



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

Issued by the Department of Transportation
on the 28th day of August, 2003

America West Airlines,

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

**Docket OST-2003-14194
Served: August 28, 2003**

CONSENT ORDER

This order concerns violations of 14 CFR Part 382 by America West Airlines (America West). Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that Part also violate the ACAA. ACAA and Part 382 violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. Finally, to the extent that the apparent 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. This order directs America West to cease and desist from future violations of the ACAA and Part 382 and assesses a compromise civil penalty for such violations.

BACKGROUND

In 2002, the Department of Transportation's Office of Aviation Enforcement and Proceedings (Enforcement Office) began an investigation of America West after the office learned that America West's policy about in cabin stowage of a passenger's folding wheelchair appeared to be inconsistent with 14 CFR §§ 382.21(a)(2) and 382.41(e). With respect to section 382.21(a)(2), it appeared that some of America West's newer aircraft did not have in cabin stowage space for a passenger's folding wheelchair. With respect to section 382.41(e), it appeared that the carrier gate checked all personal wheelchairs and did not permit a passenger to stow his or her folding wheelchair in the cabin of its aircraft irrespective of the size of the wheelchair or the availability of stowage space.

The Enforcement Office then made 10 telephone calls to America West's reservations system to determine the type of information America West employees provide passengers about in-cabin stowage of folding wheelchairs. These telephone calls indicated an apparent problem with America West's compliance with section 382.21(a)(2) in providing space in the cabin for stowage of a folding wheelchair. These calls also indicated an apparent compliance problem

with section 382.41(e) in allowing a passenger to stow his or her wheelchair in the cabin of any America West aircraft that had sufficient stowage space. In 9 of the 10 calls, America West representatives informed Enforcement Office investigators that only some of its aircraft, specifically its Boeing 757s, had a first class closet that could be used to stow a passenger's wheelchair. In one telephone call, the representative indicated that none of America West's aircraft had stowage space in the cabin to stow a passenger's folding wheelchair. In the 9 other telephone calls, America West representatives consistently told investigators that it was America West's policy in aircraft with closets to stow wheelchairs underneath the cabin in the cargo section, but exceptions could be made depending on the amount of carry-on luggage in the closet. The representatives also indicated that, ultimately, whether an exception could be made to America West's stowage policy would be up to the gate agents working flights with aircraft containing closets.

In a December 2002 response to an Enforcement Office inquiry, America West stated that it operates a fleet of 145 aircraft which consists of 12 Boeing 737-200, 39 Boeing 737-300, 13 Boeing 757-200, 32 Airbus A319 and 49 Airbus A320 aircraft. All of its aircraft have 100 or more passenger seats and 58 of its 145 aircraft were ordered after April 5, 1990, or delivered after April 5, 1992; those 58 aircraft consist of 30 Airbus A320s and 28 Airbus A319s. None of those 58 aircraft have a space to stow a passenger's standard-size folding wheelchair as required by 14 CFR 382.21(a)(2). America West's 13 Boeing 757 aircraft have first class closets but none of its Boeing 737 aircraft do.

America West further stated in its response that it intended to implement a policy in which the floor space between the last two rows of seats of the aircraft would be designated as a folding wheelchair stowage space on all of its aircraft.¹ When a wheelchair is stowed on the floor space between the last two rows of the aircraft, it will be secured with seatbelt extenders, attached to the passenger seats behind the wheelchair. On its Boeing 757 aircraft, America West stated that it would designate the first class closet as the priority stowage space if the seats ABC were unavailable. The policy would also state that in order for a passenger to be guaranteed the use of the designated space to stow his or her folding wheelchair, the passenger must pre-board. If the passenger did not pre-board, America West would honor a request to stow a folding wheelchair in the designated space only if accommodating the request would not delay the flight.

The Enforcement Office informed America West that its proposal to use the floor space between the last two rows of seats as priority wheelchair stowage space in its aircraft would have to receive Federal Aviation Administration (FAA) approval. America West sought and received FAA approval to use the floor space between the last two rows of seats for a wheelchair stowage space in all of its aircraft.

¹ In all of America West's Airbus, Boeing 757, and Boeing 737-300 aircraft, the floor space between the last two rows, seats ABC, would be designated as the priority stowage space for a passenger's folding wheelchair. In its Boeing 737-200 aircraft, the floor space between the last two rows, seats DEF, would be designated as the priority stowage space.

APPLICABLE SECTIONS OF 14 CFR PART 382

The ACAA, 49 U.S.C. § 41705, and 14 CFR Part 382 forbid discrimination in the provision of air transportation against qualified individuals with disabilities. See 14 CFR § 382.7(a)(1). It contains numerous directives, of which two are relevant to this case.

Specifically at issue is section 382.21(a)(2), which is an aircraft accessibility requirement. This regulation requires that "[a]ircraft with 100 or more passenger seats shall have a priority space in the cabin designated for stowage of at least one folding wheelchair."² Under this section, the term "folding" refers to the accordion-like movement of a wheelchair, where the two sides of the frame are brought together. The term "folding" does not anticipate disassembly, including the removal of the large or small wheels of the wheelchair.³ The term "wheelchair" refers to standard-size wheelchairs.⁴ Taking these terms together, section 382.21(a)(2) requires that all new aircraft with 100 or more seats maintain a space that is large enough to stow one passenger's standard-size folding wheelchair on a priority basis.

In addition, sections 382.41(e)(2) and (3) are at issue and they deal with the stowage of personal equipment, including personal wheelchairs. Under section 382.41(e)(2) a carrier must allow a passenger who pre-boards to have priority to store his or her folding, break-down, or collapsible, wheelchair over other carry-on items in aircraft that have a closet or other approved stowage space. If the passenger does not pre-board, then the passenger may use the space on a first come, first-served basis, and the wheelchair does not have priority over other carry-on items. Section 382.41(e)(3) states that if an approved stowage area is not available for a folding, collapsible, or break-down wheelchair, then the wheelchair shall be stowed in the cargo compartment.

In addition to the ACAA and Part 382, the issues described above appear to involve unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. To the extent that the apparent 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.

² Section 382.21(a) explains that this requirement applies to "new aircraft operated under 14 CFR part 121 and ordered by the carrier after April 5, 1990 or delivered to the carrier after April 5, 1992," (hereinafter referred to as "new" aircraft).

³ This understanding relies on the plain meaning of the word "folding." For example, Webster's Ninth New Collegiate Dictionary defines the term "folding" as: "to lay one part over another part of . . . to reduce the length or bulk of by doubling over . . . to clasp together . . . a part doubled or laid over another part . . ."

⁴ Our interpretation of "wheelchair" as used in section 382.21(a)(2) is within the meaning of the generic term "wheelchair," which has no limitation in and of itself, or as used in the regulation (other than folding). A major wheelchair manufacturer has represented to the Enforcement Office that the following dimensions characterize a standard-size wheelchair, when folded: 13 inches wide by 36 inches high by 42-50 inches long.

ANALYSIS

This order covers two issues: (1) the accessibility requirement that aircraft with 100 or more passenger seats ordered after April 5, 1990, or delivered after April 5, 1992, have stowage space for one passenger's folding wheelchair inside the cabin and (2) the service requirement that air carriers allow a wheelchair to be stowed in the cabin of aircraft where stowage space of sufficient size exists.

With respect to the accessibility requirement under section 382.21(a)(2), the evidence showed that prior to this investigation 58 of America West's aircraft did not have the required space for the stowage of one passenger's standard-size folding wheelchair. After notification of this omission by the Enforcement Office, America West implemented an FAA-approved stowage method by which it will stow one passenger's folded wheelchair on the floor space between the last two rows of seats in all of its aircraft, including aircraft not covered by section 382.21(a)(2). In its Boeing 757 aircraft, America West will stow a passenger's folded wheelchair in the first class closet if seats ABC of the last row are unavailable.

With respect to the service requirement under section 382.41(e)(2), the evidence showed that America West was communicating and implementing a policy that did not allow a passenger to stow his or her wheelchair in the passenger cabin in its aircraft with closets. The evidence further indicates that prior to this investigation carry-on luggage had priority over the stowage of a wheelchair in on-board closets.

In mitigation, America West states that it in good faith believed it was in compliance with the onboard stowage requirements set forth in 14 CFR §§ 382.21(a)(2) and 382.41(e)(2) and (3). Prior to this investigation, America West states that it gate checked each wheelchair and hand-carried it to the front of the jetway upon arrival so that the wheelchair was immediately available when the customer exited the aircraft. America West believed this policy met the Enforcement Office's goal of allowing wheelchair users to quickly retrieve their chairs near the aircraft door, thereby allowing their use immediately on exiting the aircraft. America West also believed its special handling policy fulfilled the DOT's stated goal of improving passengers' independent mobility, as compared to using a boarding chair or a ground chair.

Nonetheless, when the Enforcement Office notified America West of its non-compliance with the regulations regarding onboard stowage, America West states that it took prompt action to bring its policy into compliance. Specifically, America West created a priority stowage space for a passenger's folding wheelchair in all 145 aircraft in its fleet, not just the 58 aircraft covered by the regulations, at an estimated cost of nearly \$340,000 annually.⁵ America West states that it is committed to better serving its passengers with disabilities, and therefore felt strongly that it should offer onboard stowage on all flights, despite the small number of complaints it received regarding onboard stowage for folding wheelchairs.

The Enforcement Office views seriously America West's failure to provide proper accommodations under 14 CFR § 382.21(a)(2) in 58 of its aircraft and under 14 CFR § 382.41(e) in 13 of its aircraft with closets. After careful consideration of all the facts in this case, including

⁵ Approximately \$200,000 of this cost would relate to aircraft not covered by 14 CFR § 382.21(a)(2).

America West's prompt action to achieve compliance, the Enforcement Office continues to believe that enforcement action is warranted. In order to avoid litigation, America West has agreed to settle these matters and enter into a consent order to cease and desist from future similar violations.

By this order, the Department finds that America West failed to act in accordance with the ACAA and Part 382 in failing to provide for a space to stow one passenger's standard-size folding wheelchair inside the cabin of new aircraft with at least 100 seats and to allow a passenger to stow a personal wheelchair in the first class closets of 13 of its aircraft.⁶ This order directs America West to cease and desist from similar violations in the future and assesses a civil penalty of \$150,000 in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301. In addition, this order directs that America West notify the Enforcement Office within 30 days if it changes its designated space for the stowage of passenger's standard-size folding wheelchairs. Finally, this order directs that America West complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order. We believe that this consent agreement and the penalty it assesses will provide a strong incentive for America West and other carriers to comply with the ACAA and 14 CFR Part 382.

This order is issued under the authority contained in 49 CFR 1.57a 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 violated the requirements of 14 CFR § 382.21(a)(2) by failing to provide for space to stow one passenger's standard-size folded wheelchair on its aircraft ordered on or before April 5, 1990, or delivered on or after April 5, 1992, with at least 100 passenger seats;
3. We find that America West Airlines violated the requirements of 14 CFR § 382.41(e) by adopting a policy that did not allow a passenger to stow a personal wheelchair in the passenger cabin of its aircraft with closets;
4. We find that America West, in the instances described in ordering paragraphs 2 and 3, violated the Air Carrier Access Act, 49 U.S.C. § 41705;

⁶ After America West began implementing its policy to stow one passenger's folding wheelchair in the last row of seats, the Enforcement Office received a complaint that America West did not allow a passenger to stow her breakdown wheelchair and its components in an overhead bin on four separate flights. America West promptly acknowledged to the Enforcement Office that having a priority stowage space pursuant to 14 CFR § 382.21 would not affect its obligation under 14 CFR § 382.41(e)(1) to permit a passenger to stow his or her wheelchair and/or its components in overhead bins and/or under seats of any of its aircraft. Thereafter, America West clarified its written policies to reflect it has a separate and distinct obligation under 14 CFR § 382.41(e)(1) to allow passengers to stow wheelchairs and/or wheelchair components in overhead bins and under seats if they fit there.

5. We find that to the extent the violations described in ordering paragraphs 2 and 3 occurred in interstate air transportation, the conduct violated 49 U.S.C. § 41702;
6. We find that the violations described in ordering paragraphs 2 and 3 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;
7. We order America West and its successors and assigns to cease and desist from further violations of 14 CFR Part 382 and 49 U.S.C. §§ 41702, 41705, and 41712 by engaging in the conduct described in ordering paragraph 2 and 3;
8. America West is assessed a civil penalty of \$150,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 of which;
 - a. \$15,000 shall be due and payable 30 days after the service date of this order;
 - b. \$135,000 shall be credited to America West for the costs associated with improving its quality of service to disabled air travelers by providing a space for the stowage of one folding wheelchair on its aircraft that do not fall under the ambit of 14 CFR § 382.21. The documentation supporting these costs has been reviewed by the Enforcement Office;
9. America West Airlines is directed to notify the Enforcement Office within 30 days if it changes in any manner its designated space to stow passengers standard-size folding wheelchairs;
10. America West Airlines shall complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order;
11. On or before September 30, 2003, America West shall ensure that its written training materials, website, and contract of carriage, and all other written materials for internal or public use reflect that its policy on wheelchair stowage complies with 14 CFR Part 382; and
12. All payments made pursuant to this order 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. Failure to pay the penalty as ordered will subject America West Airlines 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 date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

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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

CHECKLIST: AIRCRAFT COMPLIANCE WITH DISABILITY RULES

Please fill out and certify as correct the following checklist. Fill out one checklist for each type of aircraft the carrier currently operates. If you do not have enough room on this sheet to provide the requested information, please provide the information on a separate sheet and attach it to the checklist.

Airline Name: _____

Aircraft type and series (e.g., 737-400): _____

Number of such aircraft: _____

PART I GENERAL CONDITIONS FOR INSPECTION

Are the aircraft operated under 14 CFR Part 121? _____

Do the aircraft have 30 or more passenger seats? _____

Are the following true?

- 1) The aircraft were ordered by the original customer after April 5, 1990 (Yes/No) _____
- 2) The aircraft were delivered to the original customer after April 5, 1992 (Yes/No) _____
- 3) The aircraft cabin has been refurbished since April 5, 1990 (Yes/No) _____

If the answers to items (1) through (3) are *all no*, stop here; terminate the certification of this particular type of aircraft.

PART II PRELIMINARY INFORMATION

Number of passenger seats: _____ Number of aisles: _____

Date aircraft ordered by original customer: _____

Date delivered to original customer: _____

Original customer: _____

If current operator was not original customer, date aircraft delivered to current operator: _____

Has the cabin been refurbished since April 5, 1990? _____

If yes, date the refurbishment was completed: _____

During refurbishment:

- Were existing seats replaced with newly manufactured seats? _____
 - Were closets replaced or new closets installed? _____
 - Were lavatories replaced or new lavatories installed? _____
-

PART III MOVABLE ARMRESTS

Number of passenger aisle seats:

First class: _____ Business class: _____ Coach class: _____ Aircraft Total _____

Number of passenger aisle seats that have a movable armrest on the aisle¹:

First class: _____ Business class: _____ Coach class: _____ Aircraft Total _____

Number of passenger aisle seats that do not have a movable armrest on the aisle because it was not feasible (for example, the armrest included an integrated tray table or entertainment system):

First class: _____ Business class: _____ Coach class: _____ Aircraft Total _____

Number of passenger aisle seats in exit rows where passengers with disabilities are not permitted to sit:

First class: _____ Business class: _____ Coach class: _____ Aircraft Total _____

How does the carrier ensure that individuals with disabilities, including mobility impairments, readily obtain seating in rows with movable armrests? _____

PART IV ACCESSIBLE LAVATORY

Complete this section only for twin-aisle aircraft. Before inspecting the lavatories, review the following:

§ 382.21 Aircraft accessibility

(a)(3) Aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lavatory. This lavatory shall permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair. The accessible lavatory shall afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users. The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments.

Based on your inspection, is there at least one accessible lavatory as described above? _____

PART V AIRLINE ON-BOARD WHEELCHAIR

Complete this section only for aircraft that have more than 60 seats and an accessible lavatory.²

If the aircraft has more than 60 seats *and* an accessible lavatory (as described in Part IV), is the aircraft equipped with a permanent airline on-board wheelchair? Yes/No _____

If yes, briefly describe the location and type of stowage space for this wheelchair (e.g., "closet in front of first class cabin"): _____

¹ Note: some movable aisle armrests will not lift until a button is pushed or a lever is pulled.

² Complete this section if the aircraft (with more than 60 seats) has an accessible lavatory, even if it has only one aisle and thus is not *required* to have an accessible lavatory.

PART VI STOWAGE SPACE FOR FOLDING PASSENGER WHEELCHAIR

Complete this section only for aircraft that have 100 or more passenger seats.

Is there a stowage space in the cabin (for example, a closet) designated for the accommodation of a passenger's folding wheelchair? _____

If yes, briefly describe the location and type of space for this wheelchair (e.g., "closet in front of first-class cabin"). _____

If there is such an area: What are its interior dimensions? _____

What is the weight-bearing capacity of this area? _____

Are there tie downs/restraints in this area? _____

PART VII CERTIFICATION

I certify, subject to penalties under 18 U.S.C. § 1001, that the information provided in this checklist is true and complete to the best of my knowledge.

Certification Date: _____ Certifier's name: _____

Certification location: _____ Certifier's telephone number: _____

Certifier's Signature: _____