



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

Issued by the Department of Transportation
on the 9th day of March, 2004.

Northwest Airlines, Inc.,

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

Docket OST-2004-16943

Served: March 9, 2004

CONSENT ORDER

This order concerns violations of 14 CFR Part 382 by Northwest Airlines, Inc. (Northwest). 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 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 Northwest to cease and desist from future violations of the ACAA and Part 382 and assesses a compromise civil penalty of \$225,000 for such violations.

BACKGROUND

In 2002, the Department of Transportation's Office of Aviation Enforcement and Proceedings (Enforcement Office) began an investigation of Northwest after the Enforcement Office learned that Northwest's policy about in-cabin stowage of a passenger's folding wheelchair may be inconsistent with 14 CFR 382.21(a)(2). The Enforcement Office investigators, acting as customers, made 10 telephone calls to Northwest's reservations system to determine the type of information Northwest employees provide passengers about in-cabin stowage of folding wheelchairs. The telephone calls addressed Northwest's ability to stow one passenger's folding wheelchair on its aircraft, as required by 14 CFR 382.21(a)(2). In all but one of these calls, the reservations agent stated that Northwest's aircraft could not accommodate a passenger's folding wheelchair inside the cabin.¹

¹ Three of our Transportation Industry Analysts ("TIA") made 10 separate telephone calls to Northwest's reservations center and spoke with 10 different reservations agents on November 13, 2002. (Six of these telephone calls were for flight specific routes served by the A320 aircraft, but no flight information was specified in the remaining 4 telephone calls). During each call, the TIA represented that he/she was traveling with his/her collapsible folding wheelchair and would like to stow it inside the cabin of the aircraft. In response to these representations, all but one agent stated that the wheelchair would have to be stowed in the belly of the aircraft; the remaining agent stated that the wheelchair would fit in the cabin of the A320.

The Enforcement Office's concern about the results of these test calls prompted discussions with Northwest, during which the Enforcement Office informed the carrier of its belief that the Airbus A319 and A320 portion of Northwest's fleet do not have sufficient space to stow a passenger's standard-size folding wheelchair as required by 14 CFR 382.21(a)(2). The Enforcement Office followed these discussions with a request for additional information concerning Northwest's compliance in providing in-cabin stowage of folding wheelchairs.

Northwest responded to this written request with updated plans on the method that it plans to use to create a space for wheelchairs that do not fit in the overhead bins of its A319 and A320 aircraft. Northwest stated that it operates a fleet that includes 57 Airbus A319 and 76 Airbus A320 aircraft. All of these aircraft have 100 or more passenger seats and 106 of its 133 Airbus A319 and A320 aircraft were ordered after April 5, 1990, or delivered after April 5, 1992; those 106 aircraft consist of 49 Airbus A320s and 57 Airbus A319s.

In response to the Enforcement Office's concerns about the size of its in-cabin stowage space for wheelchairs, Northwest stated that it had designated the overhead bins as the on board priority stowage space for wheelchairs on its Airbus A320s and the forward-left closet on its Airbus A319s for that purpose, but acknowledged that both of the designated priority stowage spaces are insufficient to stow a standard-size folding wheelchair.² Northwest added, that it plans on creating a new larger designated priority wheelchair stowage space by expanding either the rear or front closets on the aircraft. Northwest anticipates the project will take about 28 months to complete once it begins modifications. Until these modifications are complete, Northwest will accommodate one folding wheelchair in a row of seats and secure that wheelchair using seat belt extensions. Specifically, Northwest has designated seats 26ABC on its A320s and 22ABC on its A319s as the on board priority stowage space. Northwest further stated that it would insure all future orders of aircraft would be in compliance with section 382.21(a)(2).

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). Specifically at issue in this case 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."³ 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 wheels of

² Our interpretation of "wheelchair" as used in section 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.

³ Section 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).

the wheelchair.⁴ The term "wheelchair" refers to standard-size wheelchairs as discussed in footnote two above. 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.

In addition to the ACAA and Part 382, the violations described above appear to involve unfair and deceptive trade practices proscribed by 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 the issue of the stowage of one passenger's standard-size folding wheelchair inside the cabin of Northwest's Airbus A319 and A320 aircraft. Northwest admits that prior to the investigation giving rise to this order its new aircraft did not contain enough space for the stowage of one passenger's standard-size folding wheelchair. However, Northwest notes that section 382.21(a)(2) does not, by its terms, describe the size of the wheelchair that must be given priority space. After notification by the Enforcement Office of its concerns and the size requirements for standard-sized folding wheelchair stowage, Northwest agreed to modify either the front or rear closet of the covered aircraft to bring them into compliance. Although the Enforcement Office appreciates Northwest's willingness to create a space to stow a passenger's standard-size folding wheelchair, the office views the carrier's failure initially to provide the proper accommodation under 14 CFR 382.21(a)(2) seriously. After careful consideration of all the facts surrounding this matter, including the explanation and arguments set forth by Northwest, the Enforcement Office continues to believe that enforcement action is warranted. In order to avoid litigation, Northwest has agreed to settle these matters, without admitting to a violation of the Air Carrier Access Act, and to enter into this consent order directing it to cease and desist from future similar violations and to the assessment of a civil penalty.

In mitigation, Northwest states that it began its Airbus fleet acquisition program several years before the rule was developed. Accordingly, Northwest's original design specifications were established well before the rule's publication. Subsequent to the rule's enactment, Northwest states that it acted in good faith to comply with the rule. Northwest states that it designated priority on board stowage space for folding wheelchairs on each of its aircraft in order to comply with the rule. Northwest notes that the rule has never included applicable dimensions. Yet, in hindsight, Northwest agrees that the designated space was insufficient for some folding wheelchairs. However, once the Department notified Northwest of the dimensions being utilized by the Department for compliance purposes, Northwest immediately agreed to implement remedial measures and has fully cooperated with the Department's investigation.

⁴ 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"

Further, Northwest indicates that it has worked to exceed the requirements of the ACAA. In 1999, Northwest states that it established a Customer Advisory Board on Customers with Disabilities, the oldest such organization in the industry. The ten member Board consists of individuals representing different disability advocacy groups. According to Northwest, the Board provides input to the carrier on its programs and services for passengers with disabilities and advises Northwest regarding possible additional enhancements. In addition, in 2002, Northwest states that it created an ACAA Quality Assurance Program. The Northwest ACAA Quality Assurance Program tracks the travel experiences of a number of Northwest's passengers that have disabilities.

By this order, the Department finds that Northwest failed to act in accordance with the ACAA and Part 382 in failing to provide for a priority space to stow one passenger's standard-size folding wheelchair inside the cabin on new aircraft with at least 100 seats. This order directs Northwest to cease and desist from similar violations in the future and assesses a civil penalty of \$225,000 in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301.

In addition to imposing a civil penalty, this order directs Northwest to comply with section 382.21(a)(2) and provide a space to stow one passenger's standard-size folding wheelchair on new aircraft with 100 or more passenger seats. This order also directs that Northwest notify the Enforcement Office within 30 days if it changes its designated space for the stowage of passenger's standard-size folding wheelchairs. Finally, this order directs that Northwest 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 order and the penalty it assesses will provide a strong incentive for Northwest 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 Northwest Airlines, Inc., violated the requirements of 14 CFR 382.21(a)(2) by failing to provide space to stow one passenger's standard-size folding wheelchair in the passenger cabin of its aircraft with at least 100 seats and ordered by Northwest Airlines, Inc., after April 5, 1990, or delivered to Northwest Airlines, Inc., after April 5, 1992;
3. We find that by committing the violations described in ordering paragraph 2 Northwest violated 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 Northwest Airlines, Inc. and its successors and assigns to cease and desist from further violations of 14 CFR 382.21(a)(2) and 49 U.S.C. §§ 41702, 41705, and 41712 by engaging in the conduct described in ordering paragraph 2;
7. Northwest Airlines, Inc. is assessed a civil penalty of \$225,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 6, of which:
 - a. \$20,000 shall be due and payable within 30 days after the service date of this order; and
 - b. up to \$205,000 may be offset by the expenditures associated with installing a new closet large enough to fit a standard size folding wheelchair on Northwest's 27 Airbus A319 and A320 aircraft that are not required to comply with 14 CFR 382.21 (a)(2)⁵;
8. Within 30 days of the service date of this order, Northwest Airlines, Inc., shall provide DOT with a statement with supporting documentation verifying the projected cost of the offset listed in paragraph 7 above. The statement shall show the projected cost of the offset and contain a detailed explanation of the method used by Northwest Airlines, Inc., to determine the projected cost;
9. Within 30 months after the service date of this order, Northwest Airlines, Inc., shall provide a sworn and certified statement from an appropriate company official certifying that the projected expenditures described in paragraphs 7 and 8 have been made, and, to the extent that \$205,000 is not expended, that amount shall become due and payable by Northwest Airlines, Inc., at that time;
10. Northwest Airlines, Inc. shall ensure that each aircraft with more than 100 passenger seats that it orders after the service date of this order has a closet within the passenger cabin to stow one standard-size folding wheelchair;
11. Northwest 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;
12. Northwest Airlines, Inc. shall complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order; and
13. Payments 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

⁵ The cost associated with these modifications is estimated by Northwest to be \$266,235 for all 27 aircraft (\$9,860.56 for each aircraft). Northwest anticipates it will take about 28 months to expand the closets on all of its 133 Airbus A319 and A320 aircraft.

U.S. Treasury. Instructions on the payment of civil penalties are attached. Failure to pay the penalty as ordered will subject Northwest Airlines, Inc. 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)

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