - iii. supporting documentation showing the total expenditures on wheelchair assistance services for calendar year 2003; and
 - c. Within 24 months of the date of issuance of this order, US Airways submits to the Enforcement Office:

⁴ The offsets allowed pursuant to this paragraph and ordering paragraphs 10, 11, and 12 are intended to encourage the development of best practices within the industry.

⁵ Examples of increased wheelchair assistance services include improving the training of employees providing such services, purchasing additional wheelchairs or oversize wheelchairs, and hiring and paying additional staffing.

- i. a statement showing the total expenditures on wheelchair assistance services for calendar year 2004;
 - ii. the method used by US Airways to determine the total expenditures on wheelchair assistance services for calendar year 2004; and
 - iii. supporting documentation showing the total expenditures on wheelchair assistance services for calendar year 2004;
- 11. The amount spent by US Airways to implement a system-wide requirement whereby each airport station must develop a work plan to review and handle special assistance requests shall be credited towards the amount of the assessed civil penalty under paragraph 9(b) above provided that:
 - a. Within 12 months of the issuance of this order, US Airways submits to the Enforcement Office supporting documentation showing calendar year 2003 expenditures directly related to the development of the work plans to review and handle special assistance requests; and
 - b. Within 24 months of the issuance of this order, US Airways submits to the Enforcement Office supporting documentation showing calendar year 2004 expenditures directly related to the development of the work plans to review and handle special assistance requests;
- 12. The amount spent by US Airways to implement procedures system-wide whereby each airport station documents, records, and reviews each special assistance request and the service provided in connection with that request shall be credited towards the amount of the assessed civil penalty under paragraph 9(b) above, provided that:
 - a. Within 12 months of the issuance of this order, US Airways submits to the Enforcement Office supporting documentation showing calendar year 2003 expenditures directly related to the implementation of procedures system-wide whereby each airport station documents, records, and reviews each special assistance request and the service provided in connection with that request; and
 - b. Within 24 months of the issuance of this order, US Airways submits to the Enforcement Office supporting documentation showing calendar year 2004 expenditures directly related to the implementation of procedures system-wide whereby each airport station documents, records, and reviews each special assistance request and the service provided in connection with that request; and
- 13. Any failure by US Airways to make the expenditures in accordance with ordering paragraphs 9(b), 10, 11, and 12 or to document them adequately to the Enforcement Office shall constitute a violation of this consent order and subject US Airways 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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