



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

**Issued by the Department of Transportation
On the Thirteenth day of April, 2012**

Frontier Airlines, Inc.

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

Docket OST 2012-0002

Served April 13, 2012

CONSENT ORDER

This order concerns violations by Frontier Airlines, Inc., (Frontier) of the requirements of 14 CFR Part 382 (Part 382), the Department of Transportation's (Department) regulation implementing the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, with respect to its transportation of an individual with a disability (Mr. M¹). Violations of Part 382 also violate the ACAA, and violations of the ACAA and Part 382 also constitute an unfair and deceptive practice in violation of 49 U.S.C. § 41712. This order directs Frontier to cease and desist from future violations of Part 382 and the ACAA and assesses the carrier \$50,000 in civil penalties.

BACKGROUND

The investigation by the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) into Frontier's compliance with Part 382 and the ACAA with respect to its transportation of Mr. M began when a denied boarding incident occurred on June 19, 2011, at Dallas-Fort Worth International Airport.

Mr. M is a quadriplegic who has no use of his arms, legs, and torso. Due to his disability, Mr. M is unable to sit upright in an aircraft seat without appropriate support and restraint. In June 2009, Mr. M traveled roundtrip on Frontier flights between Denver, Colorado, and Chicago, Illinois. The Enforcement Office found that, after Mr. M boarded the outbound flight, Frontier staff provided him with three seatbelt extenders that he used to

¹ Identification of the individual involved in this incident is unnecessary for purpose of this consent order and is withheld for privacy reasons.

keep his body in an upright position. The Enforcement Office further found that, on his return trip from Chicago to Denver, Mr. M requested seatbelt extenders from Frontier staff in order to secure himself in the same way he did on his outbound flight, and a Frontier flight attendant complied.

In April 2011, Mr. M made roundtrip reservations to travel on a Frontier flight between Denver and Dallas, Texas, departing on June 17, 2011, and returning on June 19, 2011. Mr. M's mother, who was accompanying Mr. M on this trip, informed Frontier that Mr. M needed Frontier's "Meet And Assist" service, which included assistance by Frontier attendants within the airport terminals as well as during boarding and deplaning. On June 17, 2011, Mr. M was assisted by Frontier attendants through the security checkpoint at Denver airport and to the boarding gate area. He was the first to board the aircraft with the assistance of two Frontier attendants, who were necessary to jointly lift Mr. M from his personal wheelchair to an aisle chair and, once onboard the aircraft, from the aisle chair to his aircraft seat. After being seated, Mr. M again requested three seatbelt extenders to secure himself in an upright position in his seat, and a Frontier flight attendant complied.

On June 19, 2011, Mr. M and three members of his traveling party arrived at the Dallas airport to take Frontier flight 227 to return to Denver. Mr. M was assisted by one Frontier attendant through the security checkpoint and arrived at the boarding gate area approximately two hours before the scheduled departure time. The attendant then left the gate area. Mr. M's mother approached the Frontier gate agents multiple times to notify them that Mr. M required pre-boarding and the boarding assistance of two attendants and an aisle chair. Frontier's gate agents paged Frontier's third-party service vendor for wheelchair assistance. Approximately 30 minutes before the scheduled departure time, the Frontier gate agents announced pre-boarding for Frontier mileage program elite members, passengers traveling with young children, and passengers who needed extra time to board. However, no wheelchair attendants were provided to pre-board Mr. M and Frontier's gate agent began boarding other passengers. After nearly all the passengers had boarded the aircraft, a Frontier employee came to assist Mr. M, stating that, while he was handling baggage on that day, he was called upon to assist Mr. M because the Frontier-contracted attendants failed to respond to page calls. This Frontier employee transported Mr. M down the jetway in Mr. M's personal wheelchair. When it was time to transfer Mr. M from his wheelchair to a Frontier-provided aisle chair, this employee was physically assisted by Mr. M's mother and a family friend. The aisle chair used for transporting Mr. M also did not have an adequate occupant restraint system and was missing one workable restraint strap. Once on board, the Frontier employee, with the assistance of Mr. M's mother and the family friend, transferred Mr. M from the aisle chair to his aircraft seat.

After Mr. M was seated, Mr. M's mother asked a Frontier flight attendant for seatbelt extenders to use as restraint devices for his upper body. After consulting Frontier's Flight Attendant Manual (FAM) approved by the Federal Aviation Administration (FAA) and other flight attendants about the legality of using seatbelt extenders to secure Mr. M to the back of the seat, the flight attendant informed the captain of Mr. M's request. After

the captain consulted Frontier's Chief Pilot and other senior officials, he determined that the seatbelt extender method of restraint as used by Mr. M during his previous trips did not comply with the safety requirements of the FAA and Frontier's FAA-approved FAM. Because Mr. M was unable to sit upright during taxi, takeoff and landing and did not have an acceptable alternative device to support him, the captain ordered that Mr. M be removed from Frontier flight 227. Two Frontier customer service agents provided the deplaning assistance with an aisle chair that was missing restraints to properly secure Mr. M. As a result when Mr. M was transferred down the aisle, he fell onto a passenger sitting in an aisle seat. In addition, Mr. M's hand was caught between the aisle chair and that seat and one of his shoes fell off. Mr. M and the rest of his traveling party were accommodated on the next available Frontier flight back to Denver, and once again Mr. M was allowed by Frontier to use the seatbelt extenders as a restraint device notwithstanding that this method was not approved by the FAA.

APPLICABLE SECTIONS OF 14 CFR PART 382

The ACAA and Part 382 prohibit discrimination in the provision of air transportation against qualified individuals with disabilities. Of the numerous provisions contained in Part 382, there are three sections of the rule that are relevant to this case. These sections address situations in which carriers must provide flight-related information to qualified individuals with a disability, must offer pre-boarding to passengers with a disability and must provide boarding and deplaning assistance including adequate personnel and functional equipment.

Pursuant to 14 CFR 382.41(c), any passenger who states that he or she uses a wheelchair for boarding must be provided with any aircraft-related, service-related or other limitations on the carrier's ability to accommodate passengers with a disability even if the passenger does not explicitly request the information.

Section 382.93 requires that carriers must offer pre-boarding to passengers with a disability who self-identify at the gate as needing additional time or assistance to board or to be seated.

Under section 382.95(a), carriers must promptly provide or ensure the provision of assistance requested by or on behalf of passengers with a disability in boarding and deplaning. The assistance must include, as needed, the services of personnel and the use of ground wheelchairs, boarding wheelchairs, and/or on-board wheelchairs.

ANALYSIS

Mr. M has severe mobility impairments that substantially limit major life activities such as walking and sitting upright without support. Frontier received multiple advance notices of Mr. M's status as a qualified person with a disability and his need for assistance prior to his June 19, 2011, flight. Frontier entered records in its reservation

system noting that Mr. M requires “Meet And Assist” service including assistance in lifting him out of his personal wheelchair and into his aircraft seat. Frontier was informed again of Mr. M’s specific requirements by his mother over the telephone, at the airport check-in counter, and at the gate area.

After investigating the incident, the Enforcement Office determined that Frontier violated section 382.41(c) by failing to inform Mr. M, on at least three occasions, of the carrier’s limitations in accommodating his disability. In June 2009, Frontier allowed Mr. M to use the seatbelt extender strapping method to secure his body in an upright position. Then, later that same month and again on June 17, 2011, Frontier’s crew permitted Mr. M to use this same method to secure himself despite this method not being approved by the FAA. As a result of Frontier’s accommodation of Mr. M’s disability on prior flights, particularly the outbound flight on June 17, 2011, Mr. M was unprepared with an alternative restraint method when, on June 19, 2011, Frontier disapproved the restraint method that he was allowed to use on previous flights, including his outbound flight, resulting in his embarrassment and eventual removal from flight 227.

Frontier also violated sections 382.93 and 382.95 by failing to provide pre-boarding and adequate enplaning assistance to Mr. M on June 19, 2011. Mr. M’s numerous requests to pre-board were unsuccessful, and Mr. M was forced to wait until virtually all of the other passengers had boarded. It appears that Frontier’s failure to pre-board Mr. M was a result of its wheelchair assistance vendor failing to respond to Frontier’s call for service. Pursuant to 14 CFR 382.15, Frontier is responsible for ensuring that its contractors providing services to the public meet the requirements of Part 382. Frontier was ultimately able to obtain two of its own disability-trained employees (one of whom was working at baggage handling that day) to assist Mr. M but that assistance, the Enforcement Office found, was inadequate as evidenced by the fact that individuals traveling with Mr. M had to be asked to participate in the lifting of Mr. M to ensure the safety of the transfer. Furthermore, by providing enplaning and deplaning assistance to Mr. M with malfunctioning aisle chairs, Frontier also violated section 382.95. The first aisle chair that Frontier used to enplane Mr. M had its left shoulder strap completely detached from the chair. The second aisle chair that Frontier used to deplane Mr. M also had multiple straps missing. Due to the lack of proper restraint on the chair, Mr. M fell onto another passenger and was subject to further embarrassment and endangerment.

MITIGATION

In mitigation, Frontier states that it takes its responsibilities to its customers with disabilities very seriously. It also maintains that the above description is not consistent with the company’s own investigation of the matter. For example, Frontier states that it interviewed the flight attendants on the June 2009 flights and that they do not recall permitting Mr. M to use seatbelt extenders and would not have authorized him to use them for support purposes.

Frontier states that the Department is not alleging that it discriminated on the basis of Mr. M’s disability, because Frontier’s refusal to transport Mr. M was authorized under

Section 382.19 based on the captain's determination that transporting Mr. M would be inimical to safety and would violate the Federal Aviation Regulations and Frontier's FAA-approved Flight Attendant Manual.

In terms of pre-boarding assistance, Frontier states that it timely and continuously called its third-party provider of wheelchair services in order to assist with Mr. M, but the vendor failed to respond to Frontier's calls. In terms of boarding assistance, Frontier maintains that two properly trained and experienced Frontier employees assisted Mr. M with boarding.

Frontier further states that it has a solid and respectable record regarding assistance to passengers with disabilities. Frontier points out that it has received accolades over the years from passengers, politicians, regulators, non-profits, and hospitals for its exceptional efforts on behalf of travelers with disabilities. Frontier states that it has also engaged in substantial outreach efforts as well, such as permitting Craig Hospital to use Frontier's facilities and an aircraft mock-up to provide patients and their families with hands-on practice for, and details about, aisle chair transfers, boarding, onboard weight shifts, and take-off/landing procedures; donating equipment that Craig Hospital uses in its on-site version of this "mock-up"; launching and maintaining an email hotline (advertised via its website and by reservations representatives) to provide one-on-one service for people with disabilities; providing cargo transportation, without charge, for a number of customers with assistive devices being donated to hospitals and/or new owners; training and supporting its Scout organization, a group of 180 dedicated Frontier employees at the Denver airport whose sole purpose is to provide accommodations for passengers with special needs; and hosting a simulated flight for children with autism, so that the children and their families could have a "dress rehearsal" to prepare them for future travel.

Finally, Frontier has agreed to settle this matter without admitting to violations to avoid the burden and expense of litigation. Frontier believes that the interests of Frontier and the Department are better served through settlement of this matter.

DECISION

After carefully considering all the known facts in this case, including those set forth above by Frontier, we believe that enforcement action is warranted.

In order to avoid litigation, Frontier has agreed to settle this matter with the Enforcement Office and enter into this consent order to cease and desist from future similar violations of 14 CFR Part 382 and 49 U.S.C. §§ 41705 and 41712. This order directs Frontier to cease and desist from similar violations in the future and assesses a civil penalty of \$50,000. This assessment is appropriate considering the nature of the violation described herein and serves the public interest. It establishes a strong deterrence to future similar unlawful practices by Frontier 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 Frontier Airlines, Inc., violated 14 CFR 382.41(c) by failing to provide information regarding any aircraft-related, service-related or other limitations on its ability to accommodate a passenger with a disability;
3. We find that Frontier Airlines, Inc., violated 14 CFR 382.93 by failing to offer pre-boarding to a passenger with a disability who self-identified as needing additional time or assistance to board the aircraft and to be seated;
4. We find that Frontier Airlines, Inc., violated 14 CFR 382.95 by failing to provide prompt and adequate assistance requested by a passenger with a disability in enplaning and deplaning;
5. We find that in the instances described in paragraphs 2, 3, and 4, Frontier Airlines, Inc., violated the Air Carrier Access Act, 49 U.S.C. § 41705, and 49 U.S.C. § 41712;
6. We order Frontier Airlines, Inc., and its successors and assignees to cease and desist from further violations of 14 CFR Part 382 and 49 U.S.C. §§ 41705 and 41712, as described above;
7. Frontier Airlines, Inc., is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 through 5 of this order. This shall be due and payable within thirty (30) days of the date of the issuance of this order. Failure to pay the penalty as ordered shall also subject Frontier Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
8. 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.

9. 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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