



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

Issued by the Department of Transportation
On the Fourth day of November, 2013

US Airways, Inc.

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

Docket OST-2013-0004

Served November 4, 2013

CONSENT ORDER

This order concerns violations by US Airways, Inc. (US Airways) of the requirements of 14 CFR Part 382 (Part 382) with respect to providing passengers with a disability with assistance in moving within the terminal. 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 would 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 the ACAA and Part 382, as well as of 49 U.S.C. §§ 41702 and 41310, are unfair and deceptive practices in violation of 49 U.S.C. § 41712. This order directs US Airways to cease and desist from future violations of Part 382 and the ACAA and assesses the carrier \$1,200,000 in civil penalties.

Applicable Law

Part 382 requires air carriers to provide passengers with disabilities assistance in moving within the terminal and sets forth requirements regarding the type of service carriers must provide when assisting passengers. Specifically, section 382.91 requires carriers to

provide or ensure assistance (i.e., wheelchair assistance) in transportation between gates to make a connection to another flight and assistance in moving from the terminal entrance through the airport to the departing gate, or from the gate to the terminal entrance, including assistance in accessing key functional areas of the terminal.

This order finds that on numerous occasions US Airways failed to comply with the requirements of section 382.91 at Philadelphia International Airport (PHL) and Charlotte Douglas International Airport (CLT).

Facts and Conclusions

The Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated US Airways' compliance with the provisions of Part 382 by conducting an on-site regulatory compliance inspection at US Airways' headquarters during February/March 2012. The Enforcement Office reviewed all disability-related complaints relating to incidents at PHL and CLT received by the carrier during 14 separate week-long intervals in 2011 and 2012. The Enforcement Office also reviewed the contracts of US Airways with its wheelchair vendor at PHL and CLT.¹ The Enforcement Office's investigation revealed a significant number of violations of section 382.91 at PHL and CLT. Specifically, US Airways used a combination of electric carts and wheelchairs in providing assistance at these two airports. The investigation revealed that this system necessitated many transfer points for passengers that required assistance moving within the terminals often leading to unreasonable delays for those passengers. Further, a number of the complaints that we reviewed involved egregious violations, including passengers missing connecting flights because of inadequate connecting assistance.² Due to the nature and breadth of US Airways' section 382.91 violations, the Enforcement Office determined that enforcement action was warranted.³

Mitigation

¹ In general, at PHL and CLT US Airways uses a wheelchair vendor to provide assistance outside of security and uses its own employees to provide assistance inside of security. However, US Airways has indicated that at CLT, for passengers who are originating out of the airport, its wheelchair vendor now brings passengers through security and directly to the passenger's gate if it is a US Airways mainline flight.

² In prior enforcement actions, see, e.g., Docket OST-2011-0003, the 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 other passengers deplaned; (2) a non-ambulatory passenger was left unattended in a wheelchair for over 30 minutes in the terminal or on a jet way; (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.

³ With the compromise assessment contained within this Consent Order, the Enforcement Office now closes the regulatory compliance investigation of US Airways, Inc. without further finding.

In mitigation, US Airways states that it takes its responsibilities under the ACAA and Part 382 very seriously and values its customers with disabilities. US Airways states that it has spent substantial amounts of money to enhance and strengthen its disability assistance program at PHL and CLT, including adopting new mechanisms and procedures to oversee and manage US Airways' disability assistance program, as well as new technology to streamline its provision of assistance to passengers with disabilities.

Prior to the Department's regulatory compliance investigation, US Airways points out it had already begun instituting numerous programs, systems, training enhancements, and procedures, in order to better meet the needs of its customers with disabilities and to ensure compliance with all applicable requirements pertaining to customers with disabilities. Specifically, US Airways states that it has taken the following significant actions to enhance its service to customers with disabilities:

1. US Airways implemented a system involving the use of handheld devices (HHDs) and tablets for its employees providing assistance to passengers with disabilities at PHL and CLT, enabling US Airways' to track, in real-time, the needs and wait-times of customers with disabilities, seamlessly transition passengers to/from vendor employees, and monitor the availability of personnel and resources to ensure customer assistance needs are met in a prompt and timely manner. US Airways also assumed the passenger assistance dispatching function at PHL and CLT, and installed new dispatching software which works with the HHD/tablet system to optimize resource deployment and usage. US Airways continues to improve and upgrade this system.
2. US Airways completed time-motion engineering studies at PHL and CLT enabling it to more efficiently route its electric carts, eliminate passenger transfer points, and more accurately assess its staffing needs across each day.
3. US Airways added many new employees to provide assistance to customers with disabilities; including three levels of management positions whose primary responsibility is the quality assurance of US Airways' assistance program for customers with disabilities at PHL and CLT.
4. US Airways overhauled the appearance of its facilities for customers needing assistance, including new signage, refurbished seating, and additional gate furniture.
5. US Airways created a weekly report to track the performance of PHL and CLT in assisting passengers with disabilities, which is sent to PHL and CLT station management, as well as to senior airline management.
6. US Airways empowered its Complaint Resolution Officials at PHL and CLT to issue voucher compensation on the spot to passengers making disability-related complaints.
7. US Airways made significant additions to its reservations system and website to increase services for customers with disabilities, including: (i) automation to ensure that

special service/assistance requests within a reservation automatically transfer to a new flight in the event a customer's itinerary must be changed for a flight interruption; (ii) better informing customers with disabilities what to expect when receiving assistance at PHL and CLT; (iii) making it easier to make assistance to requests via the website; and (iv) enabling customers to request a specific type of assistance (*e.g.* wheelchair only).

8. US Airways is implementing new procedures whereby assistance providers at PHL and CLT hold signs listing the name of the customer they are assigned to assist, enabling passengers to quickly locate the assistant and equipment assigned to them.

9. For all customers, US Airways established a new Disability Assistance Telephone Line within its Customer Relations Department to address complaints from customers with disabilities on a "real time" basis, which enables customers with disabilities to speak with a live agent during business hours or leave a voice mail and receive a call back.

10. For all customers, US Airways altered its boarding passes to include a special designator that immediately notifies gate agents and assistance providers that the customer has a special service/assistance request in their reservation. Relatedly, US Airways' gate agents are now able to create this special service/assistance request in a customer's reservation with just a single keystroke.

US Airways also continues to work with both the PHL and CLT airports to address physical infrastructure constraints that affect the assistance US Airways provides to its passengers with disabilities.

US Airways believes that all of these additions and enhancements demonstrate US Airways' complete commitment to its long-standing policy of full compliance with all applicable legal requirements. US Airways continually expands and refines its assistance program for customers with disabilities, spending approximately \$2 million annually on improvements to advance and protect the interests of its customers with disabilities.

Finally, US Airways has agreed to settle this matter without admitting to violations to avoid the burden and expense of litigation. US Airways believes that the interests of US Airways, the Department, and the flying public, especially passengers with disabilities, are better served through settlement of this matter. This enables resources to be dedicated to improving customer service, rather than expended in further litigation.

Decision

The Enforcement Office has carefully considered the information provided by US Airways, but continues to believe enforcement action is warranted. The Enforcement Office and US Airways have reached a settlement of this matter in order to avoid litigation. Without admitting the violations described above, US Airways consents to the issuance of this order to cease and desist from future violations of 14 CFR 382.91 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712, and to the assessment of \$1,200,000 in

compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

The 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 US Airways and other sellers of air transportation.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that US Airways, Inc., violated the requirements of 14 CFR 382.91 by failing to provide adequate assistance to passengers with a disability in moving within the terminal;
3. We find that US Airways, Inc., by its activities described in ordering paragraph 2, above, violated the Air Carrier Access Act, 49 U.S.C. § 41705;
4. We find that to the extent its activities described in ordering paragraph 2, above, occurred in foreign air transportation, US Airways, Inc., violated § 41310;
5. We find that to the extent its activities described in ordering paragraph 2, above, occurred in interstate air transportation, US Airways, Inc., violated § 41702;
6. We find that the violations described in ordering paragraphs 3 through 5, above, are also unfair and deceptive practices and thereby violate 49 U.S.C. § 41712;
7. We order US Airways, Inc., and all other entities owned or controlled by, or under common ownership and control with US Airways, Inc., its successors, affiliates, and assignees, to cease and desist from further violations of 14 CFR 382.91 and 49 U.S.C. §§ 41705, 41310, 41702, and 41712 by engaging in the conduct described in ordering paragraphs 2 through 6;
8. We assess US Airways, Inc., \$1,200,000 in compromise of civil penalties that might otherwise be assessed for the violations described above;
 - a. \$700,000 of the assessed civil penalty shall be due and payable within 30 days of the service date of this order;
 - b. Up to \$280,000 of the assessed penalty shall be credited to US Airways, Inc., for funds expended toward quality assurance measures, including the first-year salaries for quality assurance management positions created for the purpose of ensuring the quality of US Airways' passengers with disabilities programs at Philadelphia International Airport (PHL) and Charlotte Douglas

International Airport (CLT) and a quality assurance tracking methodology enabling PHL and CLT station management to receive weekly updates on their performance regarding their disability programs. This credit is contingent upon US Airways providing a sworn affidavit by a senior carrier official attesting that the newly created quality assurance management positions are for the primary purpose stated above and attesting to the creation of the quality assurance tracking methodology;

- c. Up to \$80,000 of the assessed penalty shall be credited to US Airways, Inc., for funds to be expended in 2013 for the creation of a new Disability Assistance Telephone Line within US Airways' Customer Relations Department, which will enable passengers with a disability to speak with a live person during business hours, or leave a message outside of business hours and be assured of receiving a call back within a certain amount of time to answer questions and provide needed information;
 - d. Up to \$75,000 of the assessed penalty shall be credited to US Airways, Inc., for funds expended in 2012 and 2013 toward the purchase of hand-held device equipment and tablets to be used by US Airways employees at PHL and CLT to assign disability assistance requests and to monitor and ensure that assistance is provided;
 - e. Up to \$35,000 of the assessed penalty shall be credited to US Airways, Inc., for "on the spot" monetary vouchers that US Airways has provided to passengers during 2013 at PHL and CLT as part of its new policy that enables Complaint Resolution Officials at these two airports to issue on-site compensation to passengers with disability-related complaints; and
 - f. Up to \$30,000 of the assessed penalty shall be credited to US Airways, Inc., for funds to be expended in 2013 on computer programming that will change US Airways boarding passes to include a special designator for a passenger that has a special service/assistance request on their passenger record to facilitate the passenger receiving the requested accommodations. This credit is contingent upon US Airways providing a sworn affidavit by a senior carrier official attesting that a passenger without the special designator who makes an ad hoc request for assistance will not be denied assistance.
9. By December 31, 2013, US Airways, Inc., shall provide the Department with supporting documentation containing a description of the expenditures associated with each offset listed in subparagraphs 8(b)–(f) above, and the accompanying accounting verifying each offset. The documentation must be accompanied by a sworn statement by a senior carrier official attesting that the descriptions, documentation, and accounting are true and complete to the best of that official's knowledge and that official has made a reasonable inquiry to establish the accuracy of the statement. The offsets listed in in subparagraphs 8(b)–(f) are contingent upon the

Office of Aviation Enforcement and Proceedings reviewing the documentation and notifying US Airways of the acceptability of each offset request.

10. To the extent that US Airways, Inc. fails to provide adequate documentation and accounting verifying the appropriate expenditures of the \$500,000 in offsets described in subparagraphs 8(b)–(f), the amount of any specific offset item not adequately documented shall become due and payable within 30 days of the due date, December 31, 2013.
11. We order US Airways, Inc., to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject US Airways, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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