



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

Issued by the Department of Transportation
on the 13th day of April 2018

Allegiant Air, LLC

**Violations of 14 CFR Parts 259, 374, and 382,
and 49 U.S.C. §§ 41705 and 41712**

Docket OST 2018-0001

Served April 13, 2018

CONSENT ORDER

This order concerns violations by Allegiant Air, LLC (Allegiant) of the requirements of 14 CFR Part 382 (Part 382) with respect to providing adequate assistance to passengers with disabilities in moving within the terminal, and providing timely dispositive written responses to written disability-related air travel complaints. 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 also concerns violations by Allegiant of the Department's regulations regarding timely responding to consumer complaints and making prompt refunds to consumers when they are due, 14 CFR 259.7 and 14 CFR Part 374, respectively. Failure to comply with Parts 382 and 374 also violates 14 CFR 259.5, which requires a covered carrier to adhere to a customer service plan that includes a commitment to properly accommodate passengers with disabilities and a commitment to provide prompt refunds when due. Violations of the ACAA and 14 CFR Parts 259, 374, and 382 are unfair and deceptive practices in violation of 49 U.S.C. § 41712.

The violations addressed in this order were found during an on-site regulatory compliance inspection conducted by the staff of the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) at Allegiant's headquarters in Las Vegas, Nevada in March 2015, and through additional materials reviewed in 2016 and 2017. This order directs Allegiant to cease and desist from future similar violations of Parts 259, 374, and 382, the ACAA and section 41712 and assesses the carrier \$250,000 in civil penalties.

Assistance in Moving Within the Terminal

Part 382 requires air carriers to provide passengers with disabilities assistance in moving within the terminal. Specifically, among other things, section 382.91(b) requires carriers to provide or ensure assistance (e.g., wheelchair assistance) requested by or on behalf of a passenger with a disability in moving from the terminal entrance through the airport to the gate for a departing flight, or from the gate to the baggage claim and the terminal exit for an arriving flight. This requirement also includes assistance in accessing key functional areas of the terminal.

Based on its investigation, the Enforcement Office concluded that a significant number of violations of section 382.91(b) by Allegiant occurred during a period of over two years between 2013 and 2015. Specifically, the Enforcement Office found numerous instances in which Allegiant failed to provide adequate and timely assistance in moving within the terminal at airports where the carrier relies on ground handling staff and contractors to assist passengers needing wheelchairs in addition to fulfilling other duties, such as check-in and boarding, meeting arrivals, and supervising ramp services. The Enforcement Office also found that in some cases, departing and arriving passengers needing mobility assistance were asked to wait upon checking in or deplaning until the ground handling staff completed other tasks before assisting the passengers who requested wheelchair assistance in moving within the terminal. The Enforcement Office concluded this did not constitute adequate assistance under the rule. Additionally, in certain cases, ground personnel suggested that passengers with disabilities ask for assistance from a family member or a fellow passenger instead of providing the adequate assistance required by the rule.

Dispositive Responses to Disability-related Complaints

Pursuant to 14 CFR 382.155(d), carriers are required to provide a dispositive written response to a written complaint alleging a violation of Part 382 within 30 days of receipt of the complaint. An appropriate dispositive response must discuss the complaint at issue, specifically admit or deny whether the carrier believes a violation of Part 382 occurred, summarize the facts that led the carrier to its conclusion of whether a violation of Part 382 occurred, and advise the complainant of his or her right to refer the matter to the Department for an investigation.

The Enforcement Office reviewed disability related complaints received by Allegiant for 2013, 2014, and the first six months of 2015, and found that Allegiant did not respond to all complaints in full accordance with 14 CFR 382.155(d). In a number of files, Allegiant did not specifically admit or deny that a violation of the substantive portions of Part 382 at issue occurred. Numerous responses also failed to meet the 30-day time frame, and in some of those files, Allegiant did not inform complainants of their right to pursue enforcement action with the Department.

Prompt Refunds and Timely Responses to Consumer Complaints

Allegiant is subject to the credit card refund requirements of Regulation Z¹ and 14 CFR Part 374, which implements Regulation Z. Regulation Z and Part 374 establish that, with respect to refund requests involving airline tickets purchased with a credit card, a creditor—here Allegiant—must transmit a credit statement for a passenger refund to the credit card issuer within seven business days of receiving full documentation for the refund request and forgiving the debt.² In addition, 14 CFR 259.5 requires carriers to adopt and adhere to a customer service standard that ensures carriers will comply with Section 374.3 and Regulation Z for credit card refunds due and provide cash or check refunds within 20 days.

Further, pursuant to 14 CFR 259.7(c), covered carriers must acknowledge receipt of written complaints regarding scheduled service within 30 days of receipt of the complaint and must provide a substantive written response to the complaint within 60 days.³

The Enforcement Office reviewed complaints regarding tickets purchased for children under the age of two and found that in a number of cases, Allegiant failed to issue timely refunds. Based on the Enforcement Office's review, it appears that for a 22-month period between 2013 and 2015, Allegiant's booking policy required that consumers call, email, or live chat with a customer service agent in order to add a reservation for a lap child to travel free of charge. During this period, a number of passengers, apparently unaware of the policy, paid for a seat for a lap child during online reservations. In these instances, after being informed by a passenger about the unintended booking, Allegiant cancelled the child's seat reservation and, upon receiving a request for refund, refunded the corresponding payment. But Allegiant did not provide the refunds promptly in a significant number of these cases as required by 14 CFR 374.3. Allegiant also did not provide acknowledgements to all of these complainants within 30 days and substantive responses within 60 days, as required by 14 CFR 259.7(c).

Customer Service Commitments

Pursuant to 14 CFR 259.5, each covered carrier is required to adopt and adhere to a customer service plan that includes: (1) a commitment that the carrier will provide prompt

¹ 12 CFR Part 1026 (formerly 12 CFR Part 226).

² See 12 CFR 1026.12(e)(1).

³ Enforcement Office policy permits carriers to respond to consumer complaints under 14 CFR 259.7(c) through a telephone call provided that the carrier maintains a record of the conversation(s), including the name of the carrier employee, the name of the individual with whom the employee spoke, the date and time of the call, and a summary of the substance of the conversation sufficient to permit a reviewer to determine whether the principal issues in the complaint were addressed. However, if the carrier calls a passenger who had submitted a written complaint and during the call the complainant requests a written reply, the carrier should comply with the request or face possible enforcement action. See Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2), Section VII, Question #7, revised on June 15, 2012, available at www.dot.gov/airconsumer.

refunds when they are due, as required by 14 CFR 374.3 and 12 CFR Part 226 for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases (14 CFR 259.5(b)(5)); (2) a commitment that the carrier will properly accommodate passengers with disabilities, as required by part 382 (14 CFR 259.5(b)(6)); and (3) a commitment that the carrier will ensure responsiveness to consumer problems as required by 14 CFR 259.7 (14 CFR 259.5(b)(11)). Allegiant's violations of Parts 374 and 382 and 14 CFR 259.7, as described above, also constitutes nonadherence to its customer service plan, contrary to 14 CFR 259.5(a). Violations of 14 CFR Parts 259, 374, and 382 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

Response

Allegiant states that it takes compliance with the Department's requirements very seriously, that it has cooperated fully with the Department's investigation, and that any violations were entirely unintentional. Allegiant states that it values input from all passengers, especially those with disabilities, and that to the best of its knowledge, it has addressed the substance of each complaint it has received, regardless of the type, source or merits of the complaint.

Allegiant notes additionally that demand for disability assistance is frequently unpredictable despite Allegiant's best efforts to predict it.⁴ Allegiant asserts that for the carrier this is especially problematic, given that its traffic consists almost entirely of leisure passengers flying to and from accessible vacation destinations, resulting in a percentage of wheelchair-reliant passengers that Allegiant believes is far above the industry norm. Allegiant states additionally that based on recent internal data it has collected and analyzed, it believes that the situation is exacerbated by widespread abuse, i.e., passengers insisting on wheelchair assistance at the departure airport as a means of obtaining preferential boarding and seating, who, upon arrival, do not need or desire any assistance.⁵

Regarding lap children, Allegiant states that it made every refund requested, and that the refund requests corresponded to only a minuscule percentage of children under the age of two carried during the period in question. Allegiant states that in its view, this confirms that its "Traveling with Children" webpage—available throughout the period in question—was consulted and understood by the vast majority of passengers traveling with young children.

Decision

The Enforcement Office views seriously Allegiant's violations of 14 CFR Parts 259, 374, and 382 and 49 U.S.C. §§ 41705 and 41712. Accordingly, after carefully considering all

⁴ Allegiant notes that the Department's regulations do not require that wheelchair-reliant passengers advise air carriers in advance of their need for assistance, and that while some passengers voluntarily advise of such need in advance, many do not.

⁵ The Enforcement Office notes that its review of passenger complaints and other materials obtained from Allegiant as part of the Enforcement Office's investigation did not reveal or confirm Allegiant's assertion of passenger abuse of the carrier's wheelchair services.

available facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, without admitting or denying the violations described above, and without conceding or waiving its legal position that 14 CFR 382.155(d) abrogates a carrier's constitutional right to due process by requiring the carrier to admit or deny it violated the Department's disability regulations, Allegiant consents to the issuance of this order to cease and desist from future similar violations of 14 CFR Parts 259, 374 and 382, and 49 U.S.C. §§ 41705 and 41712, and to the assessment of \$250,000 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 represents a strong deterrent against future similar unlawful practices by Allegiant and other carriers.

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 Allegiant Air, LLC violated 14 CFR 382.91(b) by failing to provide adequate assistance to passengers with a disability in moving within the terminal;
3. We find that Allegiant Air, LLC violated 14 CFR 382.155(d) by failing to provide fully dispositive written responses to written complaints concerning passengers with disabilities;
4. We find that by engaging in the conduct described in paragraphs 2 and 3, above, Allegiant Air, LLC violated 49 U.S.C. § 41705(a);
5. We find that Allegiant Air, LLC violated 14 CFR 374.3(b) by failing to process in a timely manner refunds for air transportation purchased by credit card when the refunds were due, as required by the Consumer Credit Protection Act and Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§ 1601-1693r and 12 CFR Part 1026;
6. We find that Allegiant Air, LLC violated 14 CFR 259.7(c) by failing to provide timely acknowledgments and substantive responses to complaints involving scheduled service;
7. We find that by engaging in the conduct described in paragraphs 2, 3, 5 and 6, above, Allegiant Air, LLC failed to adhere to its customer service plan in violation of 14 CFR 259.5(a);
8. We find that by engaging in the conduct described in paragraphs 2 through 7, above, Allegiant Air, LLC engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712(a);

9. We order Allegiant Air, LLC and its successors and assigns to cease and desist from further similar violations of 14 CFR 259.5(a), 259.7(c), 374.3(b), 382.91(b) and 382.155(d), and 49 U.S.C. §§ 41705(a) and 41712(a);
10. We assess Allegiant Air, LLC \$250,000 in compromise of civil penalties that might otherwise be assessed for the violations described in paragraphs 2 through 8, above. The payment shall be due and payable within 30 days of the service date of this order: and
11. We order Allegiant Air, LLC 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 Allegiant Air, LLC 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:

BLANE A. WORKIE
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