



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

Issued by the Department of Transportation  
On the Seventeenth day of February, 2011

**Delta Air Lines, Inc.**

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

**Served: February 17, 2011**

**DOT OST-2011-0003**

**CONSENT ORDER**

This order concerns violations by Delta Air Lines, Inc., (Delta) of the requirements of 14 CFR Part 382 (Part 382) with respect to providing enplaning, deplaning, and connecting assistance, as well as providing dispositive responses to written complaints alleging a violation of Part 382 and properly coding and recording its disability-related complaints in connection with required reporting to the Department of Transportation (Department). 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 Delta<sup>1</sup> to cease and desist from future violations of Part 382 and the ACAA and assesses the carrier \$2,000,000 in civil penalties.<sup>2</sup>

**Applicable Law**

Part 382 requires air carriers to provide passengers with disabilities assistance in aircraft enplaning and deplaning and imposes specific requirements in doing so. Sections 382.39 (a) and (b), in effect prior to May 13, 2009, (now sections 382.91-382.95, 382.101, and 382.105), set forth requirements regarding the type and quality of service carriers must provide when assisting

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<sup>1</sup> This order is a global settlement of all ACAA and Part 382 violations (including related violations of 49 U.S.C. §§ 41310, 41701, 41705, and 41712) through the issuance date of this order by Delta and Delta's affiliates Comair and Northwest, including any such violations that may have accrued to Delta as the successor-in-interest following its merger with Northwest Airlines, Inc.

<sup>2</sup> As covered in ordering subparagraphs 10(b), 10(c), 10(d), and 10(e), the \$2,000,000 assessed civil penalty is subject to offsets of up to \$1,250,000 for expenditures by Delta to provide improved services for passengers with disabilities above and beyond what is required by the Department's disability rule. The actual cost of the initiatives covered by the offsets is substantially greater than the \$1,250,000 offset amount.

passengers with disabilities. This assistance includes, as needed, the provision of services personnel and the use of wheelchairs, ramps, or mechanical lifts. Section 382.39(a)(3), in effect prior to May 13, 2009, (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.

Under section 328.65, in effect prior to May 13, 2009, (now section 382.155), carriers are required 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, in effect prior to May 13, 2009, (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.

This order finds that on a number of occasions Delta failed to comply with these requirements.

### **Background**

The Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated Delta's compliance with the relevant provisions of Part 382 by reviewing all disability-related complaints Delta received directly from passengers during 12 week-long intervals in 2007 and 2008, as well as all disability-related complaints the Department received directly from Delta passengers during 2007 and 2008. The Enforcement Office also reviewed training and other documentation related to Delta's wheelchair assistance vendor operations at the Atlanta Hartsfield International and John F. Kennedy airports. 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 substantial number of these complaints appear to involve egregious violations of Part 382.<sup>3</sup> Additionally, Delta's complaint files indicated that in many instances, Delta 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. Furthermore, it appears that a number of its written responses to complainants did not comply with the requirements of section 382.65 [now section 382.155]. In addition to these findings, the Enforcement Office noted an upward trend in the number of disability-related complaints Delta reported annually following a 2003 consent order against the carrier, also for violations of sections 382.39 and 382.65, in which the carrier agreed to adopt significant measures to improve

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<sup>3</sup> In prior enforcement actions, e.g. Docket OST-2010-0005-0026 (August 31, 2010), 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 non-ambulatory 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.

service and reduce complaint levels.<sup>4</sup> The violations found in 2007 and 2008 following the 2003 consent order directing Delta to cease and desist from further violations of 14 CFR Part 382 and 49 U.S.C. §§ 41310, 41702, 41705 and 41712 also constitute violations of that order.<sup>5</sup>

### **Mitigation**

In mitigation, Delta states that it takes its responsibilities under the ACAA and Part 382 very seriously and values its customers with disabilities. Delta states that it has established industry-leading programs for its customers with disabilities and continually strengthens its programs by creating new structures to oversee, manage, and enhance services provided to customers with disabilities. Delta believes that the new structures, together with other disability-program enhancements, demonstrate Delta's total commitment to its long-standing policy of full compliance with all applicable legal requirements. Delta states that the number of complaints Delta receives from customers with disabilities represents a miniscule fraction of the disability community Delta carries. According to Delta, to accomplish its policy objectives with respect to passengers with disabilities, it has committed and continues to commit substantial sums of money and other resources to the advancement and protection of the interests of its customers with disabilities. Delta notes that it has instituted numerous programs, systems, training enhancements, and procedures, which it continually expands and refines through cross-divisional teams and dedicated staff, in order to meet the needs of its customers with disabilities and to ensure compliance with all applicable requirements pertaining to travelers with disabilities. Delta also states that it has created strong relationships with organizations representing the disability community, including the establishment of an industry-leading advisory board composed of individuals representing a cross section of disabilities. In this regard, Delta points out that it has established a cross divisional Disability Compliance Council for the express purpose of overseeing, managing, and improving all aspects of Delta's policies, procedures, and technologies to address the needs of passengers with disabilities.

Additionally, Delta states that it is taking the following significant actions to enhance its service to customers with disabilities:

1. Delta is investing in industry-leading innovative technology to communicate with vendors and to track in real time the needs of customers with disabilities and the resource availability to ensure that wheelchairs and personnel are ready and available to meet customers needing assistance in a prompt and timely manner.
2. Delta is making a number of significant changes to its website to increase services for customers with disabilities, including (i) allowing its customers to specify the type of wheelchair assistance they require at the time they are booking a flight; (ii) adding a video to Delta's website to help alleviate anxiety by demonstrating the customer experience and showing the services that customers with disabilities will receive; (iii) automatically displaying flights with more convenient connecting times for customers requiring special

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<sup>4</sup> See *Delta Air Lines, Inc. Violations of 14 CFR Part 382 and 49 U.S.C. §§ 41310, 41702, 41705 and 41712*, Order 2003-11-4 (November 10, 2003).

<sup>5</sup> *Id.* at 4.

assistance; (iv) providing automatic notice to customers of the receipt of a “Special Service Request” (“SSR”) and providing information that explains what they can expect at the airport; and (v) implementing automation that ensures that SSRs are automatically transferred to a new flight in the event of a flight interruption.

3. Delta is employing improved technology to transmit SSRs automatically and directly to airport service vendors over secure connections to enhance the vendors’ ability to allocate resources and to provide timely service.
4. Delta is providing customers with disabilities (who have valid e-mail addresses) with a Customer Service Survey within 24 hours of their travel in order to obtain real-time feedback on the service provided.
5. Delta is implementing enhanced airport audits to assess vendor performance, share best practices, and develop process improvements.
6. Delta is investing tens of millions of dollars in facility improvements that will improve service to its customers with disabilities, including elevator installation and additional jetways for regional jet access.

Finally, Delta has agreed to settle this matter without admitting to violations to avoid the burden and expense of litigation. Delta believes that the interests of Delta, the Department, and the flying public are better served through settlement of this matter – so that resources may be dedicated to improving customer service, rather than expended in further litigation.

### **Decision**

The Enforcement Office has carefully considered the information provided by Delta and continues to believe that enforcement action is warranted. In order to avoid litigation, Delta 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 \$2,000,000 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 Delta and other carriers.

This order is issued under the authority contained in 49 CFR 1.57(a) 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 Delta Air Lines, Inc., violated the requirements of 14 CFR 382.39 (now sections 382.91 – 382.95 and 382.101 –382.105) by failing to provide adequate and prompt enplaning and deplaning wheelchair assistance to passengers with disabilities;

3. We find that Delta Air Lines, 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 Delta Air Lines, 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 Delta Air Lines, Inc., in the instances described in ordering paragraphs 2 through 4, violated the Air Carrier Access Act, 49 U.S.C. § 41705;
6. We find that, to the extent that certain of the instances described in ordering paragraphs 2 through 4 occurred in foreign air transportation, Delta Air Lines, Inc., violated 49 U.S.C. § 41310;
7. We find that, to the extent that certain of the instances described in ordering paragraphs 2 through 4 occurred in interstate air transportation, Delta Air Lines, Inc., violated 49 U.S.C. § 41702;
8. We find that the violations described in ordering paragraphs 2 through 7 are unfair and deceptive practices and thereby violate 49 U.S.C. § 41712;
9. We order Delta Air Lines, Inc., 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 8;
10. We assess Delta Air Lines, Inc., \$2,000,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 8, above;
  - (a) \$750,000 of the assessed civil penalty shall be due and payable within 30 days of the service date of this order;
  - (b) Up to \$834,000 of the assessed penalty shall be credited to Delta Air Lines, Inc., for funds expended within eighteen months from the service date of this order, toward the development and implementation of an automated wheelchair tracking system at the carrier's major hub airports subject to the following: The system shall, among other things, be capable of generating reports of the carrier's wheelchair assistance performance;
  - (c) Up to \$236,000 of the assessed penalty shall be credited to Delta Air Lines, Inc., for funds expended within eighteen months after the service date of this order toward the development and distribution of a customer service survey to passengers with disabilities immediately following their travel asking them to rate the carrier on the accommodation services provided and soliciting specific feedback on how the carrier can improve;
  - (d) Up to \$150,000 shall be credited to Delta Air Lines, Inc., for funds expended within eighteen months after the service date of this order toward expanded corporate-

level Part 382 compliance auditing and consulting at airports. These additional responsibilities shall include the following:

- i. Conducting ad hoc audits of passenger complaints to monitor the adequacy of performance standards and metrics related to Part 382 compliance and to identify areas for performance improvement;
- ii. Conducting root cause analyses of Part 382 compliance problems;
- iii. Recommending process improvements to enhance Part 382 compliance to reduce disability-related complaints;
- iv. Identifying and reporting best practices for Part 382 compliance and sharing them system-wide; and
- v. Reviewing the responses to the customer service surveys covered in c. above;

Delta shall provide a detailed airport audit plan to the Enforcement Office within 180 days of the service date of this order outlining the specific audits to be undertaken over the eighteen months following the service date of this order; and

(e) Up to \$30,000 shall be credited to Delta Air Lines, Inc., for funds expended within 180 days of the service date of this order toward developing and implementing the following or substantially similar enhancements to its website to improve air travel accessibility: 1) the capability for a passenger to add a special service request (SSR) when booking a reservation online indicating the specific type of wheelchair assistance needed; 2) an automatic advisory of recommended connecting times to passengers booking a reservation online with an SSR; 3) notice to passengers when an SSR is received including information on what to expect at the airport, and 4) an online video demonstrating the wheelchair enplaning and deplaning process;

11. Within 21 months of the date this order becomes final, Delta Air Lines, Inc., shall provide the Department with supporting documentation verifying the expenditures in connection with the offsets listed in subparagraphs 10(b), 10(c), 10(d) and 10(e) 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;
12. To the extent that Delta Air Lines, Inc., fails to provide adequate documentation verifying the appropriate expenditures of the \$1,250,000 in offsets as described in order subparagraphs 10(b), 10(c), 10(d), and 10(e), the amount of any specific offset items not adequately documented shall become due and payable within 30 days of the due date of the certification required by paragraph 11;
13. The offsets described in subparagraphs 10(b), 10(c), 10(d) and 10(e) may be amended with the approval of the Department's Office of Aviation Enforcement and Proceedings.

If Delta Air Lines, Inc., intends to seek a change in the type and/or amount of improvements 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 11; and

14. 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.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

**BY:**

ROSALIND A. KNAPP  
DEPUTY GENERAL COUNSEL

**(SEAL)**

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