



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

Issued by the Department of Transportation
on the 29th day of December 2006

Skyservice Airlines Inc.

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

OST-2006-23528

Served: December 29, 2006

CONSENT ORDER

This order concerns a violation by Skyservice Airlines Inc. (Skyservice) of the requirements of 14 CFR Part 382 (Part 382), with respect to filing annual reports detailing disability-related complaints that the foreign air carrier received from passengers in calendar year 2005. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. This order directs Skyservice to cease and desist from future similar violations of Part 382 and the ACAA and assesses the carrier \$10,000 in civil penalties.

Under section 382.70, covered carriers (i.e., U.S. and foreign air carriers operating passenger service to and from the United States with at least one aircraft having a design capacity of more than 60 passenger seats) must, among other things, submit an annual report to the U.S. Department of Transportation (Department) summarizing the disability-related complaints that they received the prior calendar year.¹ Foreign air carriers are required to submit information only with respect to disability-related complaints associated with any flight segment originating or terminating in the United States. The annual report to the Department is due each year on the last Monday in January. The annual report covering calendar year 2005 was due on January 30, 2006.

To comply with 49 U.S.C. § 41705 which requires, among other things, that the Secretary of Transportation "regularly review all complaints received by air carriers alleging discrimination on the basis of disability . . . and report annually to Congress on the results of such review," and to ensure that consumers can compare the overall disability

¹ In addition, the rule requires carriers to record complaints that they receive alleging discrimination or inadequate accessibility on the basis of a disability. The complaints are to be categorized according to the passenger's type of disability and nature of complaint. The rule also requires that covered carriers retain a copy of each disability-related complaint that the carrier receives and a record of the action taken on the complaint for three years.

complaints filed against particular carriers, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) is committed to ensuring carriers file disability-related reports as required. To this end, the Enforcement Office has made efforts to ensure compliance with section 382.70, including providing carriers and carrier associations information about the disability reporting requirements and posting a copy of the disability reporting rule on its Aviation Consumer Protection Division's website.

Skyservice is a Canada-based foreign air carrier operating limited service to and from the U.S. using at least one aircraft having a design seating capacity of more than 60 passenger seats. Skyservice's operations into the U.S. clearly fall within the scope of the reporting rule. Therefore, Skyservice violated section 382.70 and the ACAA when it submitted the required report detailing disability-related complaints it received in calendar year 2005 on July 18, 2006, more than 5 months after the date the report was due and only after the Enforcement Office contacted the carrier regarding its delinquency.

In mitigation, Skyservice states that its failure to submit its 2005 report on time was attributable to staff turnover, that it complied with all applicable record keeping requirements, that it submitted the report immediately upon notification by the Department, and that it has implemented procedures designed to avoid any recurrence. Skyservice further notes that it makes every effort to comply with all Department requirements and that it has not been the subject of any previous Department enforcement proceeding.

We view seriously Skyservice's failure to submit its 2005 report in a timely manner. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. By this order, the Department finds that Skyservice violated 14 CFR Part 382 and 49 U.S.C. § 41705 by submitting a late report for disability-related complaints received in 2005. In order to avoid litigation, Skyservice has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Skyservice to cease and desist from future similar violations of Part 382 and 49 U.S.C. § 41705, and assessing \$10,000 in compromise of potential civil penalties otherwise due and payable. Of this amount, \$5,000 shall be due and payable within 30 days after the service date of this order and the remaining \$5,000 of the assessed penalty shall be suspended for one year following the service date of this order and forgiven after that time if the carrier complies with the payment provisions and commits no further violations during that period. We believe this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's reporting requirements by Skyservice, as well as by other domestic and foreign air carriers.

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 Skyservice Airlines Inc. violated 14 CFR 382.70 by failing to submit an annual report by January 30, 2006, to the Department of Transportation summarizing the disability-related complaints that it received the prior calendar year;
3. We find that by engaging in the conduct and violation described in ordering paragraph 2 above, Skyservice Airlines Inc. has also violated 49 U.S.C. § 41705;
4. Skyservice Airlines Inc., and all other entities owned or controlled by or under common ownership with Skyservice Airlines Inc., its successors and assignees are ordered to cease and desist from any further similar violation of 14 CFR 382.70 and 49 U.S.C. § 41705;
5. Skyservice Airlines Inc. is assessed \$10,000 in compromise of civil penalties that might otherwise be assessed for the violation found in ordering paragraphs 2 and 3 above, of which \$5,000 shall be due and payable within 30 days after the service date of this order. The remaining \$5,000 of the assessed penalty shall be suspended for one year following the service date of this order, and shall be forgiven, unless, during this time period, Skyservice fails to comply with the payment provisions of this order or the cease and desist provisions of paragraph 4 above, in which case the entire unpaid portion of the assessed penalty shall become due and payable immediately and the carrier may be subject to further enforcement action; and
6. Payment 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 in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Skyservice Airlines Inc. to the assessment of interest, penalty and collection charges under the Debt Collection Act and possible enforcement action for failure to comply with this order.

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

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