



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

Issued by the Department of Transportation
on the 18th day of August, 2004

Served: August 18, 2004

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

Docket 2004-16943

CONSENT ORDER

This order concerns certain violations by America West Airlines, Inc., (America West) of the requirements of 14 CFR Part 382, with respect to: (1) providing assistance to passengers in wheelchairs, (2) providing dispositive responses to persons who complain to the carrier about its failure to comply with Part 382, and (3) training Complaint Resolution Officials (CROs). 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 any ACAA and Part 382 violations occur 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 any violations occurred in foreign air transportation, the incidents would also represent violations of 49 U.S.C. § 41310, which in part prohibits air carriers from unreasonably discriminating against any person in foreign air transportation. Any ACAA and Part 382 violations would also constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712. This order directs America West to cease and desist from future violations of Part 382 and the cited statutory provisions and assesses the carrier \$850,000 in compromise civil penalties for such violations.

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) set forth several requirements regarding the type and quality of service air carriers must provide to passengers with disabilities in enplaning, deplaning, and making connections. Section 382.65 requires a carrier to respond to a customer's complaint about a disability-related issue in a dispositive manner within 30 days of the date the carrier receives a written complaint. This order finds that on a number of occasions, as revealed by our review of complaints filed with the Department and directly with America West, the carrier has failed to comply with these requirements.

In addition, section 382.61(a)(1) requires an air carrier to provide training to proficiency for its personnel who deal with the traveling public to enable and ensure that these employees have knowledge of Part 382 and other Department regulations affecting air travelers with

disabilities. This order also finds that in the past America West has not provided training to proficiency for its CROs.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated America West's compliance with certain provisions of Part 382 by reviewing complaints that the Department received from America West passengers with disabilities and complaints America West received directly from passengers between April 5, 2000, and November 30, 2002, that alleged a failure to provide adequate enplaning, connecting, and deplaning assistance. A review of those complaints revealed a significant number of apparent violations of sections 382.39 and 382.65. All of the complaints involved incidents occurring after April 5, 2000, the effective date of the increase in civil penalties to \$10,000 for ACAA violations enacted by AIR 21.¹

A number of complaints appear to reflect a material failure on the part of the carrier in meeting the requirements of section 382.39, including instances of failure to provide wheelchair assistance entirely, prolonged delays in obtaining wheelchair assistance, and stranding individuals alone in wheelchairs in the terminal or on board an aircraft for extended periods of time. In addition, America West's complaint files indicated that in a number of instances it did not provide a written response to the complainant fully compliant with the requirements of section 382.65, which requires that the carrier must provide a "dispositive response" with respect to each complaint postmarked within 45 days of the complained of incident. An appropriate response must specifically discuss the complaint at issue, state the carrier's view of whether a violation occurred, and provide an explanation of the carrier's view if it believes no violation occurred or what corrective action was taken if a violation is admitted. The response must also state that the complainant may refer the matter to the Department.

Furthermore, in August 2002, three Enforcement Office staff members traveled to Las Vegas and monitored an America West CRO training class and found it to be substantially deficient in complying with the requirements of section 382.61(a)(1) which requires carriers to provide training to proficiency regarding Part 382 and other DOT and FAA requirements concerning air travel by passengers with disabilities. In August and September 2003, the Enforcement Office reviewed additional America West CRO training classes and found them to be significantly improved. For example, the classes had been expanded to eight hours from two and revised to include an in-depth review of our rules, sensitivity training, and a written test at the conclusion.

In mitigation, America West states that in addition to the expansion of the CRO training program described above, America West has worked diligently toward enhancing its disability training and services in other respects since the outset of the Department's investigation. America West states that improvements to date include a change in the wheelchair service provider at the Phoenix Sky Harbor Airport, modifications to its onboard stowage policy, the addition of a wheelchair direct reservation system page in the company's internal reservations

¹ Section 707(b) of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21; Pub. L. 106-181; 114 Stat. 61; April 5, 2000) amended 49 U.S.C. § 46301(a)(3) to apply a \$10,000 maximum civil penalty for each violation of the ACAA. Vision 100—Century of Aviation Reauthorization Act (Vision 100; Pub.L. 108-176; 117 Stat. 2490; Dec. 12, 2003) increased the maximum civil penalty to \$25,000 for each violation of the ACAA occurring on or after December 12, 2003.

system, the purchase of additional wheelchairs system-wide, substantial additions to America West's Special Needs Website, the formation of a corporate ACAA Committee, the creation of a new full-time position for CRO training, the development of new training materials for the CRO training program, and recurrent CRO and sensitivity training for employees on disability-related issues.

In addition, America West also states that its executive leadership has approved a number of additional future improvements in disability services. These include the purchase of personal transport slings to aid in enplaning and deplaning of passengers in wheelchairs, the development of new computer software to better track and dispatch wheelchair services upon receipt of a passenger request, the addition of four full-time positions at the Phoenix hub solely dedicated to oversight of wheelchair services, and participation in community outreach and focus groups relating to air travel of people with disabilities.

To date, America West states that it has devoted nearly \$1.2 million toward these improvements and estimates it will expend an additional \$400,000 implementing the future improvements described above. In addition, America West states that it has agreed to be the first air carrier to pursue an exemption from 14 CFR 121.574 for the onboard use of portable oxygen concentrators by disabled passengers. America West currently cannot provide a medical oxygen service because it is not certified to carry medical oxygen under the Research and Special Programs Administration (RSPA) rules which govern the carriage of hazardous materials. However, RSPA has determined that the AirSep and Inogen portable oxygen concentrator units do not contain hazardous materials and are not covered by RSPA regulations. Irrespective of RSPA's determination, America West recognizes that these portable oxygen concentrator units are still subject to FAA safety regulations because they dispense oxygen. Therefore, America West believes that, if its exemption petition regarding use of oxygen concentrators aboard its aircraft is approved by FAA, this policy change will provide a much needed service to the segment of the community that needs medical oxygen to fly.

According to America West, there will be significant costs associated with filing and implementing the requested exemption. America West operates five airplane models in its fleet of aircraft: Airbus A319s and A320s and Boeing 757-500s, 737-300s and 737-200s. In addition, under the Company's codeshare agreement with Mesa Airlines, America West Express operates a fleet of CRJ 200s, CRJ 900s and DeHavilland Dash 8s. America West believes that it must seek an exemption for both its mainline and express service to provide a consistent product to its passengers. Accordingly, onboard testing of the oxygen concentrators would be required on each of the 8 models in its mainline/express fleet, in addition to training its reservation, customer service and flight attendant workgroups. If approved, America West conservatively estimates the costs of its voluntary compliance would approach \$300,000.

The Enforcement Office continues to view seriously the failure by any carrier to provide proper assistance to passengers pursuant to 49 U.S.C. § 41705 and Part 382. After carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. By this order, the Department finds that America West has, on numerous occasions, failed to provide adequate assistance to passengers with disabilities, failed to provide a dispositive response with respect to many of these complaints, and failed to provide adequate training to CROs to ensure proficiency with

the Department's requirements concerning airline passengers with a disability in violation of 49 U.S.C. § 41705 and 14 CFR Part 382. In order to avoid litigation, America West, without admitting the alleged violations, has agreed to settle these matters with the Enforcement Office and enter into this consent order directing America West to cease and desist from future similar violations of 14 CFR Part 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712 and assessing \$850,000 in civil penalties with offsets for specified expenditures associated with improving its service to disabled passengers beyond what is required by Part 382. We believe that this consent order and the penalty that it assesses will provide a strong incentive for all carriers to comply with the ACAA and 14 CFR Part 382.²

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 America West Airlines, Inc., on a number of occasions violated the requirements of 14 CFR 382.39 by failing to provide prompt and proper enplaning, deplaning, and connection assistance to disabled air travelers, primarily those having mobility impairments;
3. We find that America West Airlines, Inc., on a number of occasions violated the dispositive response requirements of 14 CFR 382.65 in connection with certain of the violations described in ordering paragraph 2;
4. We find that America West Airlines, Inc. violated the training requirements of 14 CFR 382.61 by failing to provide training to proficiency for its Complaint Resolution Officials;
5. We find that America West Airlines, Inc., in the instances described in ordering paragraphs 2, 3, and 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 and 3 occurred in foreign air transportation, America West Airlines, Inc., violated 49 U.S.C. § 41310;
7. We find that, to the extent that certain of the instances described in ordering paragraphs 2 and 3 occurred in interstate air transportation, America West Airlines, 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 that constitute violations of 49 U.S.C. § 41712;
9. We order America West Airlines, Inc., and its successors and assigns to cease and

² This consent order will settle all violations of 14 CFR 382.39, 382.65, and 382.61 that American West may have committed prior to the service date of this order.

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. America West Airlines, Inc., is assessed a civil penalty in the amount of \$850,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 8 of this order, subject to the payment schedule set forth in paragraph 10 (a) and (b) below, and subject to credit offsets of up to \$775,000 as provided in subparagraphs 10 (c) through (e) below:
 - a. \$37,500 shall be due and payable 30 days after the service date of this order;
 - b. \$37,500 shall be due and payable 12 months after the initial payment as set forth in subparagraph (a) above;
 - c. \$375,000 shall be credited to America West Airlines, Inc., for expenditures made to improve its quality of service to air travelers with disabilities above what is required by 14 CFR Part 382, since the initiation of the investigation giving rise to this order, which the Enforcement Office has already reviewed and accepted;
 - d. \$400,000 shall be credited to America West Airlines, Inc., for expenditures that will be made in the 24 months after the service date of this order to improve its quality of service to disabled air travelers above what is required by 14 CFR Part 382 in accordance with ordering paragraph 11; and
 - e. To the extent the carrier fails to provide adequate documentation verifying the appropriate expenditures of the \$400,000 offset, that amount shall become due and payable 28 months after the service date of this order³;
11. The improvements described in ordering paragraph 10(d) shall consist of all of the following:
 - a. Within 45 days of the service date of this order, America West Airlines, Inc., shall file an exemption petition from 14 CFR 121.574 with the Federal Aviation Administration (FAA) regarding the use of passenger owned oxygen concentrator devices on board the carrier's aircraft. Within 90 days of receiving FAA approval of America West's petition for exemption or issuance of a FAA final rule regarding oxygen concentrators⁴, whichever occurs first,

³ However, if America West is unable to gather adequate documentation, the offset shall not be automatically withdrawn and become due and payable immediately. Rather, the Enforcement Office shall grant America West reasonable extra time in which to complete the process of submitting adequate information and the requirement to pay such amount shall be tolled during such process.

⁴ On July 14, 2004, the FAA issued a Notice of Proposed Rulemaking (NPRM) entitled "Use of Certain Portable Oxygen Concentrators Onboard Aircraft." The FAA may issue a final rule on this NPRM prior to America West's filing an exemption petition regarding the use of oxygen concentrators on its aircraft. In this event, America West may elect to implement its operational program, including testing of all of its aircraft and training of its employees, in accordance with FAA's final rule. The Enforcement Office also recognizes that even if a

America West shall implement its operational program to permit passengers to use their own oxygen concentrators, as permitted by the FAA, in the cabin during flight. America West's operational program shall include testing to ensure that the device does not cause interference with electrical, navigational, or communication equipment on all its aircraft⁵ and an educational and training program for its gate and reservation agents and flight attendants. Within 120 days of FAA approval of its exemption petition or issuance of an FAA final rule on oxygen concentrators, America West Airlines, Inc., shall submit:

- i. written certification to the Office of Aviation Enforcement and Proceedings that it has implemented any FAA approved exemption petition or final rule regarding oxygen concentrators;
 - ii. a detailed explanation of the method used by America West to determine the total expenditures; and
 - iii. a sworn statement from an appropriate company official certifying that the total expenditures were properly expended to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the sworn statement;
- b. America West Airlines, Inc., shall dedicate additional specialized personnel, including at least one additional supervisor, to wheelchair service at its hub in Phoenix, Arizona. Within 26 months of the service date of this order, America West Airlines, Inc. shall submit:
- i. a statement with supporting documentation detailing the additional expenditures;
 - ii. a detailed explanation of the method used by America West to determine the total additional expenditures for its newly created positions; and
 - iii. a sworn statement from an appropriate company official certifying that the total expenditures were properly expended to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the sworn statement;
- c. America West Airlines, Inc., shall purchase or develop computer software that tracks wheelchair requests, dispatches wheelchair runners, and provides the carrier with a full report of those activities. Within 26 months of the service date of this order, America West Airlines, Inc., shall submit:

FAA final rule is issued, America West may elect to file an exemption request seeking different conditions of carriage as set forth in the final rule or for the use of portable oxygen concentrators not covered by the final rule.

⁵ America West's fleet consists of five airplane models: Airbus A319s and A320s and Boeing 757-500s, 737-300s and 737-200s. In addition, America West has agreed to test the fleet of its codeshare partner, Mesa Airlines, which operates a fleet of CRJ 200s, CRJ 900s and DeHavilland Dash 8s.

- i. a statement with supporting documentation detailing expenditures relating to the purchase or development of the described computer software;
 - ii. a detailed explanation of the method used by America West to determine the total of such expenditures for the purchase or development of the computer software described above; and
 - iii. a sworn statement from an appropriate company official certifying that the total expenditures were properly expended to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the sworn statement; and
 - d. America West Airlines, Inc., shall purchase non-intrusive slings to be used to transfer passengers from wheelchairs to aisle chairs and shall participate in community outreach including two meetings per year with local customers with disabilities. Within 26 months of the service date of this order, America West Airlines, Inc., shall submit:
 - i. a statement with supporting documentation detailing expenditures relating to the purchase of non-intrusive slings and its participation in community outreach;
 - ii. a detailed explanation of the method used by America West to determine the total of such expenditures for the purchase of slings and its participation in community outreach; and
 - iii. a sworn statement from an appropriate company official certifying that the total expenditures were properly expended to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the sworn statement;
- 12. The improvements described in ordering paragraphs 10(d) and 11 may be modified with the approval of the Enforcement Office. If America West Airlines, Inc., intends to seek a change in the type of improvement to be made, it must notify and obtain approval from the Enforcement Office 45 days prior to the date documentation is due pursuant to paragraph 11; and
- 13. Payments 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 instructions contained in the Attachment to this order. Failure to pay the penalty as ordered will subject America West Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

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

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp