



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

Issued by the Department of Transportation
on the 24th day of October, 2005.

Hawaiian Airlines,

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

Served October 24, 2005

Docket No. OST-2005-20077

CONSENT ORDER

This order concerns violations of 14 CFR Part 382 by Hawaiian Airlines (Hawaiian). 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 apparent ACAA and Part 382 violations occurred in foreign air transportation they constitute violations of 49 U.S.C. § 41310(a), which prohibits an air carrier from subjecting a person to unreasonable discrimination in foreign air transportation. 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. ACAA and Part 382 violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. This order directs Hawaiian 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 subsequent to March 20, 2003, subject to offsets of up to \$90,000 for expenditures for improvements in service provided disabled air travelers beyond the level required by Part 382.

BACKGROUND

Hawaiian operates two types of aircraft with more than 100 passenger seats: 11 Boeing 717 series aircraft and 14 Boeing 767 series aircraft. All but one of these aircraft were ordered after April 5, 1990, or delivered after April 5, 1992.

The investigation resulting in the instant consent order began when staff from the Department of Transportation's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) made a series of telephone calls to Hawaiian's reservations center and inquired as to whether Hawaiian: (1) has movable aisle armrests on its B-717 and B-767 aircraft, (2) provides requested seating to accommodate passengers with disabilities who self identify as having a disability, and (3) has a designated space to stow a passenger's standard-size folding wheelchair in the cabin on its aircraft.¹ These telephone calls were prompted by several consumer complaints filed with the Enforcement Office.

In response to the inquiry regarding movable aisle armrests, Hawaiian's reservations agents provided inconsistent, incorrect and/or incomplete information that suggested that Hawaiian's aircraft did not have the required number of movable aisle armrests on either its B-717 or B-767 aircraft. In response to inquiries regarding seating accommodations, several Hawaiian agents refused to assign seats held for frequent flyers and full-fare passengers to accommodate passengers who identified themselves as having a disability on the basis that such seats were not available to members of the general passenger population. In response to the question regarding the stowage of personal wheelchairs, almost all of the Hawaiian agents explained that in-cabin wheelchair stowage was not possible and that Hawaiian checks all passengers' wheelchairs at the gate.

Subsequently, the Enforcement Office requested written information from Hawaiian regarding the existence and location of moveable aisle armrests, its policies on seating accommodations for passengers with disabilities, and the availability of in-cabin stowage space for a standard-size folding wheelchair. Hawaiian responded to this office, stating that, as required, at least half of the aisle seats have movable armrests on all of its aircraft. With regard to in-cabin wheelchair stowage, Hawaiian initially stated, "[a]ll Hawaiian Airlines' aircraft have a closet in the cabin which allows the stowage of one folding wheelchair." Approximately a month later, Hawaiian retracted this blanket statement and explained that its B-717 aircraft do not have closets, but that Hawaiian had begun to stow passenger's wheelchairs on top of passenger seats. With regard to its B-767 aircraft, Hawaiian indicated that they have stowage closets but acknowledged that the closets would not accommodate a standard-size folding wheelchair as defined in enforcement case precedent.²

Based on this information, the Enforcement Office sent Hawaiian a formal investigation letter to which it responded, along with a follow up request for more information on Hawaiian's practices regarding in-cabin stowage of passengers' folding wheelchairs and seating accommodations for passengers with disabilities. With regard to movable armrests, Hawaiian reaffirmed its earlier assertions that more than half of the aisle seats on its B-717 and B-767

¹ Specifically, in November 2002, March 2003, and May 2003, staff from the Enforcement Office made test calls to Hawaiian's reservation agents requesting information on the availability of in-cabin stowage space for a passenger's standard-size folding wheelchair and seats with moveable armrests. In June 2004, additional test calls were made regarding the availability of seats with moveable armrests. Test calls involving seating assignments for passengers with disabilities were made in July 2003 and July 2004.

² The following dimensions characterize a standard-size wheelchair when folded: 13 inches wide by 36 inches high by 42-50 inches long.

aircraft have movable armrests.³ Hawaiian stated that the misinformation provided by its reservations agents was the result of individual training deficiencies. As a remedy, Hawaiian states that since August 1, 2003, it routinely conducts test calls to its reservations center to evaluate compliance with disability-related issues, and it also provides briefings for agents and supervisors on the topic of handling requests from passengers who “self identify” as needing disability-related accommodations.

With regard to seating accommodations, Hawaiian states that it does not provide advance seating assignments to passengers on its B-717 aircraft but does pre-board passengers with disabilities. With regard to seating accommodations on its B-767 aircraft, Hawaiian asserts that it uses the priority seating method.⁴ Hawaiian provided evidence that its seating accommodation policies on both its B-717 and B-767 aircraft were in compliance with Department rules. Hawaiian asserts that the misinformation given by its reservations agents in response to test calls by Enforcement Office employees resulted from individual training issues. It demonstrated that it had taken the following steps to remedy such issues: (1) reiterated to its employees the need to use the information in Sabre, its reservation system, to properly assist passengers with disabilities; (2) relocated some of the disability-related information in the Sabre system to make it easier to access; (3) conducted and continues to conduct internal test calls to its reservation agents to observe compliance with the seating accommodation requirements; and (4) established a process to notify the appropriate training manager when test calls reveal that an agent is unfamiliar with the seating accommodations requirements.

With regard to in-cabin wheelchair stowage, Hawaiian responded that its B-717 and B-767 aircraft had space to stow passengers’ wheelchairs in overhead bins and under seats. Hawaiian explained that closet space for stowage of wheelchairs was not available on either its B-717 or B-767 aircraft since its B-717 fleet was delivered without wheelchair stowage closets and the closets in its B-767 fleet contain mounted emergency equipment required by the Federal Aviation Administration (FAA) that would preclude the stowage of wheelchairs. After receiving approval from the FAA on July 21, 2003, Hawaiian instituted a system whereby passengers’ wheelchairs that do not fit in overhead bins or under seats are placed into canvas bags and strapped on top of passenger seats for stowage. Under the system implemented by Hawaiian, the dimensions of the wheelchairs originally requested by Hawaiian and approved by the FAA for the wheelchair bag stowage system were 14 inches in width, 39 inches in height and 35 inches in length.⁵ As a result, it is the Enforcement Office’s position that none of Hawaiian’s B-717 and B-767 aircraft had space to stow a standard-size folding wheelchair. Hawaiian has since sought and, on August 19, 2004, received FAA approval to secure on a seat a wheelchair measuring 14 inches in width by 42 inches in height

³ Hawaiian provided specific seat numbers and drawings to support its assertions in this regard.

⁴ Hawaiian states that it began using the priority seating method, as described in 14 CFR 382.38, on its B-767 aircraft in 2002, which is the year that Hawaiian began operating those aircraft.

⁵ At the time, Hawaiian’s Sabre system contained the same dimensions of a wheelchair that can be carried in the cabin of Hawaiian’s B-717 and B-767 aircraft. Those dimensions are inconsistent with the dimensions of a standard-size folding wheelchair as defined in enforcement orders. See, footnote 2.

by 36 inches in length. It is worth noting, however, that since April 5, 2000, Hawaiian has received 126 claims for reimbursement for damage to wheelchairs stowed in the cargo hold.

We also note that Hawaiian filed a petition for reorganization under Chapter 11 of the Bankruptcy Code on March 21, 2003. On May 18, 2005, the United States Bankruptcy Court for the District of Hawaii in Civil Action 08-00817 (D. Haw.) confirmed the Third Amended Joint Plan of Reorganization of Joshua Gotbaum, as Chapter 11 Trustee for Hawaiian Airlines, Inc., The Official Committee of Unsecured Creditors, Hawaiian Holdings, Inc., HHIC, Inc., and RC Aviation LLC, dated as of March 11, 2005 (the "Plan"). Pursuant to Article 5.1 of the Plan, Hawaiian represents that it has authority to carry out the obligations set forth in this Consent Order.

APPLICABLE SECTIONS OF 14 CFR PART 382

The ACAA and its implementing regulation, 14 CFR Part 382, forbid discrimination in the provision of air transportation against qualified individuals with disabilities. *See* 49 U.S.C. § 41705; 14 CFR § 382.7(a)(1). Specifically at issue in this case are four sections in Part 382 related to movable armrests, seating accommodations and in-cabin stowage of wheelchairs.

With regard to movable aisle armrests, section 382.21(a)(1)(i) requires that all new aircraft "with 30 or more passenger seats on which passenger aisle seats have armrests shall have movable aisle armrests on at least one-half of passenger aisle seats."⁶ When calculating the total number of passenger aisle seats with armrests, aisle seats "on which a movable armrest is not feasible or aisle seats which a passenger with a mobility impairment is precluded from using by an FAA safety rule," (e.g., seats with integrated trays in the armrests and exit row seating), are excluded from the count.⁷ Thus, the first step to determining compliance under section 382.21(a)(1)(i) is to count the total number of aisle seats on board an aircraft (including first class, business class and coach) and subtract, from that number, those aisle seats where the installation of movable armrests is not feasible or barred by an FAA safety rule. Fifty percent of the remainder must be movable.

Section 382.38 requires that carriers that provide advance seat assignments provide seating accommodations for individuals with a disability by using either the "block" or "priority" method. Under the block seating method, an air carrier must hold, or block, certain seats until 24 hours before the scheduled departure of the flight to accommodate the following four types of individuals who self identify to the carrier: (1) a passenger who uses an aisle chair to access an aircraft seat; (2) a passenger who is assisting a passenger with a disability; (3) a passenger who is traveling with a service animal; and (4) a passenger who has a fused or immobilized leg.⁸ Under the priority seating method, air carriers may assign to any passenger

⁶ "Having movable armrests on half the rows . . . ensure[s] that a handicapped person can use a seat in any portion of the aircraft, permitting greater overall accessibility and enhancing the provision of services in an integrated setting." Nondiscrimination on the Basis of Handicap in Air Travel, 55 FR 8008, March 6, 1990.

⁷ 14 CFR 382.21(a)(1)(ii).

⁸ For passengers with other types of disabilities, the carrier is not required to offer these passengers one of the seats blocked for use by the four categories of individuals identified in section 382.38(a). However, the carrier must assign seats, not already assigned to another passenger that would accommodate those passengers' needs.

the seats required to be available to the four categories of individuals described above and identified in section 382.38(a) under the condition that the carrier provide notice that all passengers assigned these seats at any time prior to one hour before the scheduled departure of the flight could be reassigned, if individuals from these four categories subsequently request those seats.⁹ Carriers that do not provide advance seat assignments must provide seating accommodations for individuals with a disability by allowing them to board the aircraft before other passengers or through an alternative method that has been approved by the Department of Transportation.

Section 382.45(a)(1) requires that carriers make available to passengers, upon request, information concerning the "location of seats, if any, with movable armrests." Inherent in this responsibility is the duty to provide proper information that comports with the carrier's policies and procedures as well as the ACAA and 14 CFR Part 382.

Another aircraft accessibility requirement, section 382.21(a)(2), 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."¹⁰ 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 the wheelchair.¹¹ The term "wheelchair" refers to standard-size wheelchairs.¹² 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 at least one passenger's standard-size folding wheelchair on a priority basis.

In addition to 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. Finally, to the extent that the apparent ACAA and Part 382 violations occurred in foreign air transportation they constitute violations of 49 U.S.C.

even if those seats are not available for assignment to the general passenger population at the time of the request. See sections 382.38(b)(1) and 382.38(c)(1).

⁹ For passengers with disabilities different from the four categories identified in section 382.38(a), the carrier must assign seats, not already assigned to another passenger that would accommodate those passengers' needs even if those seats are not available for assignment to the general passenger population at the time of the request. See sections 382.38(b)(2) and 382.38(c)(2).

¹⁰ Section 382.21(a)(2) applies to "new aircraft" ordered by a carrier after April 5, 1990 or delivered to a carrier after April 5, 1992.

¹¹ 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 . . ."

¹² Our interpretation of "wheelchair" as used in section 382.21(a)(2) is within the meaning of the generic term "wheelchair," which has no size limitation in and of itself, or as used in the regulation (other than folding). As mentioned in footnote 2, a standard-size wheelchair is 13 inches wide by 36 inches high by 42-50 inches long.

§ 41310(a), which prohibits an air carrier from subjecting a person to unreasonable discrimination in foreign air transportation.

ANALYSIS

This order focuses on the stowage of a passenger's standard-size folding wheelchair inside the cabin of Hawaiian's B-717 and B-767 aircraft.¹³ Section 382.21(a)(2) requires that new aircraft with at least 100 seats have a priority space for the stowage of at least one standard-size folding wheelchair for use by a requesting passenger with a disability. Further, it is the Enforcement Office's position that a standard-size wheelchair when folded is approximately 36 inches in height, by 13 inches in width, by 42 to 50 inches in length. The evidence shows that Hawaiian took delivery of its B-717 and B-767 aircraft in 2001 and 2002 but did not configure its aircraft with an in-cabin stowage space for a standard-size folding wheelchair as defined by the Enforcement Office until August 2004. In July 2003, Hawaiian received approval from FAA Cabin Safety to use the canvas bag stowage system to stow a folding wheelchair on top of seats in the cabins of the B-717 and B-767 aircraft. However, the dimensions submitted by Hawaiian and listed in the FAA approval were smaller than the dimensions of a DOT-defined "standard size" wheelchair. Between July 2003 and August 2004, it appears that Hawaiian stowed all folding wheelchairs in the bags, when requested by a passenger. In August 2004, Hawaiian received an amended approval from the FAA for the canvas bag system, which revised the approved specifications to permit stowage of DOT-defined "standard size" wheelchairs in the bags. Thus, as of August 2004, Hawaiian was, and currently is, in full compliance with the requirement for the in-cabin stowage of wheelchairs.

In mitigation, Hawaiian notes that six of the aircraft in Hawaiian's 767 fleet were leased by Hawaiian, and therefore Hawaiian did not have control over whether such aircraft were built with stowage closets. Hawaiian further states that neither the type design standards for the B-717 and B-767 in 14 CFR Part 25 nor the air carrier operating rules in 14 CFR Part 121 include a requirement for a closet to accommodate the in-cabin stowage of a "standard size" wheelchair, but that Hawaiian accommodated wheelchairs through use of the canvas bag system beginning in July 2003. Notably, according to Hawaiian the bags it used for in-cabin stowage of wheelchairs could accommodate wheelchairs larger than the dimensions for which Hawaiian originally received FAA approval. Hawaiian states that it sought and received FAA approval of those dimensions based on its own estimate of the "standard size" of a wheelchair, not as an effort to disregard the law or the interests of the disabled community. Thus, Hawaiian contends that from July 2003 forward it has accommodated every passenger's request for the in-cabin stowage of a folding wheelchair in both its B-717 and B-767 aircraft.

Hawaiian states that it is committed to expending more than \$535,000 in annual training for its employees in assisting and accommodating disabled passengers. According to Hawaiian, this expenditure for an annual training course will help ensure that all relevant employees are aware of the requirements under Part 382 and that reservation, counter and flight personnel are fully aware of their and the carrier's responsibilities to the disabled community.

¹³ In light of the remedial actions Hawaiian has taken to ensure that its reservation agents provide accurate information regarding moveable armrests and seating accommodations, the Enforcement Office will not pursue enforcement action with respect to these issues in this consent order.

In addition, Hawaiian states that it has budgeted for and will be replacing all boarding chairs at each of its airports. Together with the new boarding chairs, Hawaiian states that it is purchasing a passenger transfer kit (PTK) that will allow its employees to assist disabled passengers more easily to and from aircraft seats as well as to and from their personal wheelchairs. According to the carrier, all of Hawaiian's customer contact employees will be trained on the operation and use of the PTK. At the same time, Hawaiian states that it will be purchasing new wheelchairs at airports where Hawaiian uses its own wheelchairs, and will be adding at least one Hawaiian-owned wheelchair at each airport that utilizes contract service vendors. The total expenditure for this replacement project, according to Hawaiian, is approximately \$50,000 initially, with an ongoing monthly maintenance charge that will ensure that the equipment is maintained properly.

On or about July 2005, Hawaiian states that it will be outsourcing its existing supplemental oxygen program, which is currently done in-house, to a third party vendor, at an annual cost of approximately \$115,875. According to the carrier, this will allow Hawaiian to provide improved service to its disabled customers, as there will be more flexibility in the oxygen flow rates available to passengers. Hawaiian is also in the process of implementing a program to permit passengers to use their own AirSep Lifestyle and/or Inogen One portable oxygen concentrator (POC) devices in the cabin during flight. Hawaiian states that the cost of implementing this program, including testing the devices to ensure that they will not cause interference with aircraft navigation and communication systems and training the appropriate Hawaiian personnel, will be approximately \$50,000.

Additionally, Hawaiian states that it will create a new special services website with information directed at disabled passengers. The total expenditure for the website upgrade is \$69,800.

Hawaiian contends that the above described activities reflect a continuing commitment necessitating expenditure of more than \$600,000 for next year alone and a commitment to annually spend approximately \$530,000 dedicated solely to ensuring that people with disabilities are treated in a manner that is respectful, fully compliant with the law and in accordance with Hawaiian's business plan.

The Enforcement Office views Hawaiian's failure to provide proper stowage space for a passenger's folding wheelchair under 14 CFR § 382.21(a)(2), as described above, seriously. Although the Enforcement Office appreciates that space inside the closets on Hawaiian's 767 aircraft may be limited because the closets contain FAA mandated emergency equipment, Hawaiian has not produced any evidence that this FAA requirement precluded the creation of another space inside the cabin large enough to stow a standard-size wheelchair at the time the aircraft were ordered. The Enforcement Office does, however, recognize that Hawaiian has provided storage for certain folding wheelchairs in both the B-717 and the B-767 since July 2003. After careful consideration, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation on this matter, Hawaiian has agreed to settle these matters and enter into a consent order to cease and desist from future similar violations.

By this order, the Department finds that between 2001 when Hawaiian took delivery of its new B-717s and August 2004, Hawaiian failed to act in accordance with the ACAA and Part

382 in failing to provide a space for the in-cabin stowage of at least one passenger's standard-size folding wheelchair on new aircraft with at least 100 seats. This order directs Hawaiian to cease and desist from similar violations in the future and assesses a civil penalty of \$100,000 for violations after March 20, 2003, in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301, subject to credit offsets of up to \$90,000 and to the payment schedule set forth below. All but \$10,000 of this civil penalty will be offset by expenditures related to the following: (1) implementing a program to permit passengers to utilize their own Airsep Lifestyle or Inogen One POCs in the cabin during flight; (2) creating a new special services website with information directed at the needs of disabled passengers; and (3) providing a link from Hawaiian's website to information on DOT's website regarding DOT's toll-free hotline in order to educate and assist individuals in resolving disability-related air travel problems. The civil penalty amount of \$100,000 shall be deemed an allowed administrative expense. \$10,000 of that amount shall be paid in accordance with the Plan. The remainder of the civil penalty, \$90,000, shall be deemed satisfied if Hawaiian satisfactorily implements the above directive and provides the reports required in ordering paragraphs 10 through 12 within the time periods specified in this order.

The penalty assessment provisions of this order have been fashioned to take into account Hawaiian's bankruptcy proceedings and are not a demand for payment to the extent prohibited by section 362(a) of the Bankruptcy Code. 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.

In addition, this order directs that Hawaiian complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order. The Enforcement Office believes that this consent order and the penalty it assesses will provide a strong incentive for Hawaiian 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 Hawaiian Airlines violated the requirements of 14 CFR 382.21(a)(2) by failing to provide space to stow one passenger's standard-size folded wheelchair on its new aircraft with at least 100 seats;
3. We find that the conduct 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 foreign air transportation, the conduct violated 49 U.S.C. § 41310(a);
5. 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;

6. We find that the violations described in ordering paragraph 2 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;

7. We order Hawaiian Airlines 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 paragraph 2;

8. Hawaiian is assessed a civil penalty in the amount of \$100,000 in compromise of the civil penalties that might otherwise be assessed by the Department of Transportation for the violations occurring subsequent to March 21, 2003, as found in ordering paragraphs 2 through 6 of this order.

9. The civil penalty assessed in ordering paragraph 8 shall be satisfied in the following manner:

- a. Hawaiian shall remit \$10,000 in the manner provided for in ordering paragraph 17 within thirty (30) days of when this Consent Order becomes final.
- b. Hawaiian shall make the expenditures described in ordering paragraphs 10, 11, and 12, below, to improve its quality of service to air travelers with disabilities.¹⁴ Hawaiian shall further document its expenditures in the manner described in ordering paragraphs 10, 11, and 12, below. Twenty four months after the service date of this order, the remaining \$90,000 of the allowed administrative expense of the Department of Transportation set forth in ordering paragraph 8 shall be deemed satisfied if Hawaiian has made and documented the expenditures described in ordering paragraphs 10, 11, and 12, below.

10. The expenditures shall, in part, consist of funds spent by Hawaiian to implement a program to permit passengers to use their own AirSep Lifestyle and Inogen One POCs, as permitted by the FAA, in the cabin during flight. Hawaiian's program shall include testing to ensure that the device does not cause interference with electrical, navigational, or communication equipment on all its aircraft. The program shall also include training for Hawaiian's gate and reservation agents and flight attendants. Hawaiian shall have up to 12 months to make this improvement. Within 12 months of the service date of this order, Hawaiian shall submit:

- a. a statement, with supporting documentation, showing the total expenditures for implementing the program allowing passengers to use certain POCs, including expenditures related to testing the device and training of personnel;
- b. a detailed explanation of the method used by Hawaiian to determine the total expenditures for implementing the program ; and

¹⁴ Hawaiian and the Enforcement Office acknowledge that the commitments agreed to in ordering paragraphs 10, 11, and 12 are not expressly required by the text of 14 CFR Part 382.

- c. a sworn statement from an appropriate company official, demonstrating that the total expenditures were properly expended;

11. The expenditures shall also consist, in part, of the funds spent by Hawaiian to create a new special services website with information directed at the needs of disabled passengers. Hawaiian shall have up to 12 months to make this improvement. Within 12 months of the service date of this order, Hawaiian shall submit:

- a. a statement, with supporting documentation, showing the total expenditures for creating the website;
- b. a detailed explanation of the method used by Hawaiian to determine the total expenditures for creating the website; and
- c. a sworn statement from an appropriate company official, demonstrating that the total expenditures were properly expended;

12. The expenditures shall also consist, in part, of the funds spent by Hawaiian to provide a link from Hawaiian's website to information on DOT's website regarding the DOT's toll-free hotline in order to educate and assist individuals in resolving disability-related air travel problems. Hawaiian shall have up to 12 months to make this improvement. Within 12 months of the service date of this order, Hawaiian shall submit:

- a. a statement, with supporting documentation, showing the total expenditures related to establishing the link from Hawaiian's website to DOT's website;
- b. a detailed explanation of the method used by Hawaiian to determine the total expenditures related to establishing the link; and
- c. a sworn statement from an appropriate company official, demonstrating that the total expenditures were properly expended;

13. The improvements described in paragraphs 10 through 12 may be amended with the approval of the Enforcement Office. If Hawaiian 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 10, 11, and 12;

14. Any failure by Hawaiian to make the expenditures in accordance with ordering paragraphs 8, 9, 10, 11, and 12 or to document them adequately to the Enforcement Office shall constitute a violation of this consent order and shall subject Hawaiian to the deferred portion of the \$100,000 penalty;

15. Hawaiian Airlines shall notify the Enforcement Office within 30 days if it changes in any manner its designated space to stow passengers' standard-size folding wheelchairs on its Boeing 717 or 767 aircraft, or other aircraft governed by 14 CFR 382.21(a)(2);

16. Hawaiian Airlines shall complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the service date of this order; and

17. All 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 U.S. Treasury. Failure to pay the penalty as ordered will subject Hawaiian 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)

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