



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

**Issued by the Department of Transportation
On the Eleventh day of July, 2011**

Atlantic Southeast Airlines

Docket OST-2011-0003

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

Served July 11, 2011

CONSENT ORDER

This consent order concerns violations by Atlantic Southeast Airlines (Atlantic Southeast) of the requirements of 14 CFR Part 382 (Part 382) with respect to providing wheelchair assistance to passengers with a disability. 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. Violations of Part 382 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

The Department's Rule Protecting Disabled Travelers

Under sections 382.91 through 382.105 [formerly section 382.39], carriers must provide passengers with disabilities assistance in enplaning and deplaning aircraft. This includes, as needed, assistance from airline/contractor personnel and the use of wheelchairs, ramps, and mechanical lifts.

During June 2010, the Office of Aviation Enforcement and Proceedings (Aviation Enforcement Office) conducted a review and inspection at Atlantic Southeast's Atlanta offices and airport operations regarding the carrier's compliance with Department consumer protection requirements. The Aviation Enforcement Office reviewed, among other things, disability related complaints received by the carrier from January 2009 through May 2010. That review disclosed a number of apparent violations of sections 382.91 through 382.105 [formerly section 382.39]

during the pertinent time period. A number of these complaints appear to involve egregious violations of Part 382.¹

Mitigation

In mitigation, Atlantic Southeast explains that many of the complaint files identified by the Department in this matter involved services provided to passengers ticketed on Delta Air Lines, Inc. (Delta). Atlantic Southeast further explains that during the relevant period, its major carrier partner exclusively handled passenger sales, reservation, and recordkeeping functions, as well as most terminal services, for passengers on Atlantic Southeast flights, and was the party primarily responsible for direct customer care. For example, Atlantic Southeast states that its major carrier partners maintain primary responsibility for managing and providing dispositive responses to disability-related complaints when required by Part 382. Further, Atlantic Southeast states that the majority of complaint files at issue involved wheelchair services provided at Delta's hub in Atlanta – where its major carrier partner maintains exclusive control over the contractors that provided enplaning/deplaning/connecting wheelchair assistance to their passengers with disabilities. With respect to flights at Atlanta, Atlantic Southeast states that it relied exclusively on its major carrier partner and its wheelchair service contractor to meet the regulatory responsibility for terminal wheelchair assistance that section 382.91 assigns to Atlantic Southeast when it delivers or receives a disabled passenger requiring such assistance.

Atlantic Southeast states that it recognizes its Part 382 responsibilities to the disabled passengers it transports, and it has high standards for the accommodations to be provided to them, whether by Atlantic Southeast, a major carrier, or a service contractor. Atlantic Southeast states that in the future it will focus additional management resources and will improve internal controls and processes to better ensure those responsibilities and standards are met. Atlantic Southeast also maintains that it will encourage its major carrier partners to support service levels for disabled passengers that exceed the requirements of Part 382, whether or not an Atlantic Southeast flight is involved.²

¹ In prior enforcement actions, e.g. Docket OST-2010-0005 (August 30, 2010); Docket OST-01-10598 (February 8, 2002), the Aviation Enforcement Office explained that it considers 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.

² Atlantic Southeast also notes that the mitigation efforts and corrective action undertaken by Delta in response to an Enforcement Office investigation of alleged ACAA and related violations at Atlanta Hartsfield were recognized by the Department as having addressed many of the problems dealt with here. See *Delta Air Lines, Inc., Violations of 14 CFR Part 382 and 49 U.S.C. §§ 41310, 41702, 41705 and 41712*, Order 2010-2-11, at 4 (February 17, 2011).

Decision

The Aviation Enforcement Office has carefully considered the information provided by Atlantic Southeast but believes that enforcement action is warranted. In order to avoid litigation, ASA has agreed to settle this matter with the Aviation 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 Atlantic Southeast \$200,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.³ 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 Atlantic Southeast 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 Atlantic Southeast Airlines violated the requirements of 14 CFR 382.91 through 382.105 [formerly section 382.39] by failing to provide passengers with disabilities adequate and prompt enplaning and deplaning wheelchair assistance;
3. We find that Atlantic Southeast Airlines in the instances 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 interstate air transportation, the conduct violated 49 U.S.C. § 41702;
5. 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;
6. We find that the violations described in ordering paragraphs 2 through 5 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;
7. We order Atlantic Southeast Airlines and its successors and assigns to cease and desist from further violations of 14 CFR Parts 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712 by engaging in the conduct described in ordering paragraphs 2 through 6;
8. We assess Atlantic Southeast Airlines a compromise civil penalty of \$200,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 6, above;

³ This order covers all ACAA and Part 382 violations (including related violations of 49 U.S.C. §§ 41310, 41702, 41705, and 41712) through the issuance date of this order by Atlantic Southeast and Atlantic Southeast's wholly-owned subsidiary, Express Jet Airlines, Inc.

- a. \$125,000.00 of the assessed civil penalty shall be due and payable within 30 days of the service date of this order;
 - b. Up to \$35,000.00 of the assessed penalty shall be credited to Atlantic Southeast Airlines for the value of passenger lifts acquired by Atlantic Southeast Airlines and relocated to airports served by Atlantic Southeast Airlines to supplement and improve existing enplaning and deplaning assistance offered to passengers at those airports. Atlantic Southeast Airlines shall provide documentation to the Department's Aviation Enforcement Office regarding the passenger lifts, including the market value of those lifts if they were sold, and the relocation of those lifts, within 45 days of the date of this order;
 - c. Up to \$40,000 shall be credited to Atlantic Southeast Airlines for funds expended within twelve months after the service date of this order toward expanded corporate-level Part 382 compliance auditing, station observations, and surveys regarding employee compliance with Part 382. These additional responsibilities shall include:
 - i. Conducting monthly station audits, station observations, and surveys to ensure Part 382 compliance and identify areas needing improvement;
 - ii. Conducting root cause analyses of Part 382 compliance problems;
 - iii. Identifying and reporting process improvements and best practices for Part 382 compliance; and
 - iv. Developing internal systems to share best practice updates developed through Atlantic Southeast Airlines' auditing, observation, and survey activities described above and to implement those improvements system-wide;
 - d. With respect to those responsibilities required under paragraph 8.c., Atlantic Southeast shall provide:
 - i. A detailed airport audit plan to the Department's Aviation Enforcement Office within 90 days of the service date of this order outlining the specific audits to be undertaken over the twelve months following the service date of this order; and
 - ii. A detailed report to the Department's Aviation Enforcement Office within 90 days of the service date of this order outlining the enhanced internal systems developed through Atlantic Southeast Airlines' auditing and observation activities;
9. Within twelve months of the date this order becomes final, Atlantic Southeast Airlines shall provide the Department's Aviation Enforcement Office with supporting documentation verifying the expenditures in connection with the offsets listed in subparagraphs 8(b) and 8(c) above. This documentation must contain a description of the expenditures associated with each 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;

10. To the extent that Atlantic Southeast Airlines fails to provide adequate documentation verifying the appropriate expenditures of the \$75,000 in offsets as described in subparagraphs 8(b) and 8(c), that amount shall become due and payable within 30 days of the due date of the certification required by paragraph 9;
11. The offsets described in subparagraphs 8(b) and 8(c) may be amended with the approval of the Department's Aviation Enforcement Office. If Atlantic Southeast Airlines intends to seek a change in the type and/or amount of improvements made, it must notify and obtain approval from the Department's Aviation Enforcement Office not later than 15 days prior to the date documentation is due pursuant to paragraph 9;
12. 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. The wire transfers shall be executed in accordance with the attached instructions; and
13. Failure to pay the penalty as ordered shall subject Atlantic Southeast Airlines 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.

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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