



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

Issued by the Department of Transportation
on the 21st day of July, 2017

Frontier Airlines, Inc.

**Violations of 14 CFR Parts 250, 259, 382 and 49
U.S.C. §§ 41310, 41702, 41705, and 41712**

Docket OST-2017-0001

Served July 21, 2017

CONSENT ORDER

This consent order concerns violations by Frontier Airlines, Inc. (“Frontier”) of the requirements of 14 CFR Part 250, the Department’s oversales rule, and violations of 14 CFR Part 382 with respect to providing passengers with disabilities assistance in enplaning and deplaning, preboarding and moving within the terminal and providing 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. 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.

Further, pursuant to 14 CFR 259.5(b)(6) and (b)(8), a covered carrier must adopt and adhere to a customer service plan which includes a commitment to properly accommodate passengers with disabilities as required by Part 382 and to handle passengers that are denied boarding in the case of oversales with fairness and consistency as required by Part 250. Violations of Parts 250 and 382 constitute violations of the customer service provisions included in Part 259. Violations of the ACAA and 14 CFR

Parts 250, 259, and 382, as well as of 49 U.S.C. §§ 41310 and 41702, constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

This order directs Frontier to cease and desist from future similar violations of 14 CFR Parts 250, 259, 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712 and assesses the carrier \$400,000 in civil penalties.

Applicable Law

The Department's Oversales Rule

The Department's oversales rule reflects a carefully crafted balance between the right of individual passengers to obtain the services they purchase, on the one hand, and the ability of carriers to market their services effectively and efficiently, on the other hand. Part 250 permits airlines to sell more tickets for a flight than there are seats available on the aircraft to be used for that flight. This allows carriers to fill seats that would otherwise have remained empty due to "no shows," thereby achieving operational efficiencies including revenue enhancement for carriers, and resulting in benefits for passengers as a whole by enabling carriers to offer them lower fares.

In exchange for the ability to overbook flights (a practice that would otherwise be an unfair and deceptive practice or an unfair method of competition within the meaning of 49 U.S.C. § 41712), 14 CFR Part 250 mandates compensation and other protections for passengers who hold "confirmed reserved space" on a flight, have complied with the carrier's contract of carriage, have met the carrier's requirements with respect to check-in time and appearance at the gate, and have been involuntarily denied boarding because their flight was oversold ("eligible passengers"). Specifically, under most circumstances, Part 250 mandates that a carrier pay Denied Boarding Compensation ("DBC") to eligible passengers "on the day and [at the] place the denied boarding occurs," with "cash or an immediately negotiable check for the appropriate amount of compensation." 14 CFR 250.8. However, before denying boarding to passengers against their will, the carrier must first solicit volunteers who are willing to give up their seats in exchange for compensation. 14 CFR 250.2b.

The appropriate amount of DBC varies for each passenger depending on the planned arrival time of substitute transportation arranged (or offered to be arranged) by the carrier, the value of the unused portion of the passenger's fare to his or her destination, and whether the flight segment on which the bumping occurred was between U.S. points, or from the U.S. to a foreign point.¹ 14 CFR 250.5. In determining the value of the

¹ On May 27, 2015, the Department issued a final rule adjusting the DBC for domestic flights to 200 percent of the fare to the passenger's destination or first stopover to \$675 (from \$650), if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than two hours after the planned arrival time of the passenger's original flight; and 400 percent of the fare to the passenger's destination or first stopover, to \$1,350 (from \$1,300), if the carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than two hours after the planned arrival time of the passenger's original flight. The rule also adjusted the maximum DBC for international flights departing from a U.S. airport. The amount of

unused portion of the passenger's fare, carriers must include all mandatory taxes and fees. 14 CFR 250.1.

Further, under section 250.9(a), airlines must "furnish passengers who are denied boarding involuntarily from flights on which they hold confirmed reserved space immediately after the denied boarding occurs, a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carrier's boarding priority rules and criteria" ("250.9 Notice"). The regulation also requires that carriers "furnish the statement to any person upon request at all airport ticket selling positions which are in the charge of a person employed exclusively by the carrier, or by it jointly with another person or persons, and at all boarding locations being used by the carrier." The denied boarding statement must contain the language identified in section 250.9(b).

Violations of Part 250 constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

The Department's Rule Implementing the ACAA (14 CFR Part 382)

Provision of Wheelchair Assistance with Enplaning, Deplaning, Preboarding, and Moving Within the Airport

Part 382 requires air carriers to provide passengers with disabilities prompt enplaning and deplaning assistance, which inherently includes assistance in moving within the terminal and connecting assistance, if requested. Specifically, section 382.95(a) requires carriers to promptly provide or ensure assistance requested by or on behalf of passengers with a disability in enplaning and deplaning the aircraft. This assistance must include, as needed, the services of personnel and the use of ground wheelchairs, accessible motorized carts, boarding wheelchairs, on-board wheelchairs, and ramps or mechanical lifts. In addition, section 382.91 requires carriers to provide or ensure assistance (e.g., wheelchair assistance) requested by or on behalf of a passenger with a disability in transportation between gates to make a connection to another flight and assistance in moving from the terminal entrance through the airport to the gate for a departing flight, or from the gate to baggage claim and the terminal exit for an arriving flight. This requirement also includes assistance in accessing key functional areas of the terminal. Finally, Section 382.93 requires that carriers must offer preboarding to passengers with a

denied boarding compensation shall be no less than 200 percent of the fare to the passenger's destination or first stopover, to \$675 (from \$650), if the carrier offers alternate transportation that is planned to arrive at the passenger's destination or first stopover more than one hour but less than four hours after the planned arrival time of the passenger's original flight; and 400 percent of the fare to the passenger's destination or first stopover, to \$1,350 (from \$1,300), if the carrier does not offer alternate transportation that is planned to arrive at the airport of the passenger's destination or first stopover less than four hours after the planned arrival time of the passenger's original flight. This increase reflected changes in the Consumer Price Index for All Urban Consumers (CPI-U), and was effective for travel on or after August 25, 2015. At the time the complaints were reviewed by the Department, passengers were entitled to DBC amounts of up to \$650 or \$1,300 depending on the length of the passenger's delay. *See* 80 Fed. Reg. 30144.

disability who self-identify at the gate as needing additional time or assistance to board or to be seated.

Requirement to Provide Dispositive Written Responses

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 that a violation of Part 382 occurred under the circumstances, summarize the facts and reasons that led the carrier to its conclusion of whether or not a violation of Part 382 occurred, explain the steps the carrier will take if it finds a violation, and advise the complainant of his or her right to pursue DOT enforcement action under Part 382.

The Department's Customer Service Plan Rule

In April 2011, the Department issued a set of rules designed to enhance protections for air travel consumers. Among these rules, 14 CFR 259.5 requires that carriers adopt and adhere to a Customer Service Plan that includes commitments that carriers will handle “bumped” passengers with fairness and comply with the requirements of 14 CFR Part 250 and to properly accommodate passengers with disabilities as required by Part 382. Failure to adhere to the requirements of Parts 250 and 382 also constitutes violations of Part 259.²

Facts and Conclusions

The Office of Aviation Enforcement and Proceedings (“Enforcement Office”) conducted an on-site regulatory compliance inspection at Frontier’s headquarters in Denver, Colorado in July 2015. During that inspection, Enforcement Office staff reviewed a large percentage of complaints received by the carrier over a three-year period and which related to several areas regulated by the Department. The Department received additional Frontier complaints to review in 2016.

The Enforcement Office found substantial evidence indicating noncompliance with 14 CFR Part 250 by the carrier. Specifically, Enforcement Office staff reviewed approximately 200 complaints received by the carrier in calendar years 2014 and 2015. Among these files, the Enforcement Office identified a significant number of instances in which the complaint file indicated that Frontier involuntarily denied boarding to eligible passengers but failed to do the following: advise them of their rights to cash or check DBC payments, furnish a written notice to these passengers as required by section 250.9, provide proper DBC in a timely manner, or solicit volunteers before denying boarding of passengers involuntarily. Additionally, during on-site airport inspections conducted in September 2016 by Enforcement Office staff, some Frontier agents, when asked about

² See, e.g., American Airlines, Inc., *Violations of 14 CFR Parts 250 and 259, and 49 U.S.C. §§ 41708 and 41712*, Order 2015-9-10 (Sept. 15, 2015); see also United Airlines, Inc., *Violations of 14 CFR Parts 259 and 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712*, Order 2016-1-3 (Jan. 7, 2016).

the handling of oversale situations, informed Enforcement Office staff that only vouchers, rather than cash or a check, are offered as involuntary denied boarding compensation. The Enforcement Office's airport inspections also revealed that some Frontier agents were not able to provide accurate and complete copies of the required 250.9 Notice when prompted.

Finally, section 250.2b requires that carriers solicit volunteers prior to denying a passenger with a confirmed seat boarding on the flight involuntarily. Carriers may offer compensation to such a passenger so long as all material restrictions and terms of use are disclosed to that passenger prior to his/her decision to be voluntarily denied boarding. The Enforcement Office staff reviewed numerous complaints by passengers who were denied boarding voluntarily. These complaints revealed that, although Frontier agents informed these passengers that, as voluntary DBC, an electronic travel certificate ("ETC") was created at the time and location of the denied boarding, the passengers were subsequently unable to locate or use these vouchers without first contacting Frontier's customer relations personnel. In many cases, although Frontier agents at the airport indicated that an ETC had been created, no voucher was located within Frontier's reservation system nor was a notation made in the passenger's electronic reservation that they were entitled to an ETC as voluntary DBC. When a passenger reported this issue to Frontier's customer relations staff, Frontier staff would, in turn, contact the station manager at the airport where the denied boarding occurred to verify that the passenger was entitled to the claimed voluntary DBC. This process often took several weeks, requiring the passenger to wait an unreasonably long length of time to claim or use their promised voluntary DBC. The Department considers the failure of Frontier to provide promised voluntary DBC in a reasonable period of time to be an unfair and deceptive practice in violation of 49 U.S.C. § 41712.³

The Enforcement Office views the oversale violations uncovered during its compliance review and airport inspections as indicative of a wide-spread practice of noncompliance with Part 250 by Frontier that warrants enforcement action and must be rectified. These violations of 14 CFR Part 250 also constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712.

With respect to Frontier's compliance with the ACAA and Part 382, Enforcement Office staff reviewed approximately 375 disability complaints from all months of calendar years 2014 and 2015, including complaints received by the carrier and directly by the Department. The Enforcement Office's investigation revealed that for complaints involving the provision of wheelchair assistance as required by sections 382.91, 382.93, and 382.95, in a disproportionate number of these cases, Frontier admitted a violation to the passenger's allegations in the carrier's written response to that passenger. This resulted in an exorbitantly high rate of violations of the above-mentioned provisions. Specifically, the Enforcement Office found a high percentage of instances in which

³ See Spirit Airlines, Inc., *Violations of 14 CFR Part 250, 14 CFR Part 241, 14 CFR 249.20, 14 CFR 382.70, 14 CFR 382.45(d), 14 CFR Part 254, 14 CFR 399.84, Article 17 of the Montreal Convention, 49 U.S.C. § 41712, 49 U.S.C. § 41708, and 49 U.S.C. § 41709*, Order 2009-9-8 (Sept. 17, 2009) (the failure to pay owed compensation in a reasonable period of time constitutes an unfair and deceptive trade practice).

Frontier acknowledged that the carrier failed to provide adequate and timely wheelchair assistance to passengers with disabilities in moving within the terminal, in preboarding the aircraft, and in enplaning and deplaning the aircraft. A significant number of these violations occurred at Frontier's Denver International Airport hub.

Additionally, approximately 110 of the carrier's written responses to disability related complaints reviewed by Enforcement Office staff were not "dispositive" as required by 382.155(d). In nearly all of the carrier's 110 responses, Frontier did not discuss the complaint at issue, specifically admit or deny whether the carrier believed that a violation of Part 382 occurred under the circumstances, summarize the facts and reasons that led the carrier to its conclusion of whether or not a violation of Part 382 occurred, explain the steps the carrier will take if it finds a violation, and/or advise the complainant of his or her right to pursue DOT enforcement action under Part 382.

Additionally, the Enforcement Office staff noted that, more often than not, Frontier admitted in its response letters that a violation of 14 CFR Part 382 occurred, but did not appear to have investigated the incident at issue. Without a proper investigation, the carrier could not adequately summarize the facts and reasons that led the carrier to its conclusion that a violation of Part 382 occurred. In addition, while the Department's rules do not require a carrier to investigate a specific disability-related incident, an admission by a carrier of an alleged violation of Part 382 is viewed by the Department as an actual violation.

Response

In response, Frontier states that it takes compliance with the Department's regulations seriously and that it makes every effort to provide assistance to its passengers with disabilities and to comply with the Department's DBC requirements. Frontier also notes that Frontier fully cooperated with the DOT staff during their on-site audit and their subsequent follow-up requests, and that Frontier has adequate systems in place to ensure compliance with the Department's statutes and regulations for many of the numerous areas reviewed.

Frontier also claims that the value of Frontier's vouchers typically exceeded, by many multiples, the value of the DOT's required DBC amount, thereby providing customers who were involuntarily denied boarding with far more value than the required DBC compensation. Frontier also asserts that it is unfair for responses in which Frontier did not dispute allegations from complaining passengers with disabilities – done for the sake of goodwill and passenger loyalty – to be automatically deemed regulatory violations by the DOT.

Frontier notes that, after the Department's audit but before receiving its investigation letter, Frontier initiated a number of actions to enhance its customer service handling, and that it has continued to make numerous investments since the Department's audit. Frontier notes that the improvements have been made in customer complaint handling, wheelchair handling, denied boarding, and overall customer care, including a robust

system to track, investigate, and provide timely dispositive responses. Frontier adds that it has: trained additional customer relations agents as Complaints Resolution Officials and trained its agents to provide dispositive responses; provided recurrent (annual) ACAA training for customer relations agents; created a new customer relations center to augment the current headquarters operation; established a new Customer Relations Director position; developed a new position, senior Manager Disabilities and Escalations; and designed a computerized denied boarding application, among others.

Decision

The Enforcement Office views seriously Frontier's violations of 14 CFR Parts 250, 259, 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, Frontier consents to the issuance of this order to cease and desist from future violations of 14 CFR Parts 250, 259, 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712 and to the assessment \$400,000 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 against future similar unlawful practices by Frontier 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 Frontier Airlines, Inc. violated 14 CFR 250.2b by failing to solicit volunteers who were willing to give up their seats in exchange for compensation prior to involuntarily denying boarding to passengers with confirmed seats;
3. We find that Frontier Airlines, Inc. violated 14 CFR 250.5 by failing to advise passengers who were involuntarily denied boarding of their right to cash or check compensation and to pay the compensation amounts as outlined in 250.5;
4. We find that Frontier Airlines, Inc. violated 14 CFR 250.8 by failing to pay denied boarding compensation to eligible passengers on the day and at the place the denied boarding occurs with cash or an immediately negotiable check for the appropriate amount of compensation;
5. We find that Frontier Airlines, Inc. violated 14 CFR 250.9 by failing to furnish a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carriers' boarding priority rules and criteria to

passengers who are denied boarding involuntarily from flights on which they hold confirmed reserved space immediately after the denied boarding occurs;

6. We find that Frontier Airlines, Inc. engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712 by failing to provide promised voluntary denied boarding compensation to eligible passengers in a reasonable time or manner;
7. We find that Frontier Airlines, Inc. violated 14 CFR 382.91 by failing to provide adequate assistance to passengers with a disability in moving within the terminal and in transportation between gates to make a connection;
8. We find that Frontier Airlines, Inc. violated 14 CFR 382.93(a) by failing to offer preboarding to eligible passengers with a disability;
9. We find that Frontier Airlines, Inc. violated 14 CFR 382.95(a) by failing to provide prompt assistance to passengers with a disability in enplaning and deplaning the aircraft;
10. We find that Frontier Airlines, Inc. violated 14 CFR 382.155(d) by failing to provide dispositive written responses to written complaints involving passengers with disabilities;
11. We find that by engaging in the conduct described in paragraphs 2 through 6, above, Frontier Airlines, Inc. failed to adhere to the terms of its Customer Commitment Plan in violation of 14 CFR 259.5(b)(8);
12. We find that by engaging in the conduct described in paragraphs 7 through 10, above, Frontier Airlines, Inc. failed to adhere to the terms of its Customer Commitment Plan in violation of 14 CFR 259.5(b)(6);
13. We find that by engaging in the conduct described in paragraphs 7 through 10, above, Frontier Airlines, Inc. violated 49 U.S.C. § 41705;
14. We find that to the extent the conduct described in paragraphs 7 through 10, above, occurred in interstate air transportation, Frontier Airlines, Inc. violated 49 U.S.C. § 41702;
15. We find that to the extent the conduct described in paragraphs 7 through 10, above, occurred in foreign air transportation, Frontier Airlines, Inc. violated 49 U.S.C. § 41310;
16. We find that by engaging in the conduct described in paragraphs 2 through 10, above, Frontier Airlines, Inc. engaged in unfair and deceptive practices in violation of 49 U.S.C. § 41712;

17. We order Frontier Airlines, Inc. and its successors and assigns to cease and desist from further violations of 14 CFR Parts 250, 259, 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712;
18. We assess Frontier Airlines, Inc. \$400,000 in compromise of civil penalties that might otherwise be assessed for the violations described above:
 - a. \$325,000 of the assessed penalty shall be due and payable within thirty days of the service date of this order;
 - b. \$36,000 of the assessed penalty shall be credited to Frontier Airlines, Inc. for compensation provided to customers who filed a disability related complaint in 2014, 2015, and 2016;
 - c. \$25,000 of the assessed penalty shall be credited to Frontier Airlines, Inc. for funds expended toward the first year salary for a new quality assurance management position. The responsibilities for such a position must, at a minimum, include: (1) collaborating with disability organizations to gain better insight regarding the needs of air travelers with disabilities; (2) tracking disability complaints to analyze trends and determine follow-up action to correct any deficiencies discovered; and (3) testing procedures to ensure effectiveness of implemented corrective steps;
 - d. \$9,000 of the assessed penalty shall be credited to Frontier Airlines, Inc. for the implementation of a special service data feed application to provide Frontier's largest wheelchair provider with real-time information and response capabilities to an automated dispatch and tracking system;
 - e. \$5,000 of the assessed penalty shall be credited to Frontier Airlines, Inc. for the development of an audit and accountability and evaluation process specifically to determine Frontier agents' compliance with disability and oversales regulations;
19. By September 1, 2017, Frontier Airlines, Inc. shall provide a copy of the position description for the new quality assurance management position, evidence of the salary paid for this position, and a certification that the individual in this position performed the duties described in ordering subparagraph 18(c);
20. By September 1, 2017, Frontier Airlines, Inc. shall provide the Department with supporting documentation containing a description of the expenditures associated with the \$75,000 offsets listed in subparagraphs 18(b)-(e) above, and the accompanying accounting verifying the offsets. The documentation must be accompanied by a sworn statement by a senior carrier official attesting that the description, documentation, and accounting are true and complete to the best of that official's knowledge.

21. If Frontier Airlines, Inc., fails to provide adequate documentation and accounting verifying the appropriate expenditures of the \$75,000 offsets listed in subparagraphs 18(b)-(e) above, the amount of any specific offset item not adequately documented shall become due and payable within thirty (30) days of the due date, i.e., no later than October 1, 2017; and
22. We order Frontier Airlines, Inc., to pay within 30 days of the issuance of this order the penalty assessed in Ordering subparagraph 18(a), above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Frontier Airlines, 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:

BLANE WORKIE
Assistant General Counsel for
Aviation Enforcement and Proceedings

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