



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

**Issued by the Department of Transportation  
On the 30th day of August, 2010**

**AirTran Airways, Inc.**

**Docket OST-2010-0005**

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

**Served August 30, 2010,**

**CONSENT ORDER**

This order concerns violations by AirTran Airways, Inc., (AirTran) of the requirements of 14 CFR Part 382 (Part 382) with respect to providing wheelchair assistance to passengers with a disability, making dispositive responses to written complaints alleging a violation of Part 382, and properly categorizing its disability-related complaints. 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 violate 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. This order directs AirTran to cease and desist from future violations of Part 382 and the ACAA and assesses the carrier \$500,000 in civil penalties.

**Applicable Law**

Under section 382.39 [now sections 382.91 to 382.105], carriers must provide passengers with disabilities assistance in enplaning and deplaning aircraft. This assistance includes, as needed, the provision of services personnel and the use of wheelchairs, ramps, or mechanical lifts. Section 382.39(a)(3) [now section 382.103] prohibits carriers from leaving passengers who are not independently mobile unattended in a ground wheelchair, boarding wheelchair, or other device for more than 30 minutes.

Section 328.65 [now section 382.155] requires carriers to provide a dispositive written response to a written complaint alleging a violation of Part 382 within 30 days of its receipt. An

appropriate dispositive response must specifically discuss the complaint at issue, state the carrier's view of whether a violation occurred, and state that the complainant may refer the matter to the Department for an investigation.

Section 382.70 [now section 382.157] states that carriers must categorize disability-related complaints they receive according to the type of disability and nature of complaint and submit annual reports to the Department detailing the disability complaints received the prior calendar year. If a written complaint contains multiple issues, each issue must be coded separately to adequately account for the number of complaints a carrier receives.

### **Background**

Based on a visit to AirTran's Atlanta headquarters, the Office of Aviation Enforcement and Proceedings (the Enforcement Office) decided to further investigate AirTran's compliance with the relevant portions of Part 382 by requesting that the carrier provide copies of all disability-related complaints it received directly from passengers in January, March, May, July, September, and November of calendar years 2007, 2008, and 2009 (through June 30, 2009) and reviewing each of these complaints. The Enforcement Office also reviewed all disability-related complaints the carrier received in June, August, and December of 2008, as well as disability complaints against AirTran sent directly to the Department. The records indicated a significant number of apparent violations of section 382.39 [now sections 382.91 to 382.105] during the pertinent time period. A small number of these complaints appear to involve egregious violations of Part 382.<sup>1</sup> Additionally, AirTran'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 [now section 382.155]. Furthermore, AirTran violated section 382.70 [now section 382.157] by failing to adequately categorize and account for all the disability-related issues that were raised in the complaints.

### **Mitigation**

In mitigation, AirTran states that it maintains a robust commitment to properly serving its disabled customers and its success in doing so is best evidenced by the fact that the total number of disability-related complaints that it received during 2007, 2008, and 2009 represented less than one-half of one percent of the total number of disabled passengers that it carried in each of those years. AirTran states that these statistics were found to be virtually the same if only wheelchair-related complaints were considered.

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<sup>1</sup> In prior enforcement actions, e.g., Docket OST-01-10598 (February 8, 2002), the Enforcement Office found the following types of assistance and wheelchair-related disability complaints to be egregious: (1) the passenger was left unattended on an airplane for over 15 minutes after the other passengers deplaned; (2) a nonambulatory passenger was left unattended in a wheelchair for over 30 minutes in the terminal or on a jetway; (3) the carrier failed to provide requested wheelchair service or other assistance entirely, or a long time delay in providing wheelchair service or other assistance resulted in the passenger missing a flight; (4) the passenger was left at the wrong gate resulting in missing his or her flight; (5) the passenger had to wait an hour or more for a wheelchair in the terminal; and (6) other instances where passengers were subjected to significant delay, harm, or inconvenience because of inadequate assistance.

AirTran notes that it has taken steps to improve upon the delivery of disability-related assistance, as well as its handling and response time to consumer complaints. AirTran explains that it has established a cross divisional Disability Compliance Council led by the carrier's senior officers to oversee, manage, and continually improve all aspects of its disability compliance program and to act as an advocate for disabled passengers. AirTran states that the Council's actions will be described in a special edition of its employee communications newsletter, "Altitudes," and highlighted quarterly thereafter. According to AirTran, these articles will provide information on the carrier's total commitment to addressing the needs of its disabled passengers and the steps that are expected of all employees to satisfy that commitment. AirTran states that this senior level commitment will also be emphasized in the carrier's various training programs. To even further demonstrate this commitment, AirTran explains that it has created a special management position to proactively address the needs of the disabled passenger as distinct from the carrier's Complaint Resolution Officials (CRO), have a more reactive role. The carrier states that it is also in the process of developing a digital knowledge base tool to assist frontline employees with proper handling requirements and techniques in assisting disabled passengers as well as enhancing the overall training program by incorporating the senior management commitments into the program.

AirTran states that it has also revised its training procedures for responding to complaints from disabled passengers and created a dedicated position to respond to disability-related complaints and this work will be completed under the supervision of a manager who will review each response. AirTran states that its internal audit department in turn conducts quarterly audits of these responses.

AirTran states that to enhance and quicken the response time for wheelchair-related complaints, it is developing an automated wheelchair tracking system for use at its major hub airports whereby wheelchair assistance information will be entered on a real time basis into the passenger's name record. AirTran notes that this centralized record will permit it to continuously monitor its own performance on a real time basis and to respond to passenger complaints on a much more time-efficient basis and with greater detail than is otherwise required by Part 382.

### **Decision**

The Enforcement Office has carefully considered the information provided by AirTran and continues to believe that enforcement action is warranted. In order to avoid litigation, AirTran has agreed to settle this matter with the Enforcement Office and enter into this consent order directing the carrier to cease and desist from future similar violations of Part 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712, and assessing \$500,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by AirTran and other 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 AirTran Airways, Inc., violated the requirements of 14 CFR 382.39 [now sections 382.91 to 382.105] by failing to provide adequate and prompt enplaning and deplaning wheelchair assistance to passengers with disabilities;
3. We find that AirTran Airways, Inc., violated the requirements of 14 CFR 382.65 [now section 382.155] by failing to provide dispositive responses to written complaints alleging a violation of Part 382;
4. We find that AirTran Airways, Inc., violated the requirements of 14 CFR 382.70 [now section 382.157] by failing to properly categorize and accurately report its disability-related complaints;
5. We find that AirTran Airways, Inc., in the instances described in ordering paragraphs 2 through 4, above, violated the Air Carrier Access Act, 49 U.S.C. § 41705;
6. We find that to the extent the violations described in ordering paragraphs 2 through 4 occurred in interstate air transportation, the conduct violated 49 U.S.C. § 41702;
7. We find that to the extent the violations described in ordering paragraphs 2 through 4 occurred in foreign air transportation, the conduct violated 49 U.S.C. § 41310;
8. We find that the violations described in ordering paragraphs 2 through 4 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;
9. We order AirTran Airways 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 4;
10. AirTran Airways, Inc., is assessed \$500,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 8, above;
  - a. \$300,000 of the assessed penalty shall be due and payable within 30 days of the service date of this order;
  - b. Up to \$60,000 of the assessed penalty shall be credited to AirTran Airways, Inc., for funds expended toward the establishment of a Disability Compliance Council and the hiring of a Manager of Disability Accommodations within one year from the service date of this order, subject to the following conditions:

- i. The Disability Compliance Council shall be composed of senior officers responsible for customer interface who, among other things, will meet monthly to address disability-related issues and contribute articles discussing the proper handling of passengers with disabilities to the carrier's quarterly employee communication newsletter; and
  - ii. The Manager of Disability Accommodations shall proactively address issues related to passengers with disabilities as distinct from the reactive responsibilities residing in the Complaint Resolution Officials by, among other things, monitoring complaints and complaint data as well as cumulative reports obtained from the automated wheelchair tracking system, discussed in ordering paragraph 10(c), and pursuing corrective action as needed; and
- c. Up to \$140,000 of the assessed penalty shall be credited to AirTran Airways, Inc., for funds expended toward the development and implementation of an automated wheelchair tracking system at the carrier's major hub airports within one year from the service date this order, subject to the following:
  - i. The system shall, among other things, continually generate real-time reports of the carrier's wheelchair assistance performance; and
  - ii. AirTran shall provide the Department with copies of these reports upon request;
- 11. Failure to pay the penalty as ordered shall subject AirTran Airways, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible additional enforcement action for failure to comply with this order. Payment shall be made by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions;
- 12. Within 13 months of the service date of this order, AirTran Airways, Inc., shall provide the Department with supporting documentation verifying the cost of the offsets listed in paragraph 10 above. The documentation must contain a detailed explanation of the method used by AirTran Airways, Inc., to determine the cost of the offset, and a sworn statement from an appropriate company official testifying that the descriptions and documentation are true and complete to the best of that official's knowledge and that the official has made a reasonable inquiry to establish the accuracy of the statement;
- 13. To the extent AirTran Airways, Inc., fails to provide adequate documentation verifying the appropriate expenditure of the \$200,000 in offsets as described in ordering paragraphs 10(b) and (c) and 12, that amount shall become due and payable within 30 days of the date of the certification required by paragraph 12; and

14. The offsets described in paragraph 10(b) and (c) may be amended with the approval of the Department's Office of Aviation Enforcement and Proceedings. If AirTran Airways, Inc., intends to seek a change in the type of improvement made, it must notify and obtain approval from the Office of Aviation Enforcement and Proceedings not later than 15 days prior to the date documentation is due pursuant to ordering paragraph 12.

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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