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AVIATION CONSUMER ISSUES

(110–29)

HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

APRIL 20, 2007

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U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

April 18, 2007

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Aviation

FROM: Subcommittee on Aviation Staff

SUBJECT: Hearing on Aviation Consumer Issues

PURPOSE OF HEARING

The Subcommittee will meet on Friday, April 20, 2007, at 10:00 a.m. in room 2167 of the Rayburn House Office Building to receive testimony regarding aviation consumer issues.

BACKGROUND

Record numbers of people are flying. In 2006, 740 million passengers flew in the United States and the Federal Aviation Administration (FAA) predicts this figure will reach one billion by 2015. Flight arrival delays have increased with the growing traffic. According to the Bureau of Transportation Statistics (BTS), one out of four flights in 2006 arrived late or was cancelled, a majority of these due to weather. Over the last several years, as delays have increased, there have been calls for increased airline customer service oversight following highly publicized events where passengers have been stranded on aircraft for hours.

In 1999, a snow storm in Detroit with high winds and low temperatures led to nearly 50 Northwest Airlines aircraft and over 3,200 passengers being delayed on the airport's taxiways and aprons for four hours or more. Fifteen of the flights experienced delays of over eight hours and some of these ran out of food, water, and other amenities.

More recently, thunderstorms on December 29, 2006, severely impacted American Airlines operations at the Dallas Fort Worth International Airport, diverting many flights and shutting down the airport for nine hours. Of the 121 diverted flights that day, 67 aircraft with over 4,100 passengers were delayed on the tarmac for more than three hours, several for more than eight. These flights were delayed on the tarmac because forecasts predicted a weather break that would

have allowed the airlines to safely launch their flights. Despite the forecasts, no such break materialized.

On February 14, 2007, an ice storm crippled JetBlue's operation at New York's John F. Kennedy International and LaGuardia Airports and led to nine planes stuck for over five hours on the tarmac, with one of those planes delayed for ten hours. Similar to the December 2006 event, the imprecise weather forecasts played a large role in the erroneous decision to launch flights. Weather forecasters predicted rain at the airports, which would have allowed the safe take-off of the flights. Contrary to forecasts, though, the airports suffered through an ice storm. By the end of the day, the airline canceled 279 of 503 system-wide scheduled flights. The next day, with planes and crew displaced, the airline cancelled 217 of 562 system-wide flights. By the following Monday, JetBlue had cancelled more than 1,000 flights in total to restart its system and relocate displaced aircraft and crews. The airline was fully operational the next day.

Soon after the February 14, 2007, incident, U.S. Secretary of Transportation Mary Peters asked the Department of Transportation Inspector General (DOT IG) to review these two recent cases and examine the airlines' customer service commitments, contracts of carriage and policies dealing with extended ground delays aboard aircraft and to provide an assessment on why the American and JetBlue situations happened. Secretary Peters also requested recommendations for what airlines, airports and the federal government can do to prevent such situations in the future. This report is expected to be released in late May or early June.

I. Airline Customer Service Commitment

In response to the 1999 Detroit incident and subsequent calls for legislative action, the Air Transport Association (ATA), representing the major airlines, offered to improve their customer service voluntarily. The ATA drafted an "Airline Customer Service Commitment" (Commitment).[1] The ATA carriers agreed to develop individual Customer Service Plans to demonstrate ongoing dedication to improving air travel.[2]

The Airline Customer Service Commitments include:

- Offering the lowest fare available;
- Notifying customers of known delays, cancellations and diversions;
- On-time baggage delivery and return "lost" bags within 24 hours;
- Supporting an increase in the baggage liability limit;
- Allowing reservations to be held without payment, or canceled without penalty, for 24 hours;
- Providing prompt ticket refunds;
- Properly accommodating disabled and special needs passengers;
- Meeting customers' essential needs during long on-aircraft delays;
- Handling "bumped" passengers with fairness and consistency;

[1] On June 17, 1999, Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Continental Airlines, Delta Air Lines, Hawaiian Airlines, Midwest Express Airlines, Northwest Airlines, Southwest Airlines, Trans World Airlines, United Airlines and US Airways signed the Commitment.

[2] JetBlue, which began service in February 2000 and became an ATA member in 2001, was not a signatory to the 1999 Commitment.

- Disclosing travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration;
- Ensuring good customer service from code-share partners; and
- Being more responsive to customer complaints.

By June 2001, most of the 14 ATA member airlines voluntarily incorporated the ATA customer service commitments into their contracts of carriage. A contract of carriage is the document air carriers use to specify legal obligations to passengers. Each air carrier must provide a copy of its contract of carriage free of charge upon request. The contract of carriage is also available for public inspection at airports and ticket offices.

II. Department of Transportation (DOT) Enforcement of Consumer Issues

The DOT Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (OAEP) is responsible for enforcing air travel consumer protection requirements, protecting against unfair and deceptive practices, and unfair methods of competition in air transportation. The OAEP, with a staff of 30, is the prosecuting office for aviation consumer enforcement cases and has the authority to enter into settlements or "consent orders" relating to those cases. Their enforcement work is comprised of roughly forty percent on disability and civil rights complaints, thirty percent on economic authority and economic licensing issues, and thirty percent on consumer protection, such as truth in fare advertising. When violations occur, OAEP often pursues enforcement action, which can range from warning letters to a hearing with an administrative law judge. Serious enforcement cases are virtually always settled by a formal consent order, which reflects a resolution between OAEP and an entity, that is signed by the Deputy General Counsel. Typically such an order includes a finding of violations, a cease-and-desist condition, and a judgment of civil penalties.

The Aviation Consumer Protection Division (ACPD) within the OAEP, with a staff of 13, receives consumer complaints, investigates them and compiles the DOT monthly reports. The monthly Air Travel Consumer Report summarizes data filed by the carriers on flight delays, mishandled baggage, and denied boardings, and also lists by carrier the number of complaints registered with DOT on matters such as baggage, refunds, and flight irregularities.

According to OAEP, DOT received 8,321 air travel complaints in 2006, which were reviewed by the ACPD. According to the DOT IG, in 2003, the OAEP had 10 more people and 2,300 fewer complaints to handle and from 2003 to 2005, travel funding for compliance and enforcement purposes declined from $51,000 to $3,500.

III. DOT IG Reports on Customer Service

Section 224 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21 -- P.L. 106-181) directed the DOT IG to monitor the implementation of the airline customer service plans and evaluate how well the airlines fulfilled their commitments. AIR 21 also raised the maximum penalty for violating the passenger consumer protection provisions, ordered

DOT to raise the maximum liability for lost luggage, and made non-disclosure of e-ticket expiration dates an "unfair or deceptive" practice.

On February 12, 2001, the DOT IG released its *Final Report on Airline Customer Service Commitment,* which concluded that while the airlines were making some progress on a few of the commitments, there were significant areas of deficiency. Customers were not adequately informed of flight delays or cancellations and the airlines had not clearly defined their terms for when and how they will meet customers' essential needs during long, on-board delays. Bumping practices for flights that oversold were still inequitable and inconsistent. The airlines' Commitment and contracts of carriage were not being followed consistently for accommodating delayed overnight passengers. The DOT IG report found that airlines were complying with the commitment to offer the lowest fare, to provide prompt ticket refunds, to be more responsive to customer complaints, and to support a higher payout for lost baggage.

The DOT IG followed its February 2001 report with a June 20th, 2001, *Status Report on Airline Customer Service* on the progress made by the 14 ATA airlines. The report found that most airlines had incorporated the Commitment into their contracts of carriage, instituted performance quality assessments and petitioned DOT to revise regulations for reporting mishandled baggage and compensating passengers involuntarily bumped from a flight. The ATA airlines also formed a task force to develop plans for accommodating passengers delayed overnight, ensuring airport display monitors are correct, and providing for passengers' needs during long on-board delays.

Following the December 2004 holiday period, the DOT IG released *Review of December 2004 Holiday Air Travel Disruptions,* which appraised airline customer service issues as they related to severe air service disruptions in parts of the United States, focusing on issues related to Comair and US Airways flights. During the seven-day holiday travel period, almost fifty percent of all flights were either delayed or cancelled. Comair, based in Cincinnati, was not prepared for the severe weather and either canceled or delayed 89 percent of its scheduled 2004 holiday travel period departures. The DOT IG found that severe weather coupled with a failure of Comair's crew scheduling computer system, caused the disruption, which ultimately affected over 260,000 passengers. The DOT IG report also found that US Airways' problems centered on staffing shortages during the holiday travel period, especially at its Philadelphia hub. As a result, 53.8 percent of US Airways flights were delayed, 5.2 percent were canceled, and tens of thousands of bags were misdirected.

On November 21, 2006, the DOT IG released its *Follow-up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment.* The DOT IG found that airlines need to resume efforts to self-audit their customer service plans, emphasize the importance of providing timely and adequate flight information, train personnel who assist passengers with disabilities, provide transparent reporting on frequent flyer award redemptions, and improve the handling of bumped passengers. In addition to airline suggestions, the DOT IG recommended that the DOT's OAEP improve its oversight of air traveler consumer protection requirements and that DOT strengthen its oversight and enforcement of air traveler consumer protection rules. According to the DOT IG, the OAEP is spending the majority of its resources on investigations and enforcement of civil rights issues, including complaints from passengers with disabilities. The DOT IG states that when OAEP discovered violations and assessed penalties, it almost always forgave the penalty if the air carrier agreed to change the conditions under which the penalty was assessed. In some cases, there is no follow-up to ensure the conditions have changed.

The 2006 DOT IG report recommends the follow actions be taken by the DOT:

- Display a direct link on its website to on-time performance statistics by flight number;
- Reconsider taking enforcement actions against air carriers that consistently advertise unrealistic flight schedules;
- Review if maximum denied boarding compensation should be increased and expanded to cover aircraft with 31 to 60 seats;
- Examine through rulemaking the need to standardize reporting of airline data on frequent flyer redemptions;
- Strengthen training requirements for employees who assist passengers with disabilities including contractors;
- Strengthen strategies for monitoring air carrier compliance with conditions of consent orders;
- Implement centralized electronic case monitoring system; and
- Resume efforts to enforce truth in advertising for lowest advertised fares and redemption of frequent flyer awards.

IV. Bills Introduced

During the 106th and 107th Congresses many bills were introduced to strengthen airline consumer protections. The most consistent themes included: access to low fares; the right to deplane; lost and damaged baggage; bumping and overbooking; delays and cancellations; DOT enforcement provisions; federal preemption of state consumer law; partial ticket use and travel agent provisions.

In the 110th Congress, bills have also been introduced in the House and Senate that would address tarmac delays, conditions on aircraft, and making passengers aware of their rights.

WITNESSES

MEMBER PANEL

The Honorable Mike Thompson
Congressman
California, District 1

The Honorable Jean Schmidt
Congresswoman
Ohio, District 2

The Honorable Gregory W. Meeks
Congressman
New York, District 6

PANEL I

The Honorable Calvin L. Scovel, III
Inspector General
U.S. Department of Transportation

The Honorable Andrew B. Steinberg
Assistant Secretary for Aviation and International Affairs
U.S. Department of Transportation

Accompanied by
Mr. Dan Smiley
Operations Manager
FAA Command Center

PANEL II

Mr. David Neeleman
CEO
JetBlue

Mr. Jim May
President and CEO
Air Transport Association

Ms. Kate Hanni
Executive Director
Coalition for Airline Passengers' Bill of Rights

Mr. Kevin Mitchell
Chairman
Business Travel Coalition

Mr. Paul M. Ruden, Esquire CTC
Senior Vice President for Legal and Industry Affairs
American Society of Travel Agents

HEARING ON AVIATION CONSUMER ISSUES

Friday, April 20, 2007,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION, AND INFRASTRUCTURE,
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT,
Washington, DC.

The committee met, pursuant to call, at 10:00 a.m., in Room 2167, Rayburn House Office Building, the Honorable Jerry F. Costello [chair of the committee] presiding.

Mr. COSTELLO. The Subcommittee will come to order.

The Chair will ask all members, staff and everyone to turn off electronic devices or to put them on vibrate.

The Subcommittee meeting today is to hear testimony on the aviation consumer issues. I want to inform everyone that I have been informed that around 10:30 to 10:45 we will have a series of votes, probably as many as seven or eight votes, up to an hour. So I will give my opening statement, call on the Ranking Member of the full Committee and the Subcommittee to make remarks, then we will go directly to our colleagues, who will make up the first panel.

I would like to welcome everyone here today to our Subcommittee hearing on Aviation Consumer Issues. This hearing is timely given the recent string of delayed and canceled flights, resulting in lengthy tarmac delays and again, highlighting customer service issues. Voluntary efforts by the industry to improve airline service have come under strong criticism, and I believe closer oversight of the aviation industry is needed.

While I question a one size fits all legislative approach to regulating consumer issues, changes must be made and they must be made now. As I have said before, if the industry does not take action to address these issues, then Congress will.

For anyone to gloss over the problems by saying that these instances are few and far between, or outside the norm, is missing the point. To force anyone to be stranded on a tarmac for eight, nine, ten or more hours just one time is unacceptable.

This hearing is the first in a series of hearings that this Subcommittee will hold to review aviation consumer issues. If anyone in the industry thinks that if we can get by this hearing that we will go back to business as usual, they are wrong. We are not going back to business as usual, and if the industry does not take action, we will.

A 2006 audit by the Department of Transportation's Inspector General office found that only five of the airlines that had signed

onto the voluntary 1999 Customer Service Commitment had internal quality assurance and performance measurement systems in place to meet their promises, including addressing passengers' essential needs during delays. I find it very hard to believe that this is progress, as some have claimed.

Further, I am disappointed that the progress was not made on implementing well-defined contingency plans. This is not a new issue. Airlines were aware of the need for contingency plans to deal with extreme weather back in 1999. However, the DOT Inspector General notes that only a few airlines' contingency plans specify in any detail the efforts that will be made to get passengers off the aircraft when delayed for extended periods, either before departure or after arrival. With long onboard delays on the rise from 2005 to 2006, this must be a priority for the airlines and the industry.

I was pleased that in response to the December 2006 American Airlines incident and the February 2007 JetBlue incident, the Department of Transportation requested that the DOT Inspector General review those incidents, as well as the airlines' 1999 voluntary commitments, so it can consider what action can be taken and should be taken by the Department of Transportation. I am interested in hearing from the DOT and the Inspector General on the progress of this report.

I was also pleased that after JetBlue's February debacle they took immediate action by creating a customer bill of rights and incorporating those rights into a contract of carriage. Passengers make an investment when purchasing a ticket. They expect to get to their destination safely and on time. There is a cascade effect that a delay or a cancellation has on passengers and their plans.

Like most members of this Subcommittee and of this Congress, I travel frequently. I see first-hand the frustrations and customer service issues passengers encounter each and every day from being trapped on the tarmac for hours to lost luggage to being stranded at a location not of one's choosing or simply a lack of information regarding reasons for delays and cancellations.

Many times the airlines' answer to a problem is to give passengers an 800 number and simply send them on their way and wish them good luck. This is simply unacceptable. Communication is the key to improving any customer service system. The airlines must make customer service a priority. They must make every effort to inform passengers of delays and the cause, provide for passengers' essential needs when delays or cancellations occur, and ensure that passengers are informed of airline policies and the customer's rights before they fly.

Greater transparency by the airlines also is important. Airlines must put policies in place and inform their passengers of these policies. It should not be a guessing game or left up to the passenger to try and sort it out.

With that, I again want to make it clear to everyone that this is the first in a series of hearings on this issue. This Subcommittee intends to closely monitor the actions taken by the airlines and we will hold additional hearings to check on their progress.

Before I recognize the Ranking Member of the full Committee for his opening statement or comments, I would ask unanimous consent to allow two weeks for all members to revise and extend their

remarks and to permit the submission of additional statements and materials by members and witnesses.

Without objection, so ordered.

With that, the Chair recognizes the Ranking Member of the full Committee, Mr. Mica, for his opening statement or remarks.

Mr. MICA. Thank you, Mr. Costello. I want to thank you as the Chair of the Subcommittee, and also Mr. Petri, our Ranking Member, for taking this difficult issue head-on. I think it is an important issue. We will have members testifying in a few moments, and then hear from leaders in industry and Government as to how we can do a better job in guaranteeing the safety and the passage of people through our aviation system, particularly in difficult times.

I would like to point out just a couple of things, though. If we look at the situation we face, most long airline delays are due and related specifically to weather, severe weather. For the most part, these situations are extremely rare. Valid statistics and facts will point that out, any analysis will point that out.

Long taxi-out delays, such as occurred with American Airlines in December and JetBlue in February, are also very rare instances.

However, the nature of the industry has changed. Part of what has happened is, with the advent of discount airlines, what has occurred is the discount airlines are doing a faster turnaround of their aircraft. And to compete, all airlines are now doing this. And if you look at the situation that emanates from this, in a severe weather situation, we may have planes coming in, passengers being unloaded, another plane coming in quickly, that plane going out, not able to take off.

So what we have created with this rapid turnaround is having planes with no place to go. They can't take off, they can't come back to the gate. Which is an interesting phenomenon, most people don't look at what has happened in the industry. But that is part of what happened in these two instances that we look at.

Now, while some airlines have already begun to establish some self-imposed policies to better accommodate passengers affected by delays, caused by extreme weather, I think we have to do a better job in having a policy, a uniform policy, to deal with health and life safety situations. Passenger safety and life safety is a shared responsibility between airlines, airports and the Government.

But let's face it, folks, the Government cannot guarantee customer satisfaction. That is one of the things that we cannot do. We have all seen the bad press that the airlines have received, and some of them have made, as I said, voluntary changes. However, where safety and health hazards are exposed upon passengers, airports and airlines should have in place contingency plans. We should have a uniform requirement for that, to remove passengers from those hazardous situations.

In that regard, I have sent today, actually should receive it today, we sent it out last night, to Secretary Peters a request and asked respectfully that the Federal Aviation Administration, and a copy to Marion Blakey, develop a uniform policy to determine acceptable procedures for extraordinary flight delays, particularly when health and life safety of passengers may be at risk. So it is hard for us to legislate that, but I think we have a responsibility for the Department and FAA to do that.

So each airline and each airport would be given the flexibility to develop its own plan, due to varying environments and situations and configurations at the many airports and airline hubs that we have across the Nation.

At the end of the day, these events painfully demonstrate that our ever more critical need to modernize our Nation's air traffic control system, we also are better able to deal with these types of delays, which will in fact become more frequent this summer, and in continuing months again when we get into severe winter weather because of our system's congestion and inability to have the technology available to deal with this.

I thank you for the opportunity to participate. I am right on time.

[Information follows:]

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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Chairman

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John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

April 19, 2007

The Honorable Mary E. Peters
Secretary
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Dear Secretary Peters:

The recent high profile weather-related delays involving commercial air carriers in December 2006 and February 2007 have raised important issues surrounding passenger rights. I, and many others, have concerns regarding health and safety hazards exposed upon the traveling public as a result of these delays.

I respectfully request that the Federal Aviation Administration (FAA) develop a policy to determine acceptable procedures for extraordinary flight delays, particularly when health and life safety of passengers may be at risk. Specifically, I request that the FAA work with airports and air carriers to develop contingency plans appropriate for each airline and airport to care for airline passengers in the event that health and safety hazards arise as a result of extremely long delays.

I appreciate your attention to this important aviation safety matter.

Sincerely,

John L. Mica
~~Ranking~~ Republican Member

CC: Marion C. Blakey, Administrator, Federal Aviation Administration

Mr. COSTELLO. I thank the Chairman for his comments.

The Chair recognizes the Ranking Member of the Subcommittee, Mr. Petri. We will follow and enforce the five minute rule because of the time constraints that we are facing. Mr. Petri?

Mr. PETRI. Thank you very much.

I would ask unanimous consent that a statement from Mr. Mica be placed into the record.

Mr. COSTELLO. Without objection, so ordered.

Mr. PETRI. I am happy to welcome all the witnesses here today, along with our Chairman. Recent high profile incidents in New York and Dallas have brought a lot of attention to long flight delays on the tarmac. While these instances are rare, they raise important concerns of how the industry and the FAA can safely and efficiently operate our national air space system.

First responsibility to the passenger from both Government and industry obviously is the safety of the traveling public and that passenger. In Dallas, a freak lightning storm that stalled over the Dallas Fort Worth Airport prevented American Airlines from safely getting its passengers to their destination. In New York, unanticipated ice storm conditions prevented JetBlue aircraft from safely launching flights and in some cases, even froze the wheels of the aircraft to the tarmac. In both cases, weather was the major cause of delays.

Because most of the causes of long delays, such as weather, are out of human control, it is important to consider the steps that the industry has and can take to mitigate the effect of delays on their customers. I look forward to hearing what policy changes the airline industry, both JetBlue Airlines individually and the Air Transport Association collectively, has taken to better respond to weather delays. Over the last eight years or so, the Department of Transportation's Office of Inspector General has been active in investigating and evaluating major delay events. Over the years, the industry has voluntarily adopted recommendations made by the Inspector General, much to the benefit of the traveling public.

Shortly after this February's ice storm incident in New York, Secretary Peters asked the Office of Inspector General to review and evaluate the most recent major delays and report its findings. I look forward to hearing from the Inspector General and particularly learning about any recommendations he may have for the industry.

At the end of the day, major delay events painfully demonstrate the ever more critical need to modernize the Nation's air traffic control system. In some sense, long tarmac delays are really just the tip of the iceberg. With the anticipated growth in operations over the next 10 to 15 years, these types of delays will not be limited to days when there is severe weather. They might become the norm, rather than an anomaly.

Therefore, I believe Congress must focus its attention on ensuring the transformation of the air traffic control system during consideration of the FAA reauthorization.

I thank all of our witnesses, particularly our colleagues, for appearing before the Subcommittee today to share your concerns and points of view. With that, I yield back the balance of my time.

Mr. COSTELLO. The Chair thanks the gentleman and recognizes the gentleman from Oregon, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Thank you for this important and timely hearing.

I actually introduced my first passenger bill of rights in 1987 with then-Representative, now Senator Cardin. We are still falling far short of the mark. A number of times Congress has been deterred from imposing a basic floor for customer protections. I would hope that we won't be again.

Some would point to the DOT numbers and say, well, look, there is only a few thousand complaints. Who knows that the DOT takes complaints? Nobody. I established that office. But unfortunately, I couldn't get the other provision, which is a mandatory printing of a 1-800 number, or these days, a web site reference on everybody's ticket or boarding pass and posted at the airport. Nobody knows DOT is there. They don't know they can take complaints there. Most people don't even know what it is.

So that would be the most minimal thing we could do, is get a real measure of how big these problems are, by providing that access to our citizenry. Certainly security and safety come first. But we cannot ignore consumer protection. I am pleased we are having this hearing and look forward to the actions the Committee is going to take.

Mr. COSTELLO. The Chair thanks the gentleman from Oregon. Let us go to our first panel of witnesses. We have three colleagues that I will recognize in order. The gentleman from New York's Sixth District, Congressman Gregory Meeks; next will be Congressman Mike Thompson from the First District of California; and last will be Congresswoman Jean Schmidt from the Second District of Ohio.

Congressman Meeks, welcome. We welcome all of you here today. We look forward to hearing your testimony and the Chair recognizes you at this time.

TESTIMONY OF THE HONORABLE GREGORY W. MEEKS, A REPRESENTATIVE IN THE UNITED STATES CONGRESS FROM THE STATE OF NEW YORK; THE HONORABLE MIKE THOMPSON, A REPRESENTATIVE IN THE UNITED STATES CONGRESS FROM THE STATE OF CALIFORNIA; THE HONORABLE JEAN SCHMIDT, A REPRESENTATIVE IN THE UNITED STATES CONGRESS FROM THE STATE OF OHIO

Mr. MEEKS. Thank you, Mr. Chairman and Ranking Member Petri and all members of this Subcommittee.

Thank you for giving me the opportunity to add my voice to this debate.

Throughout my tenure in the House, the members of this distinguished Committee and its able staff have provided me the opportunity of giving my opinion and hearing my voice, so that I can help shape public policy on aviation issues. As you have just indicated, as the representative from New York's John F. Kennedy Airport, I am grateful for the many professional courtesies extended to me by this Committee.

Let me begin by stating that passengers should not ever be stranded for untold hours on an airplane. That is unacceptable.

The Valentine's Day ice storm, which caused havoc up and down the eastern coast, saved its worst damage for New York, specifically at JFK Airport. The storm resulted in hundreds of canceled flights and stranded passengers. It resulted in a media firestorm for several days, and once again raised issues by this Committee and the Congress in the late 1990s.

Could some things have been done differently during this unfortunate incident? Absolutely. Should some things have been done differently? Absolutely. The airlines can do better, and we expect them to do better. But we should also understand that there are mechanisms in place to achieve that currently.

When the airline industry was deregulated 30 years ago, the Congress adopted a policy to put market forces in place to address commercial air transportation issues. The airline industry is one of the most competitive of any industry today, with the legacy passenger carriers directly competing against each other and against new entrants. As a result, the public has benefitted. Today, consumers have more choices among airlines, more destinations, lower fares, innovative amenities and better service.

The proof of that continues to be the record amounts of individuals who travel each year, now going over one billion. Today, U.S. airlines conduct approximately 14 million takeoffs and landings a year. As indicated earlier, according to the U.S. Department of Transportation Bureau of Statistics in 2006, there were 36 flights out of the more than 7.1 million that were delayed five hours or more after pulling away from the gate. While this ratio is statistically insignificant, the frustration felt by those affected is very real.

The question is, what leads to these unusual delays? There is a combination of multiple factors that contribute to this problem. Most often, these factors include severe weather and air traffic control directives. I personally experience some of this every week going back and forth, traveling through JFK and LaGuardia, we have delays that are related to airport and airspace capacity challenges.

These factors are beyond the control of the individual airlines. It is driven more by the fact of our national airspace ATC system is built on outdated technology that was deployed in the 1950s. Until a new, satellite-based ATC navigation system is employed, passengers will continue to experience longer and longer delays. If the ATC system is not modernized, the delays will continue to mount.

While the delays passengers experience were serious and regrettable, we also must let market forces work so that it can begin to address some of the concerns and issues that we have. In a competitive environment, as is the airline industry, carriers cannot afford to lose customers to competitors, especially when profitability is often determined by those paying passengers as well as the ever-rising, increasing cost of fuel.

Furthermore, the airline industry is very capital-intensive. Much of the investments that they make improve the traveling experience of its passengers. For example, when an airline builds a new terminal or upgrades its facilities at an airport, the passengers benefit. When a consumer can fly free because of purchases made through a credit card, that is a benefit. Today passengers can check

online 24 hours in advance to avoid lines at the airport, that is a benefit. And of course, there are many others.

Like other deregulated industries, such as telecommunications and financial services, airline passengers and the general public have reaped many benefits from deregulation. Competition is alive and well and market forces are working. As a result, the focus of this Committee, I believe, should rightly be on how airlines prepare for, accommodate and respond to passenger needs when delays caused by unusual conditions are encountered.

I am here, Mr. Chair, because JFK Airport is the economic heartbeat of my district. My concern is that this situation is more complex and legislation is not necessarily the answer. All options, all options need to be evaluated carefully so we avoid unintended consequences that will handcuff an industry that is already on life support. Rushing to legislate can potentially jeopardize the livelihood of thousands of my constituents who earn their living and access to the American dream based on the survival of this industry.

I will stop there, I have something else, but I know we are getting onto the FAA reauthorization. I have some comments about that also, because it affects my airport and others in New York, very definitely. But that is in the record, and thank you, Mr. Chairman, for the opportunity to testify.

Mr. COSTELLO. The Chair thanks the gentleman for his thoughtful testimony.

Let me announce that there is a vote that is occurring right now. We have exactly 11 minutes left on the vote. There are nine votes, so it will be at least an hour, probably an hour. But we will return immediately after the last vote, which we anticipate will be in about an hour.

But we would like to get Mr. Thompson and Congresswoman Schmidt, if you could summarize your testimony, we would like to accept it now, if you would. Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman, Ranking Member Petri and members of the Committee, for holding this important hearing.

I also want to acknowledge and thank Ms. Kate Hanni, who is here today. You will hear from her later. She is a constituent of mine. She has really led the effort to improve customer service by the airlines.

Mr. Chairman and members, she was on the flight on December 29th from San Francisco to Dallas that was diverted to Austin. After flying to Austin, or whatever, that takes a couple of hours, two and a half hours, she then sat with everyone else on that plane for nine hours on the tarmac. As numerous people have stated today, that is just absolutely unacceptable.

Passengers on that flight experienced toilets that didn't work. They didn't have appropriate food. They didn't have safe drinking water. There were pets on board that were making a mess, causing other problems. And parents even had to resort to making makeshift diapers for their babies out of adult clothing. I think we know that that is unacceptable.

On the same day, Little Rock, Arkansas, folks sat on the tarmac four or five hours. There are a number of examples of this. It is not the limited instances that have been referenced today.

As you know, and I think Mr. DeFazio mentioned, the industry in the past has said that they were going to take voluntary action to fix this problem. And as we also know, when the Wendell H. Ford Aviation Investment Reform Act for the 21st Century was passed, that mandated the Department of Transportation Office of Inspector General analyze the progress made by the airlines under their voluntary actions. As we also know, that analysis by the Inspector General suggests that also some progress was made, there is still a long way to go.

February this year, the Orlando Sentinel editorialized, and I think they said it best, they said, leaving it to the airlines to provide customers with better standard of service has not worked. That is wy I applaud your effort, and I think it is time that we step up efforts here in Congress to improve things.

The bill that I have introduced gives passengers the right to deplane after three hours, with two exceptions: if the pilot determines it is unsafe to do so, obviously that wouldn't happen; and if the pilot determines within a reasonable amount of time, 30 minutes, that they can take off, we allow for two extensions of that. It also requires that passengers have food, clean water and that the toilets work.

It also calls the FAA, the Department of Transportation, in on this. It has been referenced today. There are problems. We need to figure out how to work through some of those problems. Infrastructure problems, no question. The regulatory morasses that is out there, if a plane leaves the queue to let somebody off, they can't get back in, those are all things that we need to do.

But I believe it is time that we do this, and I look forward to working with you, Mr. Chairman, Mr. Petri and other members of the Committee, to make sure that passengers have the ability to know what they can expect out of their airlines, without putting the airlines into some sort of terrible box, as Mr. Meeks has mentioned today.

Thank you, and I would like to submit my entire testimony for the record.

Mr. COSTELLO. We will accept your testimony, and let me thank you for your thoughtful testimony.

Let me ask you, Congresswoman Schmidt, can you summarize your testimony in four minutes?

Mrs. SCHMIDT. Absolutely.

Thank you, Mr. Chairman, and I thank the panel. I would venture to guess that all of us at one time or another have been on the tarmac for a certain period of time. Given the amount of time that we in Congress spend on planes, we have spent some time in a delay.

The recent incidents, some of which are deeply troubling, have brought light on an issue, and I believe can create some positive results. I decided to launch my own research project on this issue to find out what was happening and why. Based on data provided to me by the Bureau of Transportation Statistics, I randomly chose delays from last year and asked each airline to explain the cause of each delay. While I am still compiling the results, this morning I do have some preliminary findings.

All of this data is for calendar year 2006. In 2006, commercial air traffic system handled over 7.1 million flights, carrying some 740 million passengers. That amounts to 19,000 flights averaged per day. During 2006, there were 1,295 flights that the BTS reported were delayed on the tarmac for more than three hours. That is 2/100ths of a percent of all flights.

So if you were like me and found yourself on one of those flights, congratulations, you really beat the odds. But the data is quite revealing.

However, one data set that is not collected by the BTS that needs to be is diverted flights. These flights, like the now infamous American Airlines flight, do not fall into the category collected by the BTS. As this Committee puts together an FAA reauthorization bill, I hope that it will include language directing the BTS to compile statistics on diverted flights. This information should give us a clearer picture of the situation.

Of these 1,295 flights, I randomly chose 100 of them in a sample with all the major carriers. Most of those carries have responded with their explanations. While I am still compiling the data, some patterns are quickly emerging. The vast majority of these delays are caused by weather officially. As a frequent flyer, I am extremely grateful we are not flying in bad weather.

But the underlying cause, more than the weather, appears to be a horribly inadequate air traffic control system that simply must be modernized. Mechanical delays, what I will term as regulatory delays, are also a factor in a much smaller scale. An even smaller factor, but more frustrating, is human error. That would include the just dumb mistakes like grounds drops with planes a few feet from the gate, or managers that simply forgot to call to appeal to the tower.

While modernization would not have eliminated all 1,295 of those delays, it appears to me that a vast majority of them would have either been reduced dramatically in duration or totally eliminated. While my research project does not deal with the frustration passengers have experience, I strongly feel that the best course for our Committee is to try to eliminate the root causes of these delays, which I believe is outdated technology.

Once I have completed my report, I look forward to sharing it with every member of this Committee. Truly, I believe together we can make great strides in eliminating these very uncomfortable delays. Thank you again for this opportunity. I look forward to continuing to work with you on this important issue.

Mr. COSTELLO. The Chair thanks you for your testimony, and you came in under four minutes. So we appreciate that as well.

The Subcommittee will stand in recess until after the last vote. As I said, we anticipate that we will have at least an hour that we will be on the Floor. So after the last vote, the Subcommittee will come back and hear our second panel.

[Recess.]

Mr. COSTELLO. The Subcommittee will come to order.

We will now hear from our first panel after we heard from the three members of Congress. The next panel is the Honorable Calvin Scovel, Inspector General of the U.S. Department of Transportation; the Honorable Andrew Steinberg, the Assistant Secretary

for Aviation and International Affairs, with the U.S. Department of Transportation. And I understand that he in fact is accompanied by Dan Smiley, Operations Manager of the FAA Command Center.

With that, the Chair recognizes Mr. Scovel to summarize his testimony under the five minute rule.

TESTIMONY OF THE HONORABLE CALVIN L. SCOVEL, III, INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION; THE HONORABLE ANDREW B. STEINBERG, ASSISTANT SECRETARY FOR AVIATION AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY: DAN SMILEY, OPERATIONS MANAGER, FAA COMMAND CENTER

Mr. SCOVEL. Thank you, Chairman Costello, Ranking Member Petri and Members of the Subcommittee. I appreciate the opportunity to testify this afternoon. This hearing is both timely and important, given the recent events this past winter involving extended ground delays with passengers stranded aboard aircraft for extended periods, some for 9 hours or longer.

Secretary Peters has serious concerns about this issue and has asked my office to review the airlines' customer service commitments and policies for dealing with extended ground delays and their contingency plans for such events.

As this Subcommittee is aware, airline customer service took center stage in January 1999 when a similar situation occurred with hundreds of passengers trapped onboard planes on snowbound runways in Detroit. At that time, following congressional hearings, member airlines of the Air Transport Association, ATA, agreed to execute a voluntary airline customer service commitment to demonstrate their dedication to improving air travel.

In February 2001, we reported that the ATA member airlines were making progress toward meeting the commitment, which has benefited air travelers in a number of important areas. However, the commitment did not directly address the underlying cause of deep-seated customer dissatisfaction: flight delays and cancellations. This is still the case today.

The debate again is over the best way to ensure improved airline customer service, whether it is voluntarily implemented by the airlines, legislated by the Congress, further regulated by the Department, or achieved through some combination of these. This is clearly a policy issue for Congress to decide.

Today, I would like to discuss three important points regarding airline customer service as we see them, based on the results of our previous airline customer service reviews and our ongoing work. First, the airlines must refocus their efforts to improve customer service. In November of 2006, we reported that ATA member airlines' customer service plans were still in place to carry out the provisions of the commitment, including meeting passengers' essential needs during long, on-board delays.

However, we found several areas where airlines need to refocus their efforts to improve customer service. The airlines need to resume self-audits of their customer service plans. A quality assurance and performance measurement system and these audits are necessary to ensure the success of the commitment and the cus-

tomer service plans. In our 2006 review, however, we found that just five of the ATA airlines had quality assurance systems and performed self-audits.

The airlines must also emphasize to their customer service employees the importance of providing timely and adequate flight information to passengers. Further, the airlines must disclose chronically delayed flights to customers. We recommended in our 2001 report that airlines disclose to their passengers, at the time of booking and without request, the on-time performance for those flights that are consistently delayed. To date, none of the airlines have adopted this recommendation.

Second, the Department should take a more active role in airline customer service issues. DOT is responsible for oversight and enforcement of air traveler consumer protection requirements. However, when DOT discovered violations and assessed penalties, it almost always forgave or offset the penalties if airlines agreed to mitigate the condition for which the penalties were assessed.

DOT's follow-up monitoring of compliance was limited. In some cases, there was no follow-up monitoring at all. Also, instead of on-site compliance reviews, the Department has primarily relied on air carriers' self-certifications.

Third, the airlines must overcome challenges in mitigating extraordinary flight disruptions. In 2006, approximately 10 percent of all commercial flights were delayed due to poor weather conditions. While it is too early to tell what this summer will hold, the picture in 2007 so far shows that the number of delays and cancellations is increasing and the length of delays is longer.

As I mentioned earlier, meeting passengers' essential needs during long, on-board delays is a serious concern of Secretary Peters. She asked my office to examine the airlines' customer service plans for dealing with these events, especially the recent events at American Airlines and JetBlue Airways, and provide recommendations as to what can be done to prevent a recurrence.

We are in the early stages of this review and plan to brief the Secretary in June and issue our report and recommendations shortly thereafter. However, our work thus far has shown that there are a number of actions that airlines, airports, the Department, and FAA can undertake immediately, without congressional action, to improve airline customer service.

One: airlines should implement quality assurance and performance measurement systems and conduct internal audits of their compliance with the provisions. Two: the Department should revisit its current position on chronic delays and cancellations and take enforcement actions air carriers that consistently advertise unrealistic flight schedules, regardless of the reason.

Mr. Chairman, I see that I am at my time. If I can have one more minute, please, I can finish up. Thank you.

Three: the airlines, airports, and FAA should establish a task force to coordinate and develop contingency plans to deal with lengthy delays, such as working with carriers and airports to share facilities and make gates available in an emergency.

Finally, the Department—in collaboration with FAA, airlines, and airports—should review incidents involving long, on-board ground delays and their causes; identify trends and patterns of

such events; and implement workable solutions for mitigating extraordinary flight disruptions.

Mr. Chairman, this concludes my statement. I would be glad to answer any questions that you or other Members of the Subcommittee might have.

Mr. COSTELLO. Thank you. The Chair recognizes Mr. Steinberg.

Mr. STEINBERG. Thank you.

Mr. Chairman, thank you for inviting me to testify today on behalf of DOT. I will try and keep this brief, just hitting the main points of my written statement, which I would ask to be made part of the record.

Since deregulation of the airline industry almost 30 years ago, the Government has tried to balance the interest in protecting consumers against unreasonable business practices against the basic mandate of deregulation, which is to let the marketplace decide customer service issues. We continue to think that this is the right approach, but we also recognize that sometimes a regulatory action is necessary. Of course, our broad regulations over safety are such an example.

When the marketplace doesn't work, we do have tools at our disposal to address deficiencies. The cornerstone of our consumer protection program is our very broad authority to prohibit unfair and deceptive practices, as well as unfair methods of competition in air transportation. You should know that the Department's Office of General Counsel is the Department that brings aviation consumer action cases under the statute. And that office handles all consumer complaints and inquiries and publishes a monthly air travel consumer report, which summarizes airline data on the kinds of complaints we get, delays, mishandled bags, denied boardings and so on.

Between 2000 and 2006, complaints with DOT actually fell by nearly two-thirds. But we are beginning to see complaints increase again. Most focus on airline performance problems, including delays. We have already heard testimony today about the most highly publicized incidents, involving JetBlue and American Airlines this year and last year. The fact is that, however, all carriers at one time or another have similar problems.

The Inspector General is right, that Secretary Peters was troubled by the incidents that were reported, particularly, I would say, over the reports that food, water and other basic needs were not being met by the airlines. If those reports are true, it begins to cross the line between inconvenience and discomfort and health and safety issues. That is why she asked the Inspector General to conduct an investigation, to see specifically how the airlines were doing on this commitment that they made eight years ago to deal with on the ground delays, because that commitment was not covered in the prior Inspector General report, and to make recommendations. And as indicated, after that review is completed, we will decide what to do.

Although these very lengthy tarmac delays are statistically rare, it is clear that airlines must have adequate contingency plans in place to deal with these situations. Stranding hundreds of passengers for many hours aboard aircraft is not acceptable. Incidents like these raise questions about the planning for such events.

So we were pleased to see that following these events, both of the carriers involved announced corrective actions. In American's case, they announced that they would limit any tarmac delay to four hours. In JetBlue's case, of course, they had a very highly publicized customer bill of rights that I am sure you will hear more about later.

I would say the Department prefers that airlines address these issues directly, rather than the Federal Government. But again, we recognize sometimes action may be necessary.

We do need to keep tarmac delays in the context of a vast system of more than 7 million flights a year. Airline networks are complex operations in which the airlines are constantly juggling operational, mechanical, safety, human resource, regulatory constraints. So what I would ask the Committee to consider is that any new requirement be assessed in terms of, will it fix the problem, does it have the potential to make the problem actually worse by creating more delays and what is the public benefit from it.

I want to just conclude by saying that we are all personally empathetic with people that are on planes on the ground for unacceptable lengths of time. We have all been there. And we don't just look at statistics. The question is, how to fix this problem when it occurs. The Secretary has indicated that we will wait until we get the Inspector General's reports and we have all the facts and all the information before recommending a course of action.

Thank you.

Mr. COSTELLO. I thank you. And let me follow up on your testimony and comment that I am, while you point out, and it has been accurately pointed out before, both in the written testimony that we will receive and hear from the next panel, these circumstances and situations are rare. They are oftentimes caused by weather.

The fact of the matter is, what we need to do is find a solution. I am also pleased that you acknowledge that the airlines need to do more.

In that regard, let me ask Mr. Scovel a couple of very quick questions. You indicate in your testimony, as I did in my opening statement, that the airlines need to adopt policies that are very clear, very accessible and easy to understand by the flying public. You indicate that they must implement more effective contingency plans.

What items should be addressed in these plans, in your opinion, Mr. Scovel?

Mr. SCOVEL. Thank you, Mr. Chairman.

Sir, I would start with defining the extended period of time, which relates back, in fact, to the June 1999 customer service commitment that all member airlines of ATA at that time joined. At that time, that term was not defined. When we pointed it out in our 2001 report, the airlines at that point agreed that it would be a priority for them and that they would undertake steps to make that definition. To date, however, 5 of 13 airlines do not specify in their customer service plans what is meant by an "extended period of time" with regard to meeting passengers' essential needs.

Now, that term would also apply to situations where passengers should be deplaned after an extended tarmac delay. We have found that seven of the ATA member airlines do not define the term for

the purposes of setting a time limit for deplaning passengers. The range for those airlines that do is 1 to 5 hours.

That would certainly be a tremendous starting point. A uniform definition for time limits for both of those, we believe, would go miles toward reassuring the public that the airlines take their commitment to customer service seriously.

Mr. COSTELLO. You also in your written testimony state that you acknowledge that JetBlue and American Airlines responded after their incidents, but you indicate that ATA has shortly after the JetBlue and American Airlines incidents announced several initiatives and requested that the Department of Transportation convene a task force among other things. You indicate that you have a concern that ATA's action merely shifts responsibility from ATA to the Department. I wonder if you might elaborate on that.

Mr. SCOVEL. Yes. We believe that it would shift responsibility from the airlines to the Department. We believe the airlines have a continuing responsibility, for instance, to execute their contingency planning, to define the terms that we have outlined, to take steps to provide for passengers' essential needs, and to make plans to deplane passengers when appropriate.

The airlines and the airports should be continually taking those steps on their own, rather than relying on the Department's review or judgment. At some point, the Department's involvement will be necessary. In fact, one of our recommendations for immediate action, even without any congressional intervention, should the Congress decide to go that route, is for the Department to convene a meeting of the airlines in order to review all of that.

But, in the meantime, we believe that this is a continuous process for the airlines, if they are to make any headway in this area.

Mr. COSTELLO. So instead of attempting to shift responsibility to the Department, they should assume responsibility and be proactive in an attempt to address these issues internally?

Mr. SCOVEL. Absolutely, sir. And if I may, I want to be clear on part of my earlier statement, when I was talking about defining an extended period of delay specifically with respect to deplaning passengers. We consider that a one size fits all policy, which is, we would caution the Congress about going down that route, should the Congress decide that legislation is necessary.

We think, on the other hand, that a uniform definition of a time period for provision of passengers' essential needs may certainly be helpful to the customer. However, we realize there are many more moving parts when it comes to deplaning passengers, including safety for passengers, the layout of the airport, whether it is physically possible, and if it were to become desirable, if FAA were to reexamine its departure sequence rule so that the desires of passengers who may want to continue on a flight that may be promised a departure window at some point, as opposed to those passengers who are simply fed up and want to get off.

Mr. COSTELLO. I think I made clear in my opening statement, my concern about a one size fits all legislative approach, however, the airlines have had the opportunity to address this issue and in fact committed to doing so back in 1999. And obviously some have been a little more proactive than others, as you indicate in your testi-

mony. But you know, the bottom line is that either they are going to address the problem or we are.

And number two, let me say that it is easy to just blame the airlines. They made a commitment in 1999, and it was our responsibility in this Congress to provide aggressive oversight to make certain that they in fact were complying with their commitments. That is one of the reasons why I made very clear early in this hearing that this is the first in a series of hearings. We are not just going to close the book on this at the end of the day. We are going to hold additional hearings and we are going to provide aggressive oversight on this issue.

So they will either comply and address the issue on their own or we will certainly be back in this room examining what action or the lack of action they have taken.

With that, let me recognize the Ranking Member if he has questions at this time.

Mr. DIAZ-BALART. I will be brief, Mr. Chairman, thank you very much.

Just a couple of questions, gentlemen. What are some of the logistical and operational challenges as well as safety-related kind of regulatory barriers that currently would prevent, if nay, airlines from simply returning to the gate and offloading passengers who don't wish to continue? Has the Office of Inspector General considered how to overcome some of those challenges, if they do exist, and what are they? Does the DOT have the authority, if it needs to address these challenges right now?

Mr. SCOVEL. Thank you, sir. We have not undertaken a detailed study of that. We believe that is properly within the purview of FAA. As you may know, sir, the FAA has operated for many years under a first come, first served rule when it comes to the departure sequence. However, when we come up against situations involving extended on-ground delays caused by weather and a long queue of aircraft awaiting departure; when an aircraft may need to return for either de-icing, as happened in February at JFK with JetBlue, or perhaps even to return to a gate to deplane passengers, the standing rule has been that the plane must go to the end of the queue.

There are some exceptions. Airlines have what they call "advocates" in the air traffic control tower who may be able to negotiate, on a one-time basis, a return to a higher place in the queue. But generally, it is back to the end of the line.

As far as regulatory barriers, certainly FAA possesses the ability, we think, to change that. What we identify as problems, mainly, are the physical layout of airports themselves. Some airports by virtue of their location and their design and their more modern age may be able to safely accommodate aircraft moving about in such a fashion. Other airports, because they are much more crowded and narrow, may not be able to have aircraft move about in that fashion and guarantee passenger safety.

I think you mentioned deplaning passengers, and one method for that, of course, and that happened in some locations in the December incident involving American Airlines, was buses moving to the location of the aircraft and taking passengers off in that way. That, of course, would be highly safety-dependent, depending on whether

the passengers' own conditions and so forth, and the ability of ground personnel to move about safely under all those conditions.

But, that would require some detailed study. We have not spoken in detail with FAA about it. But to the extent this Congress or the airlines would anticipate undertaking a more precise definition of an extended period of time for the purposes of deplaning passengers, a key element of that, we think, would be re-examining FAA's departure sequence rules, so that passengers who may want to remain aboard aircraft, as I mentioned, and try to make a departure window, will have that option, while other passengers who are fed up can get off the gate or exit the aircraft and get on a bus.

Mr. DIAZ-BALART. Am I hearing, though, that in your opinion, there would be a problem with a one size fits all kind of approach to consumer issues, including these issues? Am I reading you correctly, or am I just making that up entirely?

Mr. SCOVEL. We see problems with a one size fits all approach, specifically when it comes to deplaning passengers. Frankly, in other areas, we think a more uniform policy across the airlines would be helpful to the customers. So, I don't think I can at this point say, one size fits all is not a good approach across the spectrum of customer service concerns.

Mr. DIAZ-BALART. Let me ask you, and I don't know who should answer this, are there right now requirements, either in contracts, of either carriers or in regulation, that direct airlines and airports to have contingency plans, clear contingency plans for accommodating, for protecting the health and safety of the travelers? For example, should there be an extreme event, whether it is weather-related or otherwise, are there clear contingencies, or is it through contracting? Is it through regulation? Who can answer that?

Mr. SCOVEL. Let me defer to Mr. Steinberg.

Mr. STEINBERG. As a result of the customer commitments that were given in 1999, I believe that most of the airlines have looked at the issue of contingency planning and have incorporated some language on it in their contracts. Whether that language is adequate or not and whether the commitments are explicit enough is another matter. I suspect that is something that the Inspector General will look at as he determines whether they have met the commitments that they made.

There are no regulations per se that really cover the situation, except that to say that of course the FAA has many regulations dealing with passenger safety, including when passengers are on the ground. But none to my knowledge that cover food, water and those kinds of things.

Mr. DIAZ-BALART. Thank you, gentlemen. Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair thanks the gentleman.

The gentleman from Oregon, Mr. DeFazio is recognized.

Mr. DEFAZIO. I thank the Chairman.

To Mr. Scovel, don't you think that, and we talk about one size fits all and the disadvantages of Federal mandates, but wouldn't it be prudent to set a floor? What I observe in the industry is that you have some very responsible carriers, and then you have others who have adopted the old Ma Bell model, which is, we don't care, we don't have to. There is not one size fits all in the industry.

If you set a floor for customer protections across a broad range of issues, then even the worst actors have to meet it. And if the best ones, for competitive reasons or just because they are good folks, want to exceed it, that is great. But absent that floor, I don't know how we are going to get and assure the kinds of protections and deal with the abuses we are talking about here.

Mr. SCOVEL. Mr. DeFazio, I think I was speaking specifically in terms of deplaning passengers when I was expressing some reluctance to endorse a one size fits all policy. However, I did say too that with regard to other issues, specifically, provision of passengers' essential concerns, a consistent policy across the industry would certainly be helpful to customers. Whether you would term that a floor, and hopefully the good citizens in the industry would want to exceed that in providing for their customers. We would certainly endorse that.

Mr. DEFAZIO. I don't know if you were here earlier. But when I got the Office of Consumer Complaints established in a prior FAA authorization, unfortunately due to objections by the industry and concerns by that Administration about having to staff the office, in case too many people had complaints, we ended up with a secret office of complaint. And they don't get a lot of calls.

Don't you think if we are going to have such an office, to get a meaningful measure it would be useful to have it made known? Do you think it would be overly burdensome if we required, when you print out your boarding pass, that the computer program actually prints, if you have problems with this flight, this number is available? Or on tickets?

Mr. SCOVEL. It sounds like a reasonable approach. I will note that the Department has on its web site a way to access the Office of Aviation——

Mr. DEFAZIO. Right, but that means that we have a consumer who knows there is a Department of Transportation or an FAA and they sort of parse their way through it. But for a lot of people who aren't frequent travelers, and even for frequent travelers, I think it would be a useful thing. Thank you.

The denied boarding issue, I was puzzled. I guess I wasn't aware of the exemption for the smaller planes. It says here, I think you said in your testimony, consider extending it to planes between 31 and 60 seats?

Mr. SCOVEL. Yes. That refers to the over-booking and over-sold provision.

Mr. DEFAZIO. Right.

Mr. SCOVEL. We recommended in our 2001 report that the airlines petition the Department to change the rules so that instead of starting the protection for consumers with over-bookings that occur aboard aircraft at 60 seats, that it be reduced, if you will, to aircraft with 30 seats. That would have greatly expanded the number of carriers reached and would amount to the many tens of millions of passengers who would be potentially protected by such a rule.

Mr. DEFAZIO. Sure, well, my mid-size, non-hub airport is no longer served by planes larger than 60 seats. This must be a fairly archaic rule.

Mr. SCOVEL. Precisely. I don't know when the 60 seat part of the rule originated. But I can say that, to their credit, very shortly after our 2001 report was released, ATA member airlines endorsed it and did indeed petition the Department in 2001.

Mr. DEFAZIO. Oh, okay. So do we know what action the Department has taken? The petition was when, in 2001?

Mr. SCOVEL. In 2001.

Mr. DEFAZIO. The industry asked to be regulated in 2001. Okay, so where are we?

Mr. SCOVEL. They did, in April 2001.

Mr. DEFAZIO. Right.

Mr. SCOVEL. This month, in fact, the Department's Office of General Counsel, I presume, began circulating an advanced notice of proposed rulemaking addressing the airlines' petition.

Mr. DEFAZIO. Let's see. Six years after being asked by a regulated body, we are finally circulating a petition to advance rulemaking. That is great. Do we have someone who can address that issue here? Let's see. Mr. Steinberg, you are international affairs. I don't think either of the other witnesses are really accountable for that.

Mr. STEINBERG. I can address it. We are actively working on it now. I can't explain the number of years that it took. I would just note that, of course, there was September 11th and a lot of intervening events that affected that. It is not an excuse. It shouldn't take us that long.

I can assure you that a rulemaking is imminent.

Mr. DEFAZIO. Yes, because, with the changes in the characteristics of the industry, yes, 10 years ago, my city was served by planes up to 130 seats. But now with the industry changes, this is really essential.

One last thing, Mr. Chairman, if I might. Again, Mr. Scovel, I was not aware, is this rule of back to the end of the line, is that custom and practice or is that at each airport, or is there some actually promulgated regulation or rule that governs all airports that says if anyone pulls out of line they have to go to the end of the line?

Mr. SCOVEL. It is my understanding that by longstanding custom and practice that indeed is the practice. I cannot quote you chapter and verse which FAA regulation, if any, addresses that. Perhaps Mr. Steinberg would have that information, or I would be happy to get that for you for the record.

Mr. DEFAZIO. I am curious if there is any statutory or regulatory underpinning or if it is just something that we have been doing and never thought about.

Mr. STEINBERG. It is something that we have thought about. It is part of the way that the FAA manages traffic. I might defer to Mr. Smiley, who is the Manager of the Command Center for the FAA. Perhaps he can provide more detail.

Mr. SMILEY. Yes, sir, thank you.

I don't know of any rule that says that. However, it is often a logistical issue at the airports, that if you take a flight out of line that is in a line-up for departure, and are able to bring it back to the terminal, often that is a problem in and of itself. Then if they were to take the passengers off and maybe even have to take their

luggage off, time goes by, they turn around and try and get back in the line, their space is gone, in essence. They get back in the back of the line and starting coming back out.

Mr. DEFAZIO. I understand operationally and congestion. But what I am looking at here is the perverse incentives that we are establishing, if there are five planes, ten planes out there, I am tenth in line, and it is probably not likely we are going to leave, but maybe we can leave, people have been on the plane five hours and if I go back, that other plane is coming, or if I am one in a line of ten, it seems to me it should have some flexibility for adverse conditions and maybe it needs to be more than just understood custom and practice since Orville and Wilbur first went up, that maybe we want to, so we won't abuse the passengers. We want to say, gee, look, if the weather's bad and the pilot has had people out there for more than a certain period of time, he should go back and not feel he has to stay in line, because he might get to take off soon and he is going to lose his place in line, or her place in line. Do you think that would be reasonable?

Mr. STEINBERG. Mr. DeFazio, I just want to note for your benefit that the FAA does have customer advocates. It isn't quite as inflexible as it perhaps has been presented. When an airline is in a situation where they have had passengers onboard for several hours, that can be communicated to the customer advocate. Subject to the logistical constraints that you mentioned, they can be moved. And that happens on a daily basis. It is not quite inflexible.

Mr. DEFAZIO. Thank you.

Thank you, Mr. Chairman.

Mr. COSTELLO. I thank the gentleman, and let me comment if I can that as I mentioned about the lack of aggressive oversight by this Subcommittee and the Committee concerning the agreement in 1999, I think when we talk about the agency to come out with regulations to regulate the industry, and it is six years later and we are still waiting, it is another reason why this Committee needs to provide aggressive oversight.

The Chair recognizes the Chairman of the full Committee, the distinguished gentleman who is chairing the full Committee, Mr. Oberstar.

Mr. OBERSTAR. Thank you very much for holding these hearings, Mr. Costello. You have moved the ball forward considerably on all of the subjects of aviation, as we prepare for the reauthorization of FAA. I compliment you and Mr. Petri on a very thorough in-depth review, which will continue over a period of weeks to come.

The Chairman just a moment ago referred to the lack of oversight on this Committee on the passenger bill of rights issue, among many others. That lack of oversight is exceeded only by the failure of the Department of Transportation to exercise its own oversight and its own enforcement of Section 41712 of Title 49 of the U.S. Code that deals with unfair and deceptive practices and unfair competition.

The ATA testimony goes on at length about the benefits derived from the Deregulation Act of 1978. I sat right here in this Committee room and rubbed my worry beads about the effects of deregulation and in the end, I voted for it. There was a great deal of protection for small cities and essential air service written into

the legislation, and hold-ins and all the rest. And with the assurance that there was going to be vigorous oversight by the existing Administration, the Carter Administration, of the passenger concerns and of the community concerns.

Unfortunately, they didn't last long enough to exercise that oversight. The election of 1980 changed the course. And the protection that passengers were anticipating and expecting hasn't been forthcoming consistently from the airlines, despite the pats on the back that the ATA's testimony gives themselves. And we have had these meltdowns over a period of time. It is hard to call a snowstorm a meltdown, in which case it is only a figure of speech.

I think of all the testimony, which I have read over, all the testimony submitted today, that of the Inspector General is the most compelling and the most, creates with me the greatest concern. When I see, Mr. Steinberg, from your testimony that oh, shucks, violations are difficult to demonstrate, this section is enforceable in its own right but violations are difficult to demonstrate, prosecution is ultimately successful, it is resource-intensive, time consuming, of limited precedential value, because each case is highly dependent on its own set of facts, baloney. If you don't exercise oversight, they are going to continue to do stuff that the public doesn't want. You are already recognizing that there is an increase in complaints. The reason there haven't been more complaints is that nothing much is done about them. That is why we have had a parade of our colleagues in the Congress coming here and saying, fix this.

Now, the Inspector General's statement, when DOT discovered violation of assessed penalties and almost always forgave or offset a portion of the penalty, there are cases when that is appropriate. Why spend money on a fine if they will spend the same money fixing the problem? I have no problem with that.

When it came to U.S. Air, I think it was, that did not approve vouchers for lodging or meals, one of the many complaints that DOT looked into and if they turned around and gave money and compensate, make up for it later, or if I think, I think it was Southwest that was getting a fine for not having wheelchair storage, and they said, we will spend the money on wheelchair storage, I think that makes up for the problem.

But if these are random enforcement, the airlines don't take them seriously, then people get discouraged and they are not going to file complaints. DOT says the IG has not conducted on-site compliance reviews, relied on air carrier self-certification and company-prepared reports. It has not found supporting documentation. Chronically delayed and canceled flights are clearly examples of deceptive practices by the airlines.

This isn't new. We went over this almost 10 years ago in a hearing of this Committee, at Dallas Fort Worth. There were 57 flights, regularly scheduled for departure at 7:00 a.m. No airport in the world can depart 57 flights at the same time. And the airlines, in a parade before this Committee, said, we know that we are not being candid with the public. FAA said the same thing. And everybody knows this.

So you mean all the travelers are in on the gag? I sign up for a 7:00 o'clock flight knowing it is not going to leave until 8:00? Ba-

loney. I sign up for a 7:00 o'clock flight expecting to leave at 7:00. And I know that 57 aren't going to depart at the same time and you know it. So why don't you do something about it? The reason we are having hearings is that the Department hasn't done anything about it and the airlines haven't and the FAA hasn't. Without waiting for your responses, I am just telling you that a case is building for something to be done in the upcoming authorization. And that something is going to be, in my mind, a fine that means something, that takes some pain out of the airline, and enforcement that we will direct to be done. I don't want to send through this Committee, a series of amendments by members are on the House Floor, about how many inches are going to be from one knee to the seat in front of you and how much of an incline will be allowed on the seat recline from the passenger just ahead of you. We were all set for that sort of thing seven, eight years ago. That is not productive.

Airlines signed up for a passenger bill of rights. They said, let's cure the problem. It was up to your department to enforce it, whether you were there or someone else, your predecessor or your successor, it hasn't been done. And the airlines have to clean up their act. We have had Northwest with their mess in Detroit and JetBlue with theirs. Each has tried to correct their problems. But the problems come up with some other carrier. They don't seem to learn from each other.

And you are the court of last resort. If deregulation is going to mean anything, if we are going to hang onto it and hold onto it, then you have to start taking these complaints seriously and taking action on them. Or as I said, we will bring a bill to the Floor and have a flood of amendments as to how many bags you can put in the overhead, what size they should be, what size should the overhead compartment be. You think these issues are—wait until we get to the Floor. We are going to have 433 people offering amendments.

[Laughter.]

Mr. OBERSTAR. The airlines will all go berserk.

So I am just telling you, we are going to have some tougher enforcement, we are going to have tougher fines, tougher penalties. If you want to keep the Government out of deciding market entry and pricing for air carriers, then the air carriers have to do their job of serving the public, and that means more than what they are doing now. You don't need to respond. It would be painful for you to respond. You might say something that would get you in trouble at the Department, or in trouble up here, or in trouble with the airlines.

Mr. STEINBERG. If you would like me to respond, I can address some of the many questions.

Mr. OBERSTAR. You are welcome.

Mr. STEINBERG. Let me start by saying that we agree, the airlines have to do a better job. It is our job to oversee their compliance with their promises to their customers. We have a lot of empathy when things go wrong.

It isn't in fact the case that we are doing nothing. Obviously, Mr. Chairman, we are not doing enough. But by your account and by many other of your colleagues accounts, but——

Mr. OBERSTAR. I encourage you on that point to take the IG's report home with you, put it at your bedside table and read it over tonight. When you wake up at 3:00 in the morning, read it again.

Mr. STEINBERG. Of course we will look at it and study it. We have a pretty good track record of working with the IG's office.

But just to give you a few examples, over the last six years, the Department has assessed roughly $22 million in penalties. Yes, a lot of them were offset. To explain our policy on that, I think the Inspector General, with all due respect, may not understand completely what we do. We don't give an offset for just coming into compliance with our current rules. Where we give an offset, it typically is paying for improvements that aren't required by regulation. And so we make a judgment that it makes sense, because we can get more for the public by doing it that way.

We do forgive part of the penalties, typically about half, but there again, sort of the reason is that we hold that out over them. It is not an unconditional forgiveness. If they violate the consent order that is signed, then we collect the penalty. So I did want to correct that.

With respect to the issue of enforcement on scheduling items, first let me tell you that the Office of Enforcement, which of course is part of the General Counsel's Office at DOT, is right now in the midst of settling or going through consent order proceedings with eight carriers on the specific issue of whether they disclose the on-time performance statistics as they are required to do when a customer requests it. That is a result of an investigation that involved about 20 carriers, and they found that 8 were seriously out of compliance.

I am also told that we are launching an investigation specifically into unrealistic scheduling. As you probably know, we have a regulation that prohibits unrealistic scheduling as a deceptive practice. Now we are looking at stepping up enforcement efforts there. We are sending investigatory letters out or will be shortly to all major carriers. We want to understand, as you pointed out, sir, how it is possible that a flight could be late 70 or 80 percent of the time and that information is not disclosed in an adequate way to the customer. So I expect you will see activity from General Counsel's office on that as well.

Just one final comment, sir. The Office of Aviation Enforcement has about 30 people. They are very skilled, 20, 30 years experience typically. They have been focused in ways that Congress has directed us. Several years ago, there was more of an emphasis on dealing with disabled passengers and civil rights issues. So there were many consent proceedings brought on that basis. I can assure you that we are listening and that resources are being shifted to focus on these issues that have been raised today. Thank you.

Mr. OBERSTAR. Thank you, Mr. Steinberg. I want to commend the Inspector General on the splendid service your office has provided with this report. It is a very detailed report, and the report last fall. I want to assure you, the Chairman is going to keep an eagle eye out. We need more, we need a lot more people in the Department. We need more air traffic controllers. We need more inspectors in the maintenance positions. We need more inspectors overseas for foreign repair stations. And we clearly need more peo-

ple to defend the public interest in aviation. That is the role of the Department, to stand between the traveling public and the airlines in the public interest.

Yes, you have done a good job, and I should have commended you at the outset on the civil rights issues and responsibilities that we urged upon you in legislation. But this is the next frontier. What has gone before us is not satisfactory to a large segment of the traveling public. We will address it in the upcoming legislation.

Thank you again, Mr. Chairman, for your vigilance in holding these hearings.

Mr. COSTELLO. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Illinois, Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman. Thank you for holding this hearing today.

I want to start out with what may be an embarrassing admission. Until this hearing, I did know there was a Department of Transportation and an FAA. However, I did not know that there was a phone number to call to register a complaint about any problems with a flight on an airline. I wholeheartedly concur with Chairman DeFazio about that, that it needs to be made more public. We are talking here about, and Mr. Steinberg talked about the marketplace and allowing the marketplace to make sure that things are operating well, operating efficiently. We oftentimes will do that, we talk about marketplace imposing its own regulation.

One of the things that is very important when we are talking about a market, for a market to operate efficiently there needs to be perfect information. If you go back, look at your economics textbook, it assumes perfect information if you are going to have a perfectly efficient market. Obviously, if information is not available and people do not fly often enough to really get information, just collect it for themselves and then know further down the line who they may not want to fly.

So there has to be a greater collection of this information. Like I said, I had no idea there was such a number.

Now, I want to ask Mr. Scovel about the, I know in the airline customer service commitments, they include a provision specifying how bumped passengers can be handled with fairness and consistency. Now, how has this provision been implemented by the carriers?

Mr. SCOVEL. Thank you, sir. To respond to your question, we have found uneven implementation of that specific provision of the customer service commitment. In fact, we have found in our previous reports that passengers bumped from the same flight have been offered different amounts of compensation. Our understanding of the provision is that passengers bumped from the same flight should be offered the same compensation. And we have reported such.

Mr. LIPINSKI. I know that I experienced a long delay recently, I was flying with my wife. I received an e-mail saying that I was going to be compensated with 10,000 frequent flyer miles, something like that. I told my wife, and she said, I didn't receive anything like that. So I am not really sure why that was the case.

But I want to go further, another issues besides being bumped. There are concerns that I hear from people, although they haven't

been raised here, about canceled flights. Not because of weather, but what is termed, because of mechanical problems. And there are some questions about why this happens, what these mechanical problems may be. I think at the very least, I have not seen this, maybe Mr. Scovel you have, this has been in an IG report, but is there any effort to collect information on cancellations of flights and the reasons for the cancellation of flights?

Mr. SCOVEL. I should defer to Mr. Steinberg to ask whether the Department or FAA may have undertaken any such study. I can say that, for my office, we have not examined that particular cause for the event.

Mr. STEINBERG. We do collect information on cancellations. I am not certain whether we have the data divided by the reasons given for cancellations. I will say this, that is one of the most common questions that I get is, the plane seemed empty and they suddenly came on and said, the flight was canceled, and I am suspicious. The reason that that happens is that when the airlines are required by circumstances, say a mechanical problem, to cancel a flight, if there is identical equipment, the same aircraft at the airport, they try to figure out the least number of passengers to impose the inconvenience on. Therefore, if they can substitute an aircraft for the flight that had the mechanical but had the most passengers leaving, they will do that.

Why it is explained the way it is, again, that is a fair question. But it isn't the case, to my knowledge, that airlines look at load factors and say, let's cancel that flight because there are not a lot of passengers. It would be illogical for them to do that, because the equipment needs to get to its next destination for their schedules to work.

Mr. LIPINSKI. Thank you.

Mr. COSTELLO. The Chair recognizes the gentleman from Tennessee, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman. I am not sure who to direct this to, so whoever wants it can just take off with it.

I want to talk about the St. Patrick's Day weekend massacre. I was supposed to fly to Memphis. A lot of people were supposed to fly everywhere and the flights were canceled because of ice. Was that the cause of there not being enough de-icing machines at the airports?

Mr. SCOVEL. Sir, my office has not had occasion to examine how airports have tried to prepare for events such as ice storms. I can say, and you may have noticed in our testimony, too, that some of my staff were caught in the same ice storm over St. Patrick's Day weekend.

Mr. COHEN. Right. I understand that. It makes me feel no better.

Mr. SCOVEL. I know.

Mr. COHEN. Whose responsibility it is, the airport or the airlines, to have de-icing equipment?

Mr. SCOVEL. My understanding, sir, it is the airport. Now, the airlines are certainly interested in that. They have the immediate economic interest in being able to move their equipment and passengers.

Mr. COHEN. So airlines don't have their own de-icing equipment, it is all the airport's?

Mr. SCOVEL. That is my understanding.

Mr. COHEN. Anybody else have a different understanding?

Mr. STEINBERG. I am not sure. I think there are situations where the airlines have their own de-icing equipment. I could follow up and get you a direct answer on that.

Mr. COHEN. Thank you, sir. I read somewhere where it was the airlines and they didn't have enough de-icing equipment and that is why flights were canceled.

Mr. STEINBERG. One of the things I think we are observing now is that because of what happened on Valentine's Day and last December, the airlines are being a bit more cautious and canceling flights more often than they were before. We were actually seeing that in some of their financial results. That just goes to illustrate the complexity of the system. If you do something over here, it tends to——

Mr. COHEN. What is the policy when the flights cancel like that? Just tough luck because it was God's will? Is that it, you have to go Sunday and Friday night and kind of work on it that way?

Mr. SCOVEL. Well, the airlines have different policies. JetBlue, when it announced its customer service commitment, or bill of rights, after its Valentine's Day event, it addressed cancellations. But it is in terms of what they term a "controllable irregularity," I believe. In other words, something that may have been under their control, perhaps mechanics——

Mr. COHEN. Let me ask you more directly. What could you do on behalf of the public to have some regulations to require that there be compensation adequate to compensate people. You get a round trip ticket to Washington, as some people who were traveling with me had. They were told they couldn't, on Friday evening they couldn't get out until Monday morning. They didn't want to go back to the hotel at a thousand bills a night, stay in a hotel for two or three more days. So we rented a car and did the journey back to Memphis, like the Pope used to do it, more or less. Fifteen hours later, we arrived.

They don't need that return trip ticket. Shouldn't they have some redress?

Mr. SCOVEL. In terms of——

Mr. COHEN. Yes, who wants a one way ticket from Washington? You have to get here to use the ticket, you have to get on your 15 hour drive to drive up here again, or rent a car and take advantage of it?

Mr. SCOVEL. A refund of that portion of the ticket.

Mr. COHEN. Shouldn't that be mandatory?

Mr. SCOVEL. Sir, I would leave that as a policy decision for the Congress. That involves certain economic considerations, and, as Inspector General, I believe my role is just to present facts and data for your information and consideration——

Mr. COHEN. Mr. Steinberg, do you have a different role? Anybody got a role on this?

Mr. STEINBERG. Our understanding is that generally if a flight is canceled, completely, and a passenger is not re-accommodated, they get a refund. I think that is the policy of all major carriers today. The situation does arise, of course, when they are accommodated, but in a way that is not completely satisfactory and what

do they get in exchange for that. My belief is that the practices of the airlines vary all over the lot in terms of vouchers and now we have seen JetBlue set forms of compensation.

But we do not have a regulation specifically that requires refunds in the case where the passenger is involuntarily denied boarding, where we do have a regulation.

Mr. COHEN. And I guess some of that issue is, was it involuntarily denied, or should the airlines have had de-icing equipment? That is an issue we haven't determined a factual basis for, whether it was the airline or the airport. But it was reported in one major publication that it was the airlines who didn't want to spend the money on de-icing.

I can understand it, but if they save money on de-icing, they ought to spend the money on taking care of the passenger. The passenger I am talking about bought their tickets through some type of a special thing with Merrill Lynch. They gave up oodles of amounts of points to get these tickets, first class tickets. Well, you compensate them somehow. I don't think they were.

Mr. Smiley, do you have an answer?

Mr. SMILEY. Yes. With regard to the de-icing equipment, I am familiar with what occurred in Newark, and Continental Airlines in particular had some equipment that broke after a period of time during that weekend long ice storm that they had. I don't know the number, maybe seven or eight machines, and two or three of them failed after a period of time.

So I believe that it can be either the airport or the airlines that own the equipment and operate the de-icing pans.

Mr. COHEN. Thank you, sir.

Mr. COSTELLO. The Chair thanks the gentleman from Tennessee. And let me thank all three of our witnesses for being here today, and in particular Mr. Scovel, let me compliment you on your work as Chairman Oberstar did. We had a chance to read your testimony and discuss it, and we appreciate the information that you were able to provide to us.

The Chair at this time would ask the next panel to come forward as I introduce you. My understanding is that Mr. Neeleman and Mr. May both are on tight schedules here, so we will try and get you up and get your testimony as quickly as we can.

Mr. David Neeleman, who is the Chief Executive Officer of JetBlue Airways Corporation; Mr. James May, President and CEO of the Air Transportation Association of America; Mrs. Kate Hanni, the Executive Director of the Coalition for Airline Passengers' Bill of Rights; Mr. Kevin Mitchell, the Chairman of Business Travel Coalition; and Mr. Paul Ruden, Senior Vice President for Legal and Industry Affairs of the American Society of Travel Agents.

If you will take your seats, and we will begin by recognizing Mr. May, the President of the Air Transport Association. We would ask all of our witnesses, your entire statement will be submitted into the record and we will ask you to summarize your statements under the five minute rule.

TESTIMONY OF JAMES C. MAY, PRESIDENT AND CEO, AIR TRANSPORTATION ASSOCIATION OF AMERICA, INC.; DAVID NEELEMAN, CHIEF EXECUTIVE OFFICER, JETBLUE AIRWAYS CORPORATION; KATE HANNI, EXECUTIVE DIRECTOR, COALITION FOR AN AIRLINE PASSENGERS BILL OF RIGHTS; KEVIN P. MITCHELL, CHAIRMAN, BUSINESS TRAVEL COALITION; PAUL M. RUDEN, SENIOR VICE PRESIDENT, LEGAL AND INDUSTRY AFFAIRS, AMERICAN SOCIETY OF TRAVEL AGENTS

Mr. MAY. Thank you, Mr. Chairman. In the interest of time, I will truncate my oral even more severely than I would have otherwise. I am pleased to be here on behalf of the nearly 400,000 passenger airline employees who every day make it their mission to safely and smoothly transport over 2 million passengers throughout the United States and the world. Much has been said today about the quality of airline customer service, some of it fairly harsh, some of it fair and well-deserved. With more than 20,000 flights a day, we may not get it right every time, but we do get it right most of the time. For the times we don't, we do apologize.

What troubles me ius the suggestion that our members and employees don't care about how passengers are treated, which is not true. They care deeply, and the service they receive is very important.

Following safety, on-time service is the most important factor for success in the airline business. The reputations that airlines earn for good service is the currency they have to offer in the marketplace.

I would like to make two fundamental points. I don't think you can effectively legislate airline industry response to irregular operations, especially when severe weather strikes. Arbitrary deadlines and inflexible standards will have serious unintended consequences.

Extreme weather delays and cancellations are the enemy of every airline, crew member and passenger. They are costly. They drive missed connections, mis-handled bags, upset flight schedules. And in the worst case, they have a cascading effect that can spread to many cities and disrupt passengers' plans for several days. We saw in the St. Patrick's Day storm that there were over 3,300 cancellations, stranding thousands of passengers and upsetting spring break plans for many. If we don't have any place to put the passengers on succeeding flights, that is when we have those cascading effects.

So those factors are incentive enough for our airlines members to avoid cancellations and delays whenever possible. It is in our best interest to complete as many flights as possible.

Recent events have caused us, however, to review our policies and procedures, update contingency plans and engage key airports in discussions about dealing with severe weather conditions. In addition, as you heard earlier, the DOT Inspector General is reviewing these incidents and will issue a report shortly.

Mr. Chairman, we are not waiting for those reports. I have just concluded a tour of our company headquarters, and we are aggressively pursuing updating our plans. We requested the IG DOT investigation. I think it will yield some very positive results. And we look forward to the opportunity to not only aggressively update our

plans, but to meet with the Inspector General, key members of this Committee and the Secretary of Transportation to address those recommendations.

I don't think, however, that Congress can legislate good weather or the best way to respond to bad weather. Because every situation is in fact unique. As I said earlier, every irregular operation is different. In December it was recurring thunderstorms. In February it was snow, and very importantly ice pellets, a subject that we ought to talk more about. This week, it was intense rain and high winds along the East Coast. Operational flexibility is needed if passengers, crew members and airplanes are to reach their destinations when different types of adverse weather conditions arise.

A strict three hour limit, even with two extensions, I think eliminates much of the flexibility that we need to actually complete those flights whenever possible. No passenger likes a delayed flight, including me. What they like even less, however, is not being able to get to their destination at all, or to have a two or three day delay in reaching their final destination.

So in conclusion, flexibility is the best tool the airline has to respond to severe weather conditions. With 42,000 city pairs, more than 20,000 flights a day, we needed flexibility to respond to irregular operations and get passengers to their destinations safely, which is our ultimate goal.

Have we made mistakes in terms of our customer service? You bet. Do we apologize? Absolutely. Can we do better? For sure. We are committed to work with this Committee and the Department of Transportation to make sure that happens.

Thank you.

Mr. COSTELLO. We thank you.

Mr. Neeleman, you are recognized at this time.

Mr. NEELEMAN. Thank you very much, Mr. Chairman and members of the Committee, for this opportunity to speak to you today.

We were invited here and agreed to come by our own volition. We are the only airline that has agreed to do so. I think it exemplifies our up-front nature of what happened in the events of Valentine's Day. What happened was unacceptable to our customers and it was unacceptable to our for our crew members. We are deeply sorry for those events. It really has become a defining moment in our company as we have changed so many things.

What happened on that day, and it was interesting, Congressman Cohen's comments about de-icing, there is a relatively new Federal mandate that says we can't fly in certain conditions. We are basically grounded. That is now being reevaluated by the FAA. We have been flying lots of years and never had that problem in these conditions. It was mandated.

So that is what started the series of events. I am not blaming that for what happened to our people that were stranded on airplanes. We have now come up with contingency plans. As long as I am head of this company, it will never happen again. We have purchased extra equipment and we have extra places to evacuate customers with extended delays. We have new systems, procedures and leadership.

So I am confident that these things, the way it happened on St. Valentine's Day will never happen again as far as stranding our customers. Like I said, it was unacceptable.

We have also enacted a customer bill of rights, which we have disseminated on our web site and to our customers that spells out exactly what is expected of them with us, and defined compensation, explaining what is controllable, what is uncontrollable and what remedies they have in the case that they have a bad experience with us. So we are really focused on our customers. We have always been a customer service company. It is something that we pride ourselves in. We have won award after award. So our reaction to this event is not dissimilar to the way we have treated customers in the past.

I think the reason I agreed to come and be here today and testify is, I am concerned about the legislation that has been proposed. Sometimes the best intentions, and we are going to hear from Kate Hanni here in a second about her horrible experience, and I know it was a horrible experience. But I think if you have the best intentions, you can really come up with some really bad unintended consequences.

On just a good day in New York, in the summertime, you can have taxi-out times of an hour, hour and a half. We get a thunderstorm that will come over the field and close departures for a couple of hours, it would be very easy to have somebody on a plane over a three hour period of time. To the extent that our pilots were mandated to bring people back to the gate at that limit, chaos would reign at a place like LaGuardia, where there is very little maneuverability.

I think it would be interesting for Congressman DeFazio and Mr. Chairman to come out to Kennedy on a night when it is snowing. We are not talking about 10 airplanes in line, we are talking about 80 airplanes or 100 airplanes that are trying to get out. If we were to have to come back to the gate, it would be physically impossible in some places, to get to the gate to let people off, if two or three people wanted to get off an airplane, it would be very, very difficult to do that. It would, more importantly, create a huge disservice to the other 98 percent of the customers that are on board that don't want to get out of line, don't want to go back to the gate, and their planes could be stranded. We could find ourselves in a position where we had thousands of people in the airport sleeping overnight instead of going on to their destination, if this was mandated.

Now, I take all of your comments to heart. This industry has to regulate itself. We have to have evacuation plans, we have to have contingency plans. And JetBlue is committed to doing that in the future.

But let us work together with the Department of Transportation, with the FAA, to figure out how to not keep airplanes, and to make sure that we don't strand customers and have ways of letting people off without mandating these hard limits, which during an irregular operation would potentially prove catastrophic for our customers, which is the last thing that we want to do.

Thank you very much for the time.

Mr. COSTELLO. Thank you.

Before we hear the testimony of the other witnesses, we will respect your time commitment, so I am going to ask a couple of questions and see if other members have questions or Mr. May or Mr. Neeleman.

Mr. Neeleman, let me just say to you that both, Mr. May commented that you can't legislate good weather and you indicated that the weather, of course, is beyond your control. I have flown out of JFK on a night where the weather was bad and we had delays. I think everyone understands that. Everyone understands. No one is telling you that you have to control the weather.

The issue here is communication, communicating with the people who in fact are your customers. As I said in my opening statement, I was pleased that you took the action at JetBlue that you did immediately after your incident.

But the other airlines have not. Some have, better than others. But it defies logic to me why the other airlines wouldn't be doing exactly what JetBlue has done, why they wouldn't communicate to their passengers what circumstances you control, and what other things you can't control. What happens if in fact because of weather, a flight is canceled, communicating with them, giving them information and telling them what their rights are. That hasn't been done.

When the airlines say today, we are going to work, please don't legislate and we will try and work this out internally, that was said in 1999. Everyone trusted the airlines to do that. In fact, here we are back again doing these hearings because one, the airlines didn't live up to their promises; two, the department, the DOT didn't handle the responsibility in making certain that the promises that were made in fact were carried out; and three, this Subcommittee and the Congress did not do their job in oversight of the agency and of the industry.

I am inclined, as I said in my opening statement, not to legislate these things or to do a one size fits all. But unless the industry addresses this and addresses it now, there is going to be Congressional action. There is no question about it. As Chairman Oberstar said, in a markup of the FAA reauthorization, unless there is something in place and evidence that in fact the airlines are following the policies that they put in place that can clearly be understood by their passengers, then when we do a markup of the FAA reauthorization, if that is not in place and being followed, then you are going to see members offering amendments and you are going to see an industry that will in fact be regulated when it comes to passengers and their rights.

So I just wanted to comment, and I wanted to ask Mr. May, you heard the Inspector General talk about the action that was taken by ATA after both the American Airlines incident in December and JetBlue in February. Basically the IG, as I take it, says that ATA is really just taking the ball away from the airlines and putting the responsibility on the agency. I want to give you a chance to comment on that.

Mr. MAY. Thank you, Mr. Chairman. I know that that can be an interpretation, but as somebody who sat in the board meeting and participated in the discussion prior to that, I can tell you that it was with the most sincere objectives and motives that this industry

went to the Department of Transportation, to the Secretary of Transportation, asked her to have the IG look at the specific circumstances surrounding not just the Austin event but the events in New York with JetBlue and elsewhere and how we are responding. We have provided our customer service plans to the IG. We have provided our contingency plans to the IG, while at the same time assuring that we are, as I said in my oral statement, sitting down to re-review those and make sure that we are updating them and making the changes that are necessary.

I think this is a very different industry, from the leadership right on down, than it was in the last event, in 1999, when this took place. I think our CEOs are absolutely committed to the most positive kinds of changes when it comes to customer care.

I would reiterate that we don't think that legislating behavior from the perspective of when we take off and when we land, we want to leave safety as the primary consideration, and the opportunity to get where we are going and get our passengers where they are going safely is the primary. So Mr. Neeleman and I are absolutely in accord on all of these points.

I think our board also recognizes that customer service is a critical component. We have to equally address that.

Mr. COSTELLO. The Chair recognizes Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman.

I guess we keep focusing on very specific legislation and behavior that could impinge operations. I am not sponsoring nor recommending any legislation that would do that. And my past attempts on this issue haven't either.

What we are talking about, though, is establishing a basic floor. For instance, Mr. Neeleman, you have here, it says, customers are experiencing an onboard ground delay for more than five hours, JetBlue will take necessary action so that customers may deplane. Well, I think it would be worth going through an FAA rulemaking and determining if that is a good standard for the entire industry. Because right now, apparently some airlines don't have that standard. And if we say, well, we don't want to impede operations, well, sorry, it was ten hours. I think five hours might be right, maybe not. Maybe it could be a little less.

But I think establishing a floor makes sense. I just don't understand. And Mr. May, I would hope that you would agree with that. We shouldn't leave it to the vicissitudes of the marketplace, because nobody knows what their contract of carriage said, except the people at JetBlue now, about how long they might be kept prisoner on a plane without any offer of getting off.

So we are talking about some really basic floor. And then if anybody wants to compete over and above that, maybe the FAA would say it was ten hours. Whatever. But then JetBlue says, hey, we are only five, we will advertise it. So when people know that they are stuck at JFK, they are only going to be stuck on the plane for five hours.

It seems to me, and I had this discussion when I was a freshman with Mr. Bolger who preceded you in this job. I said, you do not want to represent the industry to the lowest common denominator of your organization, and you don't do the ATA or the industry a service by doing that. I know it is hard to run a large organization

like yours and if you have someone who is a substandard actor over here, you are trying to urge them to move up, but then again, you don't want them to pull out of the organization, so you are not going to beat them over the head with a club. So you come and say these sorts of things.

But my point would be, we have made your job easier if we say, in reasonable areas where we can agree, where we are identifying sort of ongoing chronic problems, we are going to have the FAA knowing about operational stuff come up with a reasonable rule and everybody will have to follow it and anybody who wants to exceed it can. Wouldn't that be reasonable? I am not talking about arbitrary stuff here.

Mr. MAY. I think the key, Congressman DeFazio, is making sure that we don't have a standard that doesn't acknowledge that JetBlue operates in certain markets with certain equipment and certain conditions that can be very different from some of the competitors in the business, United Airlines, American Airlines and so forth. So I think probably we can take a long look at trying to find some basic——

Mr. DEFAZIO. I understand your caveat. It is a good caveat. But I don't think that humans vary that much. And a human trapped on United Airlines at Denver for five hours is not going to be any happier than a human trapped for five hours at Kennedy or gee, maybe even in beautiful Paris, France, when I am trapped for five hours on the ground, I am still trapped five hours in a can with a bunch of people who run out of water, the lavs are getting ready to overflow and we are sitting there and no one can tell us what is going to happen.

That is what we are talking about here. I just think that we are going to have to look very carefully as a committee of those sorts of what I think would be reasonable floor standards, understanding, I know it has been 21 years, I understand operational stuff, I have flown over 3 million miles, I am pretty well versed in what is good, what is bad, what works, what doesn't. And I don't think that you are going to find the Committee doing things that are unreasonable, going to impinge the operations. But they are, I think, going to set a basic floor.

Let us go to maybe something we can agree about.

Mr. NEELEMAN. Can I respond to that for just one second?

Mr. DEFAZIO. Sure.

Mr. NEELEMAN. Just from our perspective. I met with some people who were on our planes that were on for nine hours, on the plane. They said that the pilot announced at five hours that there was a break in the weather, the ice pellets were potentially going to stop, and they said, we are going to leave. Everybody on the plane cheered after five hours.

Mr. DEFAZIO. Just like when they used to announce they were going to ban smoking. I understand. We are all captive. We want to go somewhere.

Mr. NEELEMAN. Nobody wanted to get off the airplane.

Mr. DEFAZIO. That is fine.

Mr. NEELEMAN. They all wanted to go——

Mr. DEFAZIO. Okay, well, then, maybe we will mandate that we have a vote after five hours, and you can have a ballot.

Mr. NEELEMAN. If you had that vote, if you were number one for takeoff, nobody would——

Mr. DEFAZIO. Yes, I know. But the point is, I think that this needs further deliberation, rather than just allowing it to just stay out there and let market forces, because the market is not transparent. Let me go to, one thing I think we can agree on, I think, is the 30-60 rule, apparently. I have no idea why that would still exist, since many communities are served now by commuter jets that are less than 60 seats.

Mr. MAY. Correct.

Mr. NEELEMAN. We agree on that.

Mr. DEFAZIO. Okay, good.

Mr. NEELEMAN. And we don't over-book our flights.

Mr. DEFAZIO. We will do what the FAA can find out why. And then this end of the line thing. It seems to me if operationally it would be possible, I know there are extraordinary constraints at Kennedy and elsewhere. But there are some times, some places where applying the end of the line rule might not make sense, for instance, at Denver, where there is a lot more capacity for planes to return to a terminal. It may not be your gate, but there are lots of gates there. Or some other place. I mean, it just seems that that should, the FAA apparently has some process to break that rule with the customer service representative, whoever that is, wherever they are and however they can be contacted by the pilot. I think we ought to be taking a look at that.

Mr. NEELEMAN. I think it is a good question, but when you think about it in practical terms, even if we could get back in line or back to the front of the line, if two people in the back of the plane said, my business meeting, I am not going to make it, I want off the airplane, this is——

Mr. DEFAZIO. Nobody is taking it to that extreme. I have been there with people, yes, there are a lot of people you don't want to be on a plane with.

Mr. NEELEMAN. But if two people can affect 148 people, delay their trip another two hours because two people say——

Mr. DEFAZIO. Right, and I have been on planes where I had to come back and I was delayed four hours out of Dulles because a woman was very nervous about the flight and the pilot went back. I said, I can't believe you went back because that woman was nervous. But they did and she got off and then they had to find her bags, which, since we don't offer RFID on baggage, it took about an hour and a half to find her bags. Then we got to leave.

So I understand that. But again, that doesn't mean we exclude, we say, gee, we will just keep the in-line thing and it will be totally inflexible, or you will have to find the elusive customer—I am saying some level of review and scrutiny. I think the point the Chairman is trying to make is that having an industry-friendly Administration is not always the best thing you can have. They will let a rule languish that the industry wants because they, we don't want to make any rules on the industry.

So it is not necessarily serving your needs. And not having oversight by the committee of jurisdiction, you let these things get pent up, and then you get some of our colleagues who don't understand

the industry introducing legislation that might become popular and might move if there is another incident or two.

So just kind of work with us here.

Mr. MAY. We hear the counsel of the Chairman very clearly.

Mr. NEELEMAN. And we are working, all we care about is customers. If we didn't have our customers, we wouldn't be in business. So all we are trying to do is help our customers. We think some of this legislation, and I know you haven't sponsored it, but it could actually hurt customers.

Mr. DEFAZIO. I understand. That is why I am not a co-sponsor of those particular bills.

But again, and just two more quick points, Mr. Chairman, thank you for being generous. I think these are important.

If you do look, and I am sure you have, the IG report, there are two things that again, the disclosing of chronically delayed flights. Yes, there are a couple of web sites where you can go and get some fragmentary data about airline performance, and I have done that. But I think they make a good point there about disclosure. If we want to talk about something that is market-based, for consumers, if you go back and read Adam Smith, it has to be, it can't be opaque, it has to be transparent. Everybody has to have perfect information.

So I would think that the airlines would rush to provide this information, except maybe there are a few who have such miserable records with certain flights, they don't want to disclose it. And then everybody else kinds of says, well, they are not doing it, so we are not going to do it. So again, this is an area that we are going to have to look at, if the industry doesn't do a better job there. And then just the emphasizing to customer service the importance of providing timely and adequate flight information.

I had one, everybody relates to it, but you say, oh, yes, they will do that. But there are times it doesn't quite work. They have what I call a random excuse generator, because you can go to the gate and they will look at the computer and they will say, oh, it is this. Then you go to the Red Carpet room and oh, it is this. And I will say, well, that is really different. They said they didn't have a crew, you said it is a—and there is this ongoing credibility problem. United once had this great ad campaign. They knew this was what upset business travelers. I told the former CEO, I said, this is the greatest ad campaign I have ever seen, you guarantee people, you were going to tell them, no more than 15 minutes, you will tell them exactly what is going on. I said, but you had better follow through on it or you are going to be in a world of hurt. And they didn't, and they were. Thank you.

Mr. COSTELLO. The Chair recognizes the gentlelady from Texas, Ms. Johnson.

Ms. JOHNSON. Thank you very much, Mr. Chairman. Thank you for having this hearing. It is very interesting.

I have experienced, since I have been here now a little while, around 15 years, every kind of weather you can think of, all over the Country, the airlines had to stop. I would much rather be on the ground when we have that kind of weather, even if I had to sit for eight hours, than to be up in the air.

And let me say that I have observed some improvements in the way that the information is coming. I was six weeks ago or something like that, I was stuck in Abilene, Texas, for six hours on a plane trying to get to Dallas. And the pilot offered the opportunity for people to get off. He did say, if you get off, you can't get back on because of security. If you wanted to rent a car or whatever. And some did get off.

They did pass out additional water, and they ordered pizza. It was just that by the time, the pizza didn't get there by the time we got a notice to leave.

I am trying to figure out what else the airlines can do to accommodate passengers when this comes. I ride one two ways almost every week. And I know that I am not going to avoid the weather. And I can't challenge the weather. But I am trying to figure out what else the airlines can do.

I saw this ad that JetBlue printed, which I thought was very, very well done. So I want to ask the two CEOs here from airlines, what else can you do?

Mr. NEELEMAN. I will tell you, since St. Valentine's Day, the storm that we had, we have been racking our brains to try and figure out what we can do more for our customers. I think the difficulty arises that if you are going into like the President's Day weekend and you have to cancel 200 flights because of an ice storm in which you can't take off, now you have all those customers that are on canceled flights, and the flights are full through the holiday weekend, that is a very disruptive thing for our customers. It is really disruptive if you can't get through on the phones and talk to anybody.

So our focus has really been about notifying people of the cancellation before they get to the airport, and we did this this last weekend with the nor'easter that came through, much better. And then offering them the ability to re-book their tickets with no additional change fee or no additional charge so that they can go a different weekend. And do it quickly, through the internet, where they can push a button and have it automatically changed over.

But to the extent that if you want to go on that day at that time, and now you can't go any more because of weather event, that is a hard thing to talk to customers about. I think just the ease of information, letting people know what it is, letting them get in touch with you quickly and receive an alternative or a full refund. I think one of the things that wasn't quite clear maybe on the other panel, if we cancel a flight, a customer, by Federal law, is entitled to a full refund. We don't hold onto people's money if we cancel a flight.

So I think it is just the communication and letting people know. As you said, weather will come. And so it is just trying to communicate better with our customers and letting them communicate back with us a lot easier. That is really all we can do when things are really, really bad on weather.

Mr. MAY. Congresswoman, I think certainly I endorse everything that Mr. Neeleman said, and reinforce from our perspective that I think the suggestions made by many members on this panel, by the IG, the DOT and others, are things that we have to pay particular attention to and incorporate wherever is reasonable into our game

plan. We thank you for your attention to this issue. It is very important to us.

But at the end of the day, completing those flights is the most important thing, and doing it safely.

Ms. JOHNSON. Thank you very much for your response. My time is expiring. Thank you, Mr. Chairman.

Mr. COSTELLO. I thank the gentlelady. The Chair recognizes now the gentleman from Illinois, Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman. I actually have a plane to catch so I will make this quick.

Mr. MAY. So do we.

[Laughter.]

Mr. LIPINSKI. Hopefully, it will be going out.

Information, that I can't emphasize, information I think should be available. There should be, the airlines should, there is absolutely no reason the airlines should not be making information available about delayed flights, and cumulative information available about delayed flights, the most important thing, in the short term, for everyone sitting there waiting for a flight, in the long term for people being able to make decisions, judge airlines, et cetera.

I have a question that had come to my mind during what happened with JetBlue. Is it possible to have a system where if you don't have any gates at airports, you can still take passengers off the plane, bring stairs up there, have an area where the plane could go and get passengers off in that way? Is that logistically possible?

Mr. NEELEMAN. Absolutely. In preparation for our next event, we always have to have these contingency plans. We have, in the process of purchasing equipment, we have an area, and we have a luxury at JFK because we have this area, other airlines don't have it. But we have leased a large area where we can bring airplanes back and we will have stairs there. Because what happened on St. Valentine's Day, all the planes were at the gate, they were stuck to the gates, the wheels were stuck to the ground, we couldn't push them off, we couldn't push them on. But we could have done better. We have reevaluated what could have been done better. So we will take those planes over there.

There was concern about people falling down stairs and hurting themselves. We didn't hurt anyone on that day, we just made their lives very, very miserable.

Mr. LIPINSKI. You could have just carried them down.

Mr. NEELEMAN. That is right. We did that eventually, but we should have done it much sooner. So yes, we have contingency plans for that.

Mr. LIPINSKI. Do you think this is possible to be something that is done regularly by all airlines, to have that available?

Mr. NEELEMAN. I think it depends on the airport. Jim can answer that. But I think every airport should have a plan in place, an evacuation plan, where you have to go to a gate if it is open. If it is open, you have to be allowed to go there. But if there is another plane coming to that gate, you could delay another plane.

Every airport should come up with a space, a plan to be able to pull something together to make sure that customers can get off airplanes, be it in Austin or in JFK.

Mr. MAY. And Congressman Lipinski, I would endorse what Mr. Neeleman has said and point out to you also that in many of these circumstances, and we are working with the airports to try and update our contingency plans. But in many of these circumstances, when you have these terrible weather events, you may have 80, 100, 110 planes on the ground that are not expected to be on the ground at that particular time. Those are in addition to those that are sitting at the gate.

So one of the complications, again, depending on the airport, and the bigger the airport, the bigger the problems, Chicago being one where you could have just no place to put some of those planes for extended periods of time. That is why we want to have as much flexibility in our contingency plans and make sure they are adjusted airport by airport, and try not to have a mandate of one size fits all.

Mr. LIPINSKI. Very quickly, Mr. May, the Inspector General said that there has not really been, the uniform compliance with the compensation for people who are bumped from flights, what is the reason for this?

Mr. MAY. My sense is, and I would be happy to come back to you, review my members and give you a more defined answer, but my sense is that it is an airline by airline issue.

Mr. NEELEMAN. Maybe I could comment on that quickly.

Mr. LIPINSKI. Well, I am out of time.

Mr. NEELEMAN. As an airline, I can just tell you that involuntary separation from an airline is a federally mandated amount of money. There is no variation on that. But until you get that amount, I think it is $500, airlines can negotiate with customer and get volunteers to come off and can offer less money or free tickets if they want to do it. So that may have led to the variability he was speaking of.

But there is Federal law that says if you involuntarily take someone from an airplane, there is a specific amount, which ours is $1,000, theirs I think is $500, which is Federal.

Mr. LIPINSKI. That is something I think it would be good for passengers to know. I would also like to put forward the possibility of, as I brought up before, of flights being canceled, not due to weather but mechanical problems, the possibility of there being some sort of compensation for that. It certainly has happened to me, happened twice in a row coming out here, and I needed to be here and expected the flight to go out at a certain time.

I think that is also something that should certainly be considered, at least.

Mr. NEELEMAN. That is what is in our bill of rights. That is the difference between controllable and uncontrollable. I can tell you that there is an infinitesimal percentage of flights that are canceled due to maintenance compared to weather. It is vastly different. We would be happy, if you wanted us to provide that, to provide it. But it is very small.

Mr. LIPINSKI. I very much would like to see that type of information available out there.

Thank you.

Mr. COSTELLO. The Chair thanks the gentleman from Illinois and thanks Mr. May and Mr. Neeleman for being here today and offering your testimony. We will see you in the not too distant future as we continue our series of hearings. Thank you.

The Chair now recognizes Mrs. Hanni, under the five minute rule, to please present your testimony. Then we will recognize the other members of the panel after your testimony and then have questions for you at the end of Mr. Ruden's testimony.

Mrs. HANNI. Okay, thank you. Mr. Chairman, members of the Committee, my name is Kate Hanni. Thank you for the opportunity to testify on behalf of the 15,000 members of the Coalition for an Airline Passenger's Bill of Rights. Some of them, all volunteers, paid their own way to be here today.

Plus, I also want to note that all of the Nation's leading consumer protection organizations, including the Aviation Consumer Action Project, U.S. PIRG, Public Citizen, Consumer's Union, and the Consumer Federation of America support this legislation on behalf of their 15 million members.

I have included as a part of my testimony the letter which all of these groups, including APBOR, sent to the full House this week.

Before I begin, I would like to point out that I am the only person here today exclusively representing consumers, your constituents. Before December, I had no knowledge of airlines and regulations. But after my stranding, I have taken it upon myself to fight for the rights of millions of people. Passenger rights matter to anyone boarding a plane. I hope today to give the flying public a voice. We appreciate your efforts and ask for your help in ensuing our safety and well-being when boarding an aircraft.

We need a new law that will hold the airlines accountable. On December 29th, my family, I, my husband Tim and my sons Landon and Chase Costello, and 5,000 other passengers were treated inhumanely on 121 diverted American Airlines flights. The horrific conditions and treatment we suffered that night could have been prevented with legislation protecting the flying public. Our tires were not glued to the tarmac.

We departed San Francisco aboard American Airlines Flight 1348 en route to Point Clear, Alabama, by way of Dallas Fort Worth, for a much-needed holiday vacation. Still recovering from a violent assault, this was my first trip away with both of my children and my husband. Due to thunderstorms, we were diverted to Austin. Nearly nine hours later, we were still sitting on the tarmac with twelve other jets.

During those nine intolerable hours, we ran out of water, toilets overflowed and we were given only one 45 calorie bag of pretzels, which I gave to my 11 year old son. As time ticked by slowly, passengers started to get frustrated, angry and feel helpless. We were left with no information on how long we would be held on the plane.

Because of the lack of care and service, a mother made diapers out of tee-shirts for her baby. People walked their dogs on the tarmac, while lightning exploded a transformer. Flight 534, a diabetic paraplegic was in such distress that paramedics were called.

The passengers revolted. Because they were unable to remove the patient, the pilot declared an onboard emergency so the plane could go to a gate. On another aircraft, police arrested brawling people. Flight 2412, a small dog defecated on passengers who began vomiting and were told to hold their own vomit bags, due to full trash receptacles. People ran out of medications and others had no water with which to take theirs.

Finally, against orders, our pilot drove the airplane to a gate, where we eventually deplaned. In order to assure we didn't leave, the airlines refused to unload our bags and said they would resume the flight the next day. By not canceling our flights, they did not have to refund our money.

My husband and I were so disappointed with the airline that we turned our anger into advocacy. We started a blog and a petition and then finally, the coalition. Yet since coalescing, there have continued to be an epidemic number of strandings by different airlines in different airplanes, proving the airlines see passengers as cargo.

These events are not new. They have just been tolerated until now.

Two fourteen, JetBlue. Michael Skolnik, one guy, two jets, 17 and a half hours on the JetBlue tarmac. Three five, United Airlines, Chicago O'Hare; 3/17, Philly and JFK. Rahul Chandron, I have submitted his testimony in my written statement. He has three strandings, starting with Northwest Airlines in 1999.

Just when you thought it couldn't get more absurd, Cheyenne, Wyoming and Scotts Bluff, Nebraska, abandonment by the airlines. Four planeloads of diverted passengers were dropped off at two airports, not their destination, and left there with no resources. Roger Barbour was trying to get to his own wedding when he was dropped in Coney by United Express, and the planes later flew away empty. It ended up costing him $3,000 to get home. This is simply unacceptable.

I have told you some of our stories. I want to tell you that believe the DOT and the industry are severely under-stating the number of tarmac strandings. The airlines have said that all these events are statistically improbable. Evidently not. In fact, our analysis of the written DOT testimony reveals that the widely-reported number of 36 planes held for 5 hours or more doesn't include planes that never took off. This phrase in the DOT's written testimony shows their oral testimonies are an attempt to dissuade this Committee with statistics that don't include some of the more severe incidents that have taken place.

The DOT and ATA tell us that tarmac delays have improved and complaints are down since the airlines promised to self-regulate in 1999. By this, they must mean that an increase of 19,000 tarmac delays of one hour or more over the year 2000 is a good thing. But the rest of us want these numbers to decrease, not increase. If we use tarmac delays of over three hours since 2000 and extrapolate to 100 passengers per flight, then only 800,000 passengers have been affected.

This slide shows 16,186 diverted flights last year. If we extrapolate to 100 passengers per flight, over 1.6 million passengers may have experienced tarmac delays like ours in Austin. But there are no tarmac statistics for any of those flights.

Is that the full extent of the problem? Not even close. This slide simply shows that the statistics the DOT and the ATA are using account for only 75 percent of all domestic passenger travel. Therefore, the Cheyenne and Scotts Bluff strandings would not be accounted for anywhere.

I have outlined today why Congress needs to enact legislation to curb these outrageous practices and require the airlines to report all tarmac delays. We need to keep the public informed and cannot let strandings continue to happen.

As I conclude my testimony, let's watch a clip of the United Express flights leaving passengers in Cheyenne, Wyoming. Congress must now step up and use the current FAA reauthorization legislation as an opportunity to ensure that airlines make passengers' rights a top priority once and for all.

In 2001, the airlines made commitments which they haven't kept. And why should they? There are no consequences for their actions. The DOT forgives most of the fines imposed, so they are virtually meaningless. Please impose meaningful consequences in this bill, so that the legislation has some hope of making a difference to the flying public.

Thank you, Committee members, for giving me the honor of speaking here today, and a special thank you to Representative Mike Thompson for taking the first step and proposing this life-saving legislation. Thank you. I am available for questions.

Mr. COSTELLO. We thank you for your testimony.

The Chair now recognizes Mr. Mitchell under the five minute rule.

Mr. MITCHELL. Thank you, Mr. Chairman.

Mr. Chairman and members of the Committee, thank you for inviting the Business Travel Coalition to testify before this Committee again and to provide our views on the subject of airline passenger service. I am here representing corporations that purchase billions of dollars of air tickets and dispatch millions of travelers each day. Formed in 1994, BTC has consistently advocated the need for improved airline service and has provided Congress and the DOT with suggestions on how to ensure such improved service in the marketplace.

However, legislation in this area is not needed, in BTC's view, and could make matters worse in terms of safety margins, flight cancellations and higher airfares. These unfortunate incidents do not rise to a level of national seriousness to warrant Federal laws governing airline industry customer service. Massive delays are not usual in this industry.

That is not to say that Congress does not have an important role. Indeed, this hearing is timely in the larger customer service sense. Progress at the beginning of the decade against airline customer commitments was recorded for several quarters. Then the tragedy of 9/11, new security requirements, followed by SARS, the Iraq war, sky-high jet fuel prices and $40 billion of airline losses hit. As was said in a few different ways today so far, airlines, the press, the Government, all lost focus on these customer service commitments.

Indeed, it is time for the airlines to refocus. Importantly, DOT is already moving on this issue, as we saw on a previous panel. In

addition, the FAA is examining its role in contributing to extended delays, for example, with the confusion created during the February storm in New York regarding the varying interpretations of the regulation concerning ice pellets.

DOT, Congress, passenger groups and the press are a potent combination, a highly visible bully pulpit, to inform consumers who in turn take purchasing decisions that drive the market. Reporters and customers pounded JetBlue in the aftermath of its customer service fiasco. Customers do have choices, and power to effect to change. In the case of JetBlue, the operational debacle cost it millions of dollars and tarnished its high-flying image. The effectiveness of management in responding with changes to policies and procedures will determine JetBlue's future success. The marketplace is holding them accountable.

In addition, in the immediate aftermath of the terrible conditions that American Airlines' customers endured in December, the airline implemented new policies and procedures.

There are actions the Federal Government can take to improve the experience of the flying public. One, increase airline competition through open skies agreements and the promotion of new entrants, such as Virgin America. Prevent radical consolidation of the airline industry. The greater the competition, the more influence the customer has in driving service improvements.

Number two, invest in a new satellite system for air traffic control, to reduce delays and improve system efficiency, especially during times of severe weather systems. Pass FAA reauthorization, so the Government and the industry can head off a real crisis in passenger service. Number three, build more runways, such as at O'Hare, the modernization program there that BTC supported.

Number four, insist on better decision making on rules promulgated by the FAA to prevent highly confusing and service degrading circumstances, such as with the ice pellet regulation. And five, require greater DOT enforcement of existing carrier commitments and existing regulations and laws.

In conclusion, while BTC believes the airlines must do more, a lot more to reduce delays and minimize customer hardships during delays, we believe that Federal legislation would be proven to be counter-productive and something that we as an organization couldn't support.

Thank you very much.

Mr. COSTELLO. We thank you.

The Chair now recognizes Mr. Ruden.

Mr. RUDEN. Thank you, Mr. Chairman, for permitting ASTA to share its views today.

Since the ATA airlines adopted the 12 so-called voluntary passenger service commitments in 1999, DOT Inspectors General have twice found and soon will find a third time that there has been widespread non-performance of the promises made to the Government and the public. On behalf of the travel agents who serve a substantial majority of air travelers, enough is enough. It is time, after eight years of futility, to achieve closure with these problems.

Absent a clear threat to safety, passengers should not be forced to remain on aircraft for periods such as six, eight or even more hours while waiting to take off. That does not mean that six hours

is okay. Six hours is not okay. I will return to how that number can be determined in a moment.

ASTA rejects the position that tarmac detentions are too infrequent and unpredictable or affect too few passengers or that real solutions are too costly to warrant intervention. Severe snowstorms and thunderstorms happen every year. It is time to stop looking for reasons not to deal with these problems and to act decisively with a program to change the culture of denial and resistance to change.

Market forces are not going to resolve these issues for us. The airlines do not compete on customer service as a general rule, and after eight years, marketplace forces have failed to do the job. There is no reason to withhold decisive action. The question is, what action?

A meaningful solution should address all parts of the airlines' unfulfilled commitments. We need a fundamental and principled solution, combining legislative, regulatory and yes, perhaps some self-help by the airlines. An approach that attacks the roots of the problem, as well as the symptoms, and that applies to all airlines, not just members of the Air Transport Association.

There are three steps that Congress could take right away. First, limit the scope of statutory preemption of State consumer protection laws and restore consumer access to State courts and State law. Empowering the States to act against abuses of air travelers' interest in the same way they can act against other industries would in one simple step effect a major change in airline attitudes and performance.

Second, appropriate funds to equip DOT's enforcement staff with the resources needed to compel compliance with DOT's unfair and deceptive practices authority.

Third, mandate that all elements of the airlines' passenger service commitments be made part of their contracts of carriage. Provable violations of real promises would then be actionable in State courts as breaches of contract. Such action by Congress, however, is not sufficient. The Department of Transportation can and should play a critical role in refining the operational issues, either for regulatory intervention, industry action or, if necessary, further Congressional action.

DOT should bring together the parties necessary to craft an informed regime that assures that airline customers will be treated properly. Yet in doing so, we must be sensitive to possible unintended consequences form imposing regulations on a complex and highly networked system. A joint fact-finding process would identify the relevant facts, risks and opportunities. Does it matter, for example, whether the flight is a domestic two hour trip or a twelve hour international trip? Is the position in line guarantee as requested by ATA even feasible?

Under FAA rules and airline operating procedures, who makes the decisions regarding return to the gate? Is it the pilot? Company managers? The FAA? What is the influence of FAA and airline flight crew work rules on flight delays, detentions and cancellations?

Representatives of interested and responsible parties should be convened by DOT to develop a factual understanding of what drives bad outcomes and how they can be avoided. Most impor-

tantly, Mr. Chairman, joint fact-finding should not be limited to insiders such as the airlines and the agencies. To earn legitimacy, joint fact-finding must include representatives of consumers and travel agents, along with the airlines, the airports, FAA, assisted by the independent Inspector General.

The airlines, Mr. Chairman, are resisting compulsion, promising again as they did before, to do better. DOT prefers marketplace solutions that have no history or chance of success. The public frustration with repeated mistreatment must be at or near an all-time high. The time for voluntary passenger service commitments has passed.

Congress and DOT should act now, then, to limit Federal preemption of State consumer protection laws, require service policies be integrated into contracts of carriage, replenish DOT's enforcement budgets and promptly convene a meeting of responsible interests, including ASTA and representatives of consumers, airlines, airports, the FAA and the Inspector General, to develop a plan as we have described.

Thank you very much.

Mr. COSTELLO. We thank you for your testimony.

Mrs. Hanni, I wonder if you might just, a few questions. One, you have had an opportunity, obviously, to take a look at JetBlue's, what they would call a passenger bill of rights, spelling out what passengers' rights are, compensation for delays, canceled flights and so on. I wonder if you might comment on their policies that they have adopted.

Mrs. HANNI. I admire very much that he came out immediately and first of all, gave the passengers a refund for their ticket and a free round-trip ticket somewhere, which I think was extremely admirable. I also admire that they canceled flights the next time that there was a serious weather event that they knew they were going to have people either out on the tarmac or stuck in the terminal. That was extremely proactive. I was up all night, by the way, on March 17th, with a woman whose daughter was lost in the Philadelphia airport, from a different airline. So JetBlue did the right thing.

I think their customer bill of rights is pretty comprehensive. I don't know yet how many people are or are not being compensated. I have had a few people say they are not and a few say they are. So it is very hard for me to tell how it is working so far. Although I am getting a lot of reports, now that I have become the advocate for airline rights, I have people text messaging me when they are stuck on the tarmac or if their wives are. So I guess the biggest problem is that it is not binding unless it is in their contract of carriage, and I am not aware that it has been made a part of their contract of carriage.

The other thing is with the airlines, whatever they give us, they can take it away. So that appears to be what has happened in the past, that there have been agreements made that they can then summarily remove for one reason or another. I don't know if those agreements were ever incorporated in their contracts of carriage, the agreement with the ATA, the 12 points. What scares me is that they can. And for any reason, that they can make a management decision that may benefit them financially, but not the passengers.

Mr. COSTELLO. Let me ask, and of course, the policy has only been in place a very short time.

Mrs. HANNI. Right.

Mr. COSTELLO. In reviewing what JetBlue did as far as their customer bill of rights, is there anything that you would add? Would you say that it is pretty comprehensive, as you said, is there anything missing?

Mrs. HANNI. I don't think chronically delayed flights were mentioned in their customer bill of rights. Also, the whole idea of the controllable irregularities. As I understand it, that means that if there is a weather delay for 24 hours, then they don't have to compensate. But then if there is an additional 24 hours, that is where a controllable irregularity becomes an issue and they get to determine. See, the big problem is that they get to determine what is weather, they get to determine what is a controllable irregularity. It is not us, it is not the FAA. It is them.

So also, in our situation, we were diverted, but we knew were weren't going to fly after three hours. So our situation was very different than the JetBlue strandings.

Mr. COSTELLO. Mr. Mitchell, you indicate in your testimony that how management responds at JetBlue will determine the future success of JetBlue. Do you want to elaborate on that?

Let me ask, maybe the first question is, you heard what Mrs. Hanni just said, that there have been some reports that some people have not been compensated. One, have you had, either Mr. Mitchell, or Mr. Ruden, have you had any feedback concerning the JetBlue policy not being adhered to, and number two, I ask both of you about, in particular Mr. Mitchell, the effectiveness of what management does with their policy will determine the future of the company.

Mr. MITCHELL. To address your second question, I have not heard any feedback about passengers being treated unevenly against JetBlue's new policy. It could be, I am just not aware of it.

I think the marketplace is watching JetBlue very carefully. I can speak very specifically about the corporate marketplace that JetBlue has been endeavoring to enter for the last six to eight to twelve months. Travel managers and purchasing managers in particular are watching the follow-up and the follow-through and the actual commitment of JetBlue.

So they would be hurt in that market, one that they desperately want to break into. I am talking about the large corporations that buy business travel.

So I think as well, as long as the press stays on the issue and this Committee and the DOT and consumer groups keep a bright light shined on JetBlue, they will empower the marketplace to further reward or penalize JetBlue for the effectiveness.

Mr. COSTELLO. Thank you.

Mr. Ruden?

Mr. RUDEN. Mr. Chairman, I don't have any information indicating that JetBlue is not complying with what they said. It would be surprising if they weren't. There may be individual mistakes being made here and there, but I don't expect that they will deviate materially from what they have done.

Whether this is going to have the influence on the marketplace that Mr. Mitchell suggests, I am highly skeptical, based on the experience of the last eight years.

Mr. COSTELLO. Well, before we conclude the hearing, let me just say that we appreciate your being here today, your testimony and your advocacy, in particular, Mrs. Hanni, on behalf of customers and the flying public. You heard me say earlier, more than once, that we are not going to conclude this hearing, put it on the shelf and walk away from it. We are going to be aggressive in our oversight. We will work very hard to make certain that either from a legislative standpoint or a standpoint of the industry coming together and doing what JetBlue and American Airlines both have done in proposing a passenger bill of rights or customer bill of rights, and making certain that they are followed, that is one of the major problems, in my judgment, from 1999, is that there is an agreement, and the agreement was that Congress said, you work it out, they worked it out, it was acceptable, there were promises made but promises were not kept.

The DOT did not do its job in making certain that the airlines lived up to their promises, and the Congress did not do its job in proper oversight. I assure you that I am committed, and members of this Subcommittee are committed to following through with this to make certain that customers are protected, that they understand their rights, they understand the procedures when they book their flight from the beginning of the process to the end.

So we thank you for your testimony.

Before I conclude the hearing, the Ranking Member has asked that we submit for the record hearings on various issues that have been conducted by the Subcommittee since 1999. So we will enter the hearing list without objection.

[Information follows:]

Hearings on Aviation Passenger Issues and Delays since 1999:

03/10/99	Aviation Passenger Protection
10/14/99	The Recent Increase in Air Traffic Control Delays
06/20/00	FAA Implementations of the Aviation Medical Assistance Act of 1998
09/28/00	Airline Delays: The Summer of Our Discontent
04/26/01	HR 1407: Airline Delay Reduction Act
06/20/01	Airline Customer Service Commitments
07/16/01	Air Traffic Congestion at LaGuardia Airport
06/05/03	The Aircraft Cabin Environment
05/13/04	Avoiding Summer Delays and a Review of the FAA's Air Traffic Organization
09/09/04	Delay Reduction Efforts at Chicago's O'Hare Int'l Airport
04/06/05	Efforts to Prevent Pandemics by Air Travel
07/14/05	Cell Phones on Aircraft: Nuisance or Necessity
05/03/06	Mishandled Bags

Mr. COSTELLO. And with that, we again thank you, and this concludes the Subcommittee's hearing. Thank you.

[Whereupon, at 2:10 p.m., the subcommittee was adjourned.]

OPENING STATEMENT OF
THE HONORABLE RUSS CARNAHAN (M0-3)
AVIATION SUBCOMMITTEE
TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

Hearing on
Aviation Consumer Issues

Friday, April 20, 2007, 10:00 AM
2167 Rayburn House Office Building

Chairman Costello and Ranking Member Petri, thank you for holding this important hearing on aviation consumer issues.

We are gathered today to discuss possible improvements to airline passengers' experience within the airport and on board planes. As airline traffic has recently increased, so too have passenger inconveniences. In 2006, one out of four flights were delayed or canceled.

In February, passengers spent 10 hours upon a grounded Jet Blue flight at JFK Airport. To say that episode was unacceptable would be an understatement. Passengers should never have to go through such horrible experiences. However, as we examine these issues, it is important to keep in mind that those situations are rare. While all of us hate delays, we must remember that there is a difference between an annoying delay and an excessive delay that could have been handled differently by the airline.

The DOT Inspector General has released numerous reports since the airline's 1999 "Customer Service Commitment". I am concerned that the airlines have not sufficiently adopted these voluntary measures. While I prefer that the airlines take proactive steps to guarantee a high quality of experience for all passengers, it is within the jurisdiction of this subcommittee to mandate those improvements upon the industry. I sincerely hope that we do not need to take that step.

I look forward to hearing from our witnesses today, and thank Chairman Costello and Ranking Member Petri for working with me on these issues.

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STATEMENT OF REP. STEPHEN I. COHEN
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON AVIATION
HEARING ON "AVIATION CONSUMER ISSUES"
APRIL 20, 2007

I thank our distinguished panel of witnesses for taking the time to testify before us today on the important issues surrounding aviation consumer rights. I am particularly interested to hear from the DOT's Inspector General regarding his findings about airlines' compliance with their customer service commitments and any proposed steps the DOT intends to take with respect to oversight and enforcement of future airline compliance. It is my understanding that the level of compliance has been mixed, with some carriers performing better than others.

I am willing to reserve judgment with respect to whether Congress needs to impose legislation on airlines mandating certain customer service requirements. I am not unsympathetic to those who advocate for such legislation, but I also understand the substantial burdens that such legislation could impose on the airline industry and I am willing – for now – to give the airlines another chance to comply with their own internal customer service commitments.

STATEMENT OF THE
THE HONORABLE JERRY F. COSTELLO

AVIATION CONSUMER ISSUES
APRIL 20, 2007

- I want to welcome everyone to our subcommittee hearing on aviation consumer issues. This is a timely topic given the recent string of delayed and cancelled flights, resulting in lengthy tarmac delays and again highlighting customer service issues.

- Voluntary efforts by the industry to improve airline service have come under strong criticism and I believe closer oversight of the aviation industry is needed. While I question a one-size-fits-all legislative approach to regulating consumer issues, changes must be made – and they must be made now.

- As I have said before, if the industry does not take action to address these issues, then Congress will.

- For anyone to gloss over the problems by saying that these instances are few and far between or outside the norm is missing the point -- to force anyone to be stranded on the tarmac for eight, nine, 10 or more hours – just one time is unacceptable!

- This hearing is the first in a series of hearings that this Subcommittee will hold to review aviation consumer issues. If anyone in the industry thinks that if we get by this hearing that it will be business as usual – they are wrong!

- A 2006 audit by the Department of Transportation Inspector General's (DOT IG) office found that only five of the airlines that had signed on to the voluntary 1999 customer service commitment had internal quality assurance and performance

measurement systems in place to meet their promises -- including addressing passengers' essential needs during delays. I do not consider this progress.

- Further, I am disappointed that progress was not made on implementing well-defined contingency plans. This is not a new issue – airlines were aware of the need for contingency plans to deal with extreme weather back in the 1999 when it became part of their Commitments. However, the DOT IG notes that only a few airlines' contingency plans specify in any detail the efforts that will be made to get passengers off the aircraft when delayed for extended periods, either before departure or after arrival. With long, on-board delays on the rise from 2005 to 2006, this should be a priority.

- I was pleased that in response to the December 2006 American Airlines incident and the February 2007 JetBlue incident, the Department of Transportation (DOT) requested the DOT IG to review those situations as well as the airlines' 1999 voluntary commitments so it can consider taking action. I am interested in hearing from both the DOT and the DOT IG on the progress of this report.

- I was also pleased that after JetBlue's February debacle, they took immediate action by creating a customer bill of rights and incorporating those rights into its contract of carriage.

- We must all remember that passengers make an investment when they purchase a ticket – they expect to get to their destination safely and on-time. There is a cascade effect that a delay or a cancellation has on passengers and their plans.

- Like most members of this Subcommittee, I travel by air quite frequently and I see firsthand the frustrations and customer service issues passengers encounter each and every day – from being trapped on the tarmac for hours on end, to lost luggage, to being stranded at a location not of one's choosing; or simply a lack of information regarding reasons for delays or cancellations. Many times, the airlines' answer to a problem is to give passengers an 800 number and simply tell them good luck. That is simply unacceptable.

- Communication is key to improving any customer service system. The airlines must make customer service a priority. They must make every effort to: inform passengers of delays and the cause; provide for passenger's essential needs when delays or cancellations occur; and ensure that passengers are

informed of airline policies and the customer's rights before they fly.

- Greater transparency by the airlines also is important. Airlines must put policies in place and inform their passengers of these policies – it should not be a guessing game or left to the passenger to try to sort it all out.

- With that, again I want to make it clear to everyone that this hearing is the first in a series of hearing on this issue. This Subcommittee intends to closely monitor the actions taken by the airlines and we will hold additional hearings to check on their progress.

- Before I recognize Mr. Petri for his opening statement, I ask unanimous consent to allow 2 weeks for all Members to

revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses. Without objection, so ordered.

Opening Statement for the Honorable Eddie Bernice Johnson
House Subcommittee on Aviation
Aviation Consumer Issues
Friday, April 20, 2007 – 2167 RHOB

Thank you Mr. Chairman.

I want to thank you and Ranking Member Petri for holding this important and timely hearing this morning.

Based on your hearing schedules, Mr. Chairman, I think it is safe to say that the productivity torch has been passed from the Water Resources Subcommittee to the Aviation Subcommittee.

As frequent flyers I am certain all of us can empathize with today's subject matter.

I have been stranded on tarmacs; I've had luggage lost while traveling both domestically and abroad; and when I have felt the customer service rendered to me fell below my expectations, I made sure I registered my complaints with the appropriate personnel.

Mr. Chairman, it's no surprise that most of our nation's air carriers are struggling to remain afloat financially; however, that does not and should not preclude them from placing an emphasis on providing exemplary customer service.

The industry understands consumers have a choice and the industry also understands the numbers. By 2015, it is projected that one billion passengers will board planes domestically each year.

Obviously, a carrier's loyalty base within this enormous market will be largely dependent on how well customers are treated today.

Again Mr. Chairman, I empathize with today's subject matter and can clearly relate to the frustrations of consumers who have experienced customer service nightmares with our nation's airlines.

However, it is my respectful view that Congress should not be in the business of codifying customer service rules for an industry.

Our nation's airlines should know that implementing exemplary customer service philosophies throughout their respective business models only serves to bolster their brand within the minds of consumers. If not, shame on them, and

consumers should punish them by taking their business elsewhere.

As a former business owner, I of all people understand that mistakes are made from time when rendering a service. However, I am also aware that when mistakes do arise — competent and capable customer service has no rival.

Furthermore, when mistakes are made, there's no substitute for a sincere apology and a demonstrative willingness to show the customer that you intend to correct the wrong so it does not happen again.

As I close, I want to align myself with the recommendations the Department of Transportation's Inspector General will elaborate on within his upcoming testimony:

1. **The airlines must refocus their efforts to improve customer service;**

2. **The Department should take a more active role in airline customer service issues;**

3. **The airlines must overcome challenges in mitigating extraordinary flight disruptions.**

These recommendations don't come off as rocket science to me.

Mr. Chairman, it is my hope that as we continue to move forward in the reauthorization debate, the committee continues to give adequate oversight to aviation consumer issues.

I want to thank the witnesses that have come before us this morning, and look forward to their testimony on this matter.

Thank you Mr. Chairman, and I yield back the balance of my time.

1

Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Aviation
4/20/07

--Thank you Mr. Chairman.

--Today our subcommittee is examining aviation consumer issues, and it couldn't come at a more crucial time.

--According to the Bureau of Transportation Statistics ("BTS"), customer complaints about airline service are up nearly 50 percent from just one year ago.

2

--Airline on-time performance has dropped to 67 percent…down from 75 percent a year ago…..and flight cancellations have more than doubled.

--Baggage handling has gotten worse as well. According to BTS, the rate for mishandled baggage is now 8.23 bags per 1000, up from 6.10 a year ago.

3

--But perhaps most disturbing are reports of passengers being trapped on grounded planes for extended periods of time without access to food, water. In some cases passengers have been held in such conditions for more than seven hours .

--In my view this is not just a matter of comfort and convenience. It is a matter of safety, and needs to be addressed.

4

--Things are moving in the wrong direction, and I hope today's witnesses can help us turn things around.

--Thank you, Mr. Chairman. I yield back the balance of my time.

OPENING STATEMENT OF
HONORABLE JAMES L. OBERSTAR
BEFORE THE HOUSE AVIATION SUBCOMMITTEE
AVIATION CONSUMER ISSUES
APRIL 20, 2007

- I want to thank Chairman Costello and Ranking Member Petri for calling today's hearing on *Aviation Consumer Issues* to receive testimony from the Department of Transportation Inspector General (DOT IG), Department of Transportation (DOT), airlines, and consumer representatives.

- In 1999, this Committee considered implementing a passengers' bill of rights. The Committee heard testimony from passengers, the airlines and consumer groups and decided that the airlines made a compelling case for self-regulation.

- In June of 2001, the DOT IG reported progress towards internal implementation of the ATA's "Airline Customer Service Commitment," an important step toward fulfilling the promise the airlines made to this Committee and the traveling public. In the wake of September 11th, and the airlines' financial hardships, consumer service issues were temporarily deferred.

- As passenger travel increases, so do delays and passenger complaints. I would like this hearing to be an impetus for airlines to re-commit themselves to their earlier "Airline Customer Service Commitment" and to the internal self-monitoring of those commitments.

- In 1999, the airlines made a commitment to implement internal quality assurance and performance measurement systems. However, the DOT IG will testify today that not all air carriers have implemented such systems. We need to keep the pressure on the air carriers to develop internal controls so that they know when they are falling short on their commitments and can take corrective action. While I do not believe that we should legislate specific customer service provisions, I do believe that airlines should be held accountable for their air carrier customer service policies.

- One way to ensure accountability is to make certain that the DOT has the authority and resources necessary to investigate passenger complaints and levy fines against the airlines when necessary. I look forward to hearing from the DOT IG on ways that the DOT can improve its enforcement processes for consumer complaints.

- Improving communication to the consumer is also a critical step. All too often passengers are either not informed or inadequately informed about delays, or the reasons for delays, cancellations, and diversions.

- I have also heard much about passenger frustration at getting through to an airline 800 number to obtain information or reschedule their delayed or cancelled flight, or if they are fortunate enough to talk to a live person, oftentimes that person has no information to give.

- Today, we will hear testimony about these frustrations and how different airlines handled the situations. Airlines have a choice in this matter. Good customer relations would dictate full and adequate disclosure of pending delays and cancellations, as well as of the steps which will be taken to accommodate passengers when excessive delays occur. Development of plans and procedures for accommodating passengers in such situations, including disseminating critical information, should be a top priority for each airline.

- The airlines must also provide consumers with the ability to access information easily. Passengers need to have a clear forum for their complaints, and the airlines should publicize these complaint statistics and delays so consumers can make informed decisions about the carrier and flights they travel on. Congress should not have to force airlines' compliance with simple customer relation initiatives – but we will if we have to.

- The airlines use our nation's public air space and facilities, we entrust our lives to them and use their services. In return, there should be a level of accountability to comply with their customer service commitments.

- Thank you again Chairman Costello for your leadership on this issue. I want to thank the witnesses for coming forward to share their testimony with us today.

Opening Statement
Congressman John T. Salazar
T&I Subcommittee on Aviation
Hearing on Aviation Consumer Issues
April 20, 2007

Thank you, Mr. Chairman.

I appreciate that we are addressing this topic because consumer satisfaction with air travel is the best indication of how well our nation's aviation system is working.

Every service industry needs to be aware of their consumers.

If their consumers aren't happy, business will suffer.

Everyone here has experience as a passenger.

Surely we can all relate to stories of delayed flights, lost baggage, and high ticket prices.

Some issues are quite simply out of our control, like inclement weather or certain mechanical problems.

Those of us who fly in and out of Colorado know how much weather plays a part in travel.

Yet the way in which various airlines and airports deal with such circumstances is something that we should look at.

Because severe weather, coupled with a failure of an airline's crew scheduling computer system or general staffing shortages, can be—and has been—disastrous.

Those of us who fly know how complicated and complex a process flying is.

I am not trying to make light of the aviation industry's task of dealing with such unpredictable factors and difficult situations.

But I believe we must continue to hold our aviation industry to high standards.

It is the responsibility of this committee to ensure that our nation's air travel remains the most efficient, safe, and reliable it can be.

I look forward to today's hearing and witness testimony. Thank you.

Testimony of Kate Hanni, Executive Director
Coalition for an Airline Passengers Bill of Rights
159 Silverado Springs Drive, Napa, CA 94558
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HR 1303– Airline Passengers Bill of Rights
April 20th, 2007
Aviation Subcommittee

Mr. Chairman, Members of the Committee, my name is Kate Hanni and I want to thank you for the opportunity to testify on behalf of the 15,000 Coalition members for an Airline Passenger's Bill of Rights.

I am here because of the inhumane manner in which my family, I, my husband Tim, my sons Landen and Chase Costello, and 5000 other passengers were treated on 121 diverted American Airlines flights on December 29, 2006. We believe that the horrific conditions and treatment we suffered that night should be illegal and should never happen again.

On December 29, 2006, we departed San Francisco aboard American Airlines Flight 1348, en-route to Point Clear, Alabama, by way of Dallas-Fort Worth, for a much needed holiday vacation. Still recovering from a violent assault, this was my first trip away with family. After 3 gate changes, we finally boarded at the third gate at 6:30 a.m. There had been a mechanical problem so we were subject to a short delay. The flight was uneventful until we got to DFW airspace. The pilot came on and said that there were some "Fingers of weather" rolling through Dallas and that we would be able to get there, but would have to divert to Austin briefly to wait out the "Wave/Finger of weather currently hitting DFW." We put down in Austin sometime around 12:00 p.m. We pulled into a parking lot type situation and were first in line and closest to the terminal so we could see the gates and traffic as it came and went.

It was a sunny landing, the weather was clear in Austin.

Hour one: Pilot says still awaiting clearing of weather. Passengers restless and nervous about connecting flights, but still o.k.

Hour two: Pilot still giving us 15 minute updates and telling us he's sure we'll take off, but weather still not clear and heavy traffic in the sky preventing take off. People becoming more restless. Several people who live in Austin and have weddings, funerals, parents' deaths to attend to are now upset and want off the plane. Pilot says he'll ask for a bus to come get some folks off, but accompanies that with a threat "if you deplane you are on your own, you cannot get back on, you have no guarantee of when you will get your luggage."

Two and ½ hours: He gets clearance to take off, but he decides it's not safe, he can see an impending thunder head and says we must wait 5-10 minutes for it to clear. It blows through, but he loses clearance to take off. People are getting angry and calling AA Customer Service to find out about their connecting flights. AA states they will surely make their connections, just stay put and that all flights have been delayed out of DFW, not cancelled.

Three hours: Pilot says a bus is coming for some passengers if would we be so kind as to allow the passengers who are disabled, elderly and folks with small children to deplane first. Again he accompanies it with a threat of losing your luggage, etc. We don't try to deplane at this point as my kids are older and the bus only holds 15 people. People storm the back of the plane. We see the people with the kids, the elderly and disabled return to their seats but there are a few less people on board. That is the last bus…

Three and ½ hours: Flight isn't going to fly. Pilot informs us he is waiting now for a gate and has made a request. Many planes have gathered next to us in the parking lot. All of them originated in California - all American Airlines. None get gates. The pilot opens the cockpit door and invites us to speak to him in the front if we want to.

Hour 4: People are very frustrated, hungry, angry, restless and needing their medications.

Hour 5: The toilets begin to stink a little, the pilot is still telling us he has requested busses to get us off, requested a gate, requested food and beverages be brought to the plane. None arrives.

Hour 6: The stewardess passes out a bag of pretzels and water from the bathroom sinks in plastic cups. A woman has run out of diapers and is making one out of a t-shirt. We have kids screaming and running up and down the aisles and people are fed up.

Hour 7: The toilets really stink, the pilot lets us know he is still requesting and being promised busses, to deplane us, bring food and beverages and to empty the toilets. He is angry they aren't giving us a gate and tells us so. He is also angry they aren't bringing us food.

Hour 8: There is another onset of thunder and lightning and suddenly a transformer is hit and all the lights go out around us. I can see a man flashing SOS signs out the window of his plane, I see people out on the tarmac walking their dogs, I see an ambulance and police car circling a plane. At this point I'm totally freaked out. I go to the front of the plane. The pilot is exiting the bathroom and I want to enter it. He holds the door shut and says enter at your own risk. I was already aware the rear toilets weren't usable so I entered at my own risk. The smell was intoxicating in a bad way. I could hardly stand it. I exit the bathroom and there is a crowd around the cockpit. I overhear a pilot from an adjacent aircraft state that a dog has "defecated" all over some passengers and that a woman is now throwing up and the air quality on board has deteriorated to an inexplicable extreme. He was summarily told to stop asking for a gate. We could see available gates, but we weren't being allowed to go to them. I then see Hazmat going to a plane and the police entering another plane. An ambulance and paramedics have entered another aircraft. All were denied gates. Feeling so much anxiety that I was having chest tightness, I asked the pilot whether if I were to have a medical emergency would they allow him a gate. He said no, they will send out an ambulance to get you like they are doing over there. I now know that flight 534 on our tarmac had a diabetic paraplegic who was going into shock. They tried to treat him on board but couldn't, but when they tried to remove him on the tarmac, the passengers began to revolt. At that point they asked his brother to declare an entire on board

emergency. He did and they were allowed a gate. They were the only plane that evening allowed to a gate prior to the restaurants closing in the terminal.

9 Hours: Our Pilot again says he is not being allowed a gate. He says he's talking to the number one and number two managers at the airport and the number one and number two managers at the airlines and being rejected. The rear of our plane was beginning to get very noisy. People were angry and trying very hard not to yell, they walked to the front of the plane and talked to the pilot. There was one particular gentleman that wasn't going to take it any more. He went to the front of the plane and had a heart to heart with the pilot. Voices were raised. At that point the pilot came on and said that he felt that it was no longer safe to hold the plane and that he may lose his job, but was taking the plane in anyway. He turned out the lights in the cabin, we applauded, he shut the cockpit door and began to move at a snails pace since he didn't have the appropriate guidance and clearance to pull in. It appeared he was pulling toward the path of an incoming jet. It was very scary. He made a series of U-Turns and pulled up behind another jet and waited until they backed away from the jet way. They did and he pulled forward. It was another 15 minutes or so before the jet way moved into position for us to deplane.

The pilot, Jesse Fedoro, told us they will get our bags off for us, so we should go to Baggage Claim 3 and wait there for our bags. As we deplaned it was like aliens coming off of a spacecraft on a different planet. We were shell shocked. You could see it in everyone's face. The restaurants had closed 30 minutes earlier so we couldn't even buy a meal. We went down to baggage claim and there were the media. The Dallas Morning News, CBS Channel 42 and others. I was interviewed by CBS and pointed out that the arrivals board didn't have our flight mentioned. My kids were tired, hungry and angry. My youngest went to sleep on the tile floor in baggage claim. My oldest bought Doritos and sodas for sustenance. We waited 2.5 hours for our bags and they never arrived. There were now a sea of bags and an even larger sea of people. We asked a security guard who was standing next to the baggage claim about the bags. She said, "Oh, they decided 2 hours ago not to remove the bags, just come back in the morning and "resume" your flight." "Resume?"* You mean the flight isn't over? How do we get back in the airport without boarding documents?

***Resuming* the flight is Scandalous. *Resuming* meant that we couldn't make our own arrangements. *Resuming* was all part of an effort on the part of American Airlines to keep revenues received and not allow us to make our own arrangements. *Resuming* meant that instead of us being told the truth, we were "baited and switched" to continue on, even being told by American Airlines Customer Service that we had confirmed seats the next day from DFW to Mobile. *Resuming* meant that they kept out bags, kept us with them in their planes, in their airports, for 2 more days. THE ONLY BENEFIT WAS TO THEM. The losses we experienced in terms of our vacation, my husbands consulting fees, being relegated to lesser rooms and 2 extra days of our trip down the drain, all so they could *RESUME* the flight. *Resuming* instead of canceling should be illegal.**

We went in the middle of the night to Waffle House and got a hotel room. We returned the next day to 700 of our new best friends at the airport trying to get in and couldn't. I bought a copy of the Dallas Morning News which had our flight on the front page. Good thing. I was able to tip the curbside guy and get a dummied up boarding pass, both of which had different times on them. We made it to the gate and our crew was there. They said our flight wasn't going to fly, so we went standby on another flight. They gave no explanation for why it didn't fly. We took off from Austin and headed for Dallas, our baggage still in Austin. We were upset about that.

Being in the same clothes for 2 days and counting, I wanted my bags. We got to Dallas and as we landed the pilots said if there is a flight at a gate going to where you are going, then get to it. We had called the night before and had confirmed that we "should" be on the flight since we didn't make the night before. We got clear across the DFW airport and the gate agent said, "I have good news Mrs. Hanni, your bags are on the plane. But I have bad news, Mrs. Hanni, you are not." I looked at the pilot armed with the Dallas Morning News and said, "You have no idea what we've been through here." He said, "Unless you are the Queen of England, you aren't getting on this plane." I asked him repeatedly to remove our bags and they declined. When we complained, they said "don't blame us for the weather." They said that they were even removing people from the plane with "confirmed" seats against their will due to a baggage overage. We asked for a voucher for the hotel and the gate agent said, "Don't blame us for the weather."

We spent the second night in Dallas, and contacted AA again. They said we had confirmed seats to get to Mobile the next day. We returned and did make our flight to Mobile. Our bags were there waiting for us. When we did get to our hotel, they had given our rooms to someone else, thinking we weren't going to arrive. My husband had lost the vacation portion of the trip for him, but had to complete the work over the next 4 days as committed.

57 hours in total. Enough is enough!

Not ones to stay angry very long, we turned anger into advocacy.

My husband and I started a blog and a petition, and then the Coalition for Airline Passengers' Bill of Rights. Since coalescing, there has have been an epidemic of strandings, different airlines, different airports, but with the same level of frustration and anger against an Airline Industry that treats passengers like cargo. However, these events are not new – it's just that we tend not to notice until it happens to us or until the media happens to notice.

2/14 Jet Blue Valentine's Day strandings. Michael Skolnik: one guy, two jets, 17.5 hours on Jet Blue…

3/5 United Airlines stranded people at Chicago O'Hare for 8 hours.

3/17 Philly and JFK. USAir, Rahul Chandron, was a third-time victim having previously been on the Northwest Airlines strandings in '99 and United in '06. The Department of Transportation Inspector General Calvin Scovel had several members of his staff stuck on jets this fateful night.

Just when you thought it couldn't get more absurd… Cheyenne, Wyoming and Scotts Bluff, Nebraska. Abandonment by the airlines. 4 plane-loads of diverted passengers were dropped off at an airport, not their destination, and left there with no resources. Roger Barbour was trying to get to his wedding when he was dropped in Cheyenne by United Express, and the planes later flew away empty. It ended up costing him $3000.00 to get home.

Members of the Committee - this is simply unacceptable!!

The airlines say all these events are statistically improbable. Evidently not! What I will talk about next is simply Scandalous on the part of our Government.

DOT Testimony

- ***"Excluding flights that were diverted or ultimately canceled (our reporting requirements do not capture data on delays associated with such flights)"***

We found this phrase[1] in the DOT's *written* testimony. Know what it means? It means that in their oral testimonies the DOT and ATA are attempting to bamboozle this committee with statistics that have nothing to do with the incidents in Austin last year, or any of the cancelled flights in February and March of this year. I'll cover a couple of examples here, but please refer to my written testimony for more details.

Time on the Tarmac

Number of Flights by Minutes of Taxi-Out Time

Year	Total Flights	0-15	16-30	31-45	46-60	61-120	121-180	181-240	241-300	301+
2000	5,682,947	3,946,791	1,774,894	314,244	41,078	5,833	1,241	297	79	
2001	5,967,799	3,898,094	1,765,709	279,441	32,143	3,882	823	113	15	
2002	5,271,059	3,423,636	1,585,987	230,940	26,474	2,492	712	134	84	
2003	6,499,540	4,246,811	1,892,827	301,535	38,938	4,357	850	218	98	
2004	7,128,370	4,589,178	2,173,898	309,835	52,254	6,235	1,038	192	42	
2005	7,140,596	4,573,052	2,154,177	357,049	49,576	5,895	901	139	27	
2006	7,141,922	4,511,694	2,182,726	388,634	59,483	8,110	1,071	168	36	
Jan-Feb 2007	1,194,847	715,483	378,225	79,442	10,387	851	176	86	15	
Total 2000-2007							6600	1348	394	

3-4 hours = 660,000 passengers
4-5 hours = 134,800 passengers
>5 hours = 39,400 passengers

The DOT and ATA tell us that tarmac delays have improved and complaints are down[2] since the airlines promised to self-regulate in 1999. By this they must mean that an increase of 19,000

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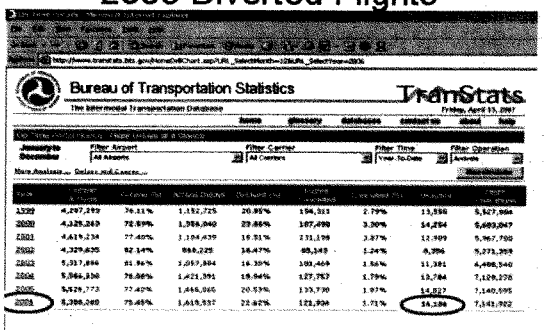
[1] STATEMENT OF MICHAEL W. REYNOLDS, DEPUTY ASSISTANT SECRETARY FOR AVIATION and INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION before the SUBCOMMITTEE ON AVIATION U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION on Airline Service Improvements, April 11, 2007, page 6

[2] STATEMENT OF MICHAEL W. REYNOLDS, DEPUTY ASSISTANT SECRETARY FOR AVIATION and INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION before the SUBCOMMITTEE ON

tarmac delays[3] (of two hours or more) last year over the year 2000 is a good thing. But the rest of us want these numbers to decrease, not increase. By the way, if we extrapolate these rare occurrences to 100 passengers per flight, then *only* 800,000 passengers have been affected by tarmac delays of over three hours over the last five years.

2006 Diverted Flights



16,186 x 100 passengers = 1,618,600 passengers

This slide[4] simply shows the 16,186 diverted flights that I mentioned earlier. If we extrapolate to 100 passengers per flight, over 1.6 million passengers may have experienced tarmac delays like ours in Austin. Isn't it convenient that there are no tarmac statistics for any of those flights that are available to the public?

Is that the full extent of the problem? Not even close!

- No tarmac data is kept for carriers with less than 1% of domestic scheduled service passenger revenue (i.e. including five of the seven United Express carriers).
- In the aggregate, those smaller carriers are responsible for approximately 25% of all airline passenger travel in the U.S.
- The DOT and airline advocates are using data that represent only 75% of air travel, and within that subset they are using statistics that represent only a fraction of affected flights.

AVIATION U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION on Airline Service Improvements, April 11, 2007, page 5

[3] http://www.bts.gov/programs/airline_information/taxi_out_times/html/all_airports.html

[4] http://www.transtats.bts.gov/HomeDrillChart.asp?URL_SelectMonth=12&URL_SelectYear=2006

This slide[5] simply shows that the statistics the DOT and ATA are using account for only 75% of all domestic passenger travel.

For this and the other reasons I've outlined today, we urge Congress to enact legislation to curb these outrageous practices, and require the airlines to report all tarmac delays.

As I conclude my testimony, let's watch a clip of the United Express flights leaving passengers in Cheyenne, Wyoming.

Congress must now step up and use the current FAA reauthorization legislation to ensure that airlines make passengers' rights a top priority once and for all. The last thing that we should do is provide more giveaways to the airlines and less accountability to consumers and Congress while airlines continue to strand passengers in communities all across the country. Thank you committee members for giving me the honor of speaking here today. And a special thank you Mike Thompson for taking the first step and proposing this life saving legislation.

In addition to my testimony, several prominent individuals and organizations have express their support for a Passenger Bill of Rights through testimony to the Senate Committee on Commerce, Science and Transportation and through letters of support. I have included these addendums for the record:

Addendum #1 Quotes from the Nov. 2006 DOT Review
Addendum #2 Member Letter ACAP, PIRG, APBOR dated April 17, 2007
Addendum #3 Testimony of Rahul Chandron (Senate Hearings 4-11-2007)
Addendum #4 Testimony of Paul Hudson ACAP (Senate Hearings 4-11-2007)

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[5] 2006 total flights all domestic flights from Table 7 (9,698.800) http://www.bts.gov/press_releases/2007/bts012_07/html/bts012_07.html#table_01 as compared to total 2006 ATA domestic flights (7,141,922) reported at http://www.bts.gov/programs/airline_information/taxi_out_times/html/all_airports.html

Addendum: #1

Following are some valuable excerpts and quotes that pertain to the failure of the Government to oversee or implement any meaningful penalties against the airlines for breaking their "Voluntary Commitments".

Title:

Follow-up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment

Date:
November 21, 2006

"...airlines have not set targets to reduce delays and cancellations as they promised in June 2001 congressional testimony,15 and consumers lose $9.4 billion a year from airline delays alone." [p.14]

"The Department Should Continue To Implement Actions To Curb Congestion and Delays Because Airlines Have Not Set Targets To Reduce Delays and Cancellations as They Promised" [p.16]

"For 2005, we identified 15,640 unique flight numbers (215,016 individual flights) that were chronically delayed or canceled, affecting an estimated 16 million passengers." [p.18]

"...the frequent flyer complaint subcategory "Not Able To Redeem Miles" grew from 17 percent in 2001 to 38 percent in 2004" [p.25 sellers of air services, with penalties totaling $21.8 million. We reviewed 121 of the consent orders signed between 1996 and 2005 relating to advertising (78), civil rights (30), and "other" consumer matters (13). The penalties assessed in these orders totaled $14.9 million, of which OAEP actually collected $2.1 million after offsets or forgiveness provisions." [p.33]

"For example, one air carrier was assessed a fine of $100,000 for non-compliance with disability requirements. Of that, $90,000 was offset because the air carrier established a consumer advisory group and provided information on their web site about the DOT toll-free hotline." [p.34]

Addendum #2

Aviation Consumer Action Project
Coalition for an Airline Passengers' Bill of Rights (PBOR)
Consumer Federation of America
Consumers Union
Public Citizen
U.S. PIRG

16 April 2007

Support Airline Passenger Bill of Rights (HR 1303 (M. Thompson-Cubin))

Dear Representative,

We, the undersigned consumer organizations, are writing on behalf of our members and other airline passengers to urge your support and co-sponsorship of bi-partisan legislation (M. Thompson-Cubin) to improve airline passenger rights, HR 1303, The Airline Passenger Bill of Rights Act of 2007.

The bill takes a variety of needed steps to provide airline passengers with new rights, including rights to potable food and water and sanitary facilities and a right to de-plane when they are stranded on runways for more than three hours at a time. It would also require airlines to make timely and truthful disclosures of diversions, delays and cancellations to customers at airports and on delayed planes. It would establish requirements that airlines post to the Internet the airline's lowest fares, schedules and itineraries and the status of any chronically delayed flights. In addition, the bill would require timely return of lost baggage, the inclusion of all of these rights in contracts of carriage and additional reports and actions by the Department of Transportation to improve the current situation.

These are all very important improvements to the rights of airline passengers. In addition, we urge the Congress to ensure that any final legislation guarantees that these are enforceable consumer rights, includes legally-enforceable and inflation-adjusted compensation for lost or damaged baggage or bumping and reinstates the rights of states to enforce their consumer protection laws against airlines.

Sincerely,

Paul Hudson
Executive Director
Aviation Consumer Action Project

Sally Greenberg
Senior Legislative Counsel
Consumers Union

Kate Hanni
Executive Director
Coalition for an Airline Passengers' Bill of Rights (PBOR)

Laura MacCleery
Director
Public Citizen's Congress Watch

Travis Plunkett
Legislative Director
Consumer Federation of America

Edmund Mierzwinski
Consumer Program Director
U.S. PIRG

Addendum #3

Testimony to the U.S. Senate Committee on Commerce, Science and Transportation
Rahul Chandran
April 11, 2007.

Chairman Inouye, Vice-Chairman Stevens, Honourable Committee Members,
It is an honor to testify today, and I thank you for the opportunity to discuss the need for improvements to airline services.

Over eight years have passed since I was first stranded on a tarmac in Detroit, courtesy of Northwest airlines during the now infamous incident of January 1999. I have not thought about the incident for many years, and I am sure that the honorable members of the Committee are familiar with the incident; I simply recall many hours of miserable monotony, unpunctuated by water or food, the frequent refusal to allow customers to use the 'facilities', and a complete lack of information or communication.

In the furore that surrounded this incident, the airlines promised greater self-regulation, arguing that there was no need for legislative protection of passengers as the airlines had their best interest at heart. The free round-trip ticket I received from Northwest as 'compensation' for the ordeal, I returned to Northwest.

Shortly thereafter, in early 2000, I was on a United flight at Washington Dulles, during a sweltering summer day, for a short-hop up to New Haven, CT. We left the gate, sometime around 1 p.m. Approximately four hours later, having sat in a tiny turbo-prop, with neither water, nor access to the bathrooms – and certainly no clear information, we returned to a position near a gate, and the door was opened as the passengers were near rioting. There were, I believe, no more than eight people on board this flight. Eight people, trapped in a metal tube designed to retain heat, on the tarmac in the hot summer sun, without air-conditioning or refreshment for four hours, are still eight people on the boundaries of reasonable tolerance.

On the 16th of March, less than one month ago, and just one month after the series of incidents that affected Jet Blue, I arrived at JFK airport at 8 p.m. Although there had been some snow, and earlier flight cancellations at other airports, the website for Cathay Pacific – the airline that was slated to carry me to Vancouver – suggested that flight 889 would take off as scheduled. I came prepared, as several hundred thousand miles of flying have left me convinced that airline websites are rarely up-front about delays.

After about two hours of waiting, we boarded the plane at midnight. I exited the same plane at 9:43 a.m, nine hours and forty-three minutes after had left the gate. The intervening period had been passed on the runway, waiting for de-icing fluid, waiting for gates to become available, waiting for taxi space – in short, waiting. Waiting, that is, with our seat-belts securely fastened, our seat-backs upright and tray-tables stowed, and no ability to enjoy even the little – but important – comfort of the three-inch recline that economy class offers.

Now in certain respects, this was the best delay I have ever encountered. The captain was reasonably communicative about the delays, although his promises of a forty-five minute resolution were only reported as having failed after about an hour and a half. The crew allowed

passengers to use the restrooms, and offered us water. Twice that is – once after about one hour, and once after six and a half hours. Eventually, when the flight was cancelled – and prior to the last two hour wait for a gate – they fed us what was supposed to be our dinner. Given that almost all the dining establishments in the terminal had stopped serving food around 10 p.m, this was a good ten and a half hours after most people had last had any food, during which they had been kept awake.

So we were watered twice, fed once, and sent about our way. Upon disembarking, we received a $15 voucher for food available at the terminal. I chose not to wait any further, and went home.

Honorable Senators, as I am sure you are all aware from your experiences, there comes a point when the consequences of a series of poor decisions accrete, and you have an intolerable outcome. Plane delays happen – I continue to fly, and have been delayed in over 30 countries, for reasons that range from the real to the incredible. Pilots need to respond to the profit-motive of their masters, and to make a good-faith effort to get their passengers off the ground, and airborne, safely.

It is, however, clear to me through all of these experiences that the companies that run airlines have failed to implement management procedures that prevent the intolerable outcome – passengers trapped on airplanes for more than six hours.

We continue to fly because air-travel is part of the engine of economic growth that has made America the success story that it remains today. A simple bill of rights that provides passengers with confidence that airlines will take care of their basic needs, prevents them from being confined in intolerable conditions, and ensures that airlines are responsible and held accountable for their actions will help to ensure that this remains the case.

Thank you for your time.

Addendum #4

TESTIMONY OF AVIATION CONSUMER ACTION PROJECT (ACAP) BEFORE THE SENATE COMMERCE, SCIENCE AND TRANSPORTATION COMMITTEE, HEARING ON AIRLINE SERVICE, APRIL 11, 2007, WASHINGTON, D.C.

Introduction

Good Afternoon Chairman Inouye, Vice Chairman Stevens and members of the Committee. My name is Paul Hudson. I am executive director of the Aviation Consumer Action Project (ACAP) which has acted as a voice for air travelers on national aviation issues of safety, security, and airline passenger rights and interests since 1971. Thank you for inviting me to testify today. I would like to make some brief summary comments and would request that my full written testimony be submitted for the record.

The Situation, How Bad Is It?

The situation today can best be described as "déjà vu all over again", as the problems that nearly brought the national air transportation to its knees in 1999-2000 have now re-emerged. With one of three flights now delayed, one of twenty flights being cancelled, one of 100 checked bags being mishandled, and most recently passengers on JetBlue and some other airlines being involuntarily detained in aircraft for up to 11 hours on the tarmac at Kennedy Airport, the situation requires prompt government and congressional action to prevent a new crisis, one that will not only cause hardship for airline passengers, but could negatively impact safety and the US economy.

The root cause of the current movement toward chronic air transportation congestion and periodic gridlock is record high air traffic that strains the air transportation infrastructure. The inadequate number of airports around Chicago, New York and a few other cities which are major choke-points in the system, the lack of reserve capacity of aircraft and flight crews, the lack of government oversight of airline scheduling practices and contingency planning for disruptions, has resulted in an air transportation system that is both vulnerable and deteriorating. It now takes longer to travel by air than it did 30 years ago, and the situation is much worse in high traffic areas and at peak travel times. In the past year alone, flight delays are up nearly 20%, denied boarding or bumping is up 20%, mishandled baggage is up 32%, and formal passenger complaints are up 50%. (Source: April 2007 Air Travel Consumer Report, US DOT and statistics at US DOT web site).

What Should Congress Do?

In 1978, Congress enacted legislation that deregulated the airline industry, abolished the federal agency that had regulated air fares and terms of service, the Civil Aeronautics Board (CAB). The remaining federal agency, the Federal Aviation Administration (FAA), regulates air safety, operates the air traffic control system and provides subsidies and grants to airports. There is also a small aviation consumer office in the US DOT that receives airline service complaints, collects data from the airlines and publishes monthly statistical reports. And of course since 9/11, the Transportation Security Administration has operated the aviation security system. US airports are still owned and operated by local government authorities, who control the access to major airports by airlines.

Airlines are now free to set fares as they see fit, and can compete on price, service and amenities. Barriers to entry of new airlines are now lower than they have ever been. This has brought benefits to the traveling public, but also has resulted in new problems that now demand your attention.

Congress must, in our view, not only address the problems that have caused national headlines in February and are the top passenger complaints (i.e. flight delays and cancellations and mishandled baggage), but are only the tip of the iceberg. It must also address the underlying problems of the national air transportation system.

Stranding and Involuntary Detention in Grounded Aircraft

Passengers should be given the opportunity to deplane when a flight is delayed more than 2 hours, and airlines should also be required to compensate passengers for more than a 2 hour delay on a per hour basis. In many cases passengers can get alternate transportation or may want to cancel their trip, if they can escape the wrongful imprisonment that airlines now increasingly impose on passengers.

There is a little known financial incentive that flight crews have to pull away from the gate (and not go back) even if they know the flight is not taking off for a long time, if at all. Most airlines only pay flight attendants and sometimes pilots from the time that the cabin door closes. This work rule goes a long way to explaining some of the more ridiculous stranding situations.

This reform would also remove another financial incentive airlines now have to over schedule flights that they know are going to be delayed or canceled due to overcrowding or weather conditions. By lying to and fooling the passengers, then involuntarily detaining them on aircraft, they avoid the massive cancellations, defections to other airlines, and financial losses that would occur if they provided honest disclosure and scheduling. Instead airlines usually blame the weather, FAA air traffic control or mechanical problems rather than their own practices.

Delay & Cancellation Abuses

Reducing stranding and delay abuses also requires **enhanced disclosure of the on-time statistic for each flight**. This figure is now available, but the passenger must ask for it. All persons providing reservations services should be required to disclose the percentage that a particular flight is on time, and have available the average delay and cancellation rate. Chronically delayed flights should be posted on the carrier's and a DOT web site, as well as frequently cancelled flights.

It is unlikely that many passengers will want to book flights that are delayed or cancelled more than 50% of the time, thereby causing the airlines to discontinue such flights and rationalize their schedules, based on reality and truth in scheduling rather than deceptive scheduling.

While the number one cause of delays is air traffic congestion, the **number two cause of delays and cancellations is the airlines' lack of reserve capacity of aircraft and flight crews** which now runs at 1% or less. Extreme weather causes less than 5% of delays. No system can operate reliably without an adequate reserve capacity, sick pilots or mechanical problems now invariably cause daily avoidable delays and cancellations. Accordingly, **mandating a minimum reserve capacity**

would be the fastest and cheapest way to improve reliability of the national air transportation system.

However, there also needs to be **a requirement that deceptively scheduled flights be canceled**. These are flights that are delayed over 80% of the time or are frequently cancelled (eg. Over 8-10% of the time). As of February 2007 there were 175 flights that are regularly late over 80% of the time, typically for 30-120 minutes. The worst examples of this Schedule Lying include Mesa Air Flight 7174 from Birmingham to Chicago late 100% of the time an average of over 2 hours, US Airways flight 154 from Philadelphia to San Francisco late 100% of time averaging over an hour, and Comair flight 1435 from Reagan National to JFK (actual flight time less than 25 minutes) late 93% of the time an average of 79 minutes.

For economic reasons, some airlines engage in the practice of deceptive scheduling. Since airline deregulation the FAA and airports exercise little if any control over airline flight scheduling. As a result, some busy airports now have many more flights scheduled to depart or land than the airport capacity will allow during certain time periods.

Airlines have an incentive to schedule flights at the most popular times even if they know that the scheduled times cannot be met due to airport capacity and overcrowding. Such practices should be banned as they amount to a fraud on the public and may give airlines willing to engage in such dishonest practices an unfair competitive advantage. (cf. JetBlue, Express Jet, Mesa and Comair have 8-10% of their flights regularly late over 70% of the time, while Southwest, Delta, Alaska, Hawaiian, and Aloha are at only 0.0 to 0.2% of their flights).

The FAA also should be required to ensure that airlines do not chronically over schedule, particularly at choke point airports, as such practices have a negative affect on the national air traffic as well as flights originating or terminating at such airports. These airports include Chicago O'Hare, Atlanta Hartsfield, New York LaGuardia, Kennedy and Newark Airports, Los Angeles International, and San Francisco. The current non-system is analogous to having no traffic lights or traffic control rules to control congestion on our nation's roadways.

The next reform needed is to **provide compensation for passengers for flights canceled by the airline for economic reasons less than two hours before flight time**. While the airlines will not admit it, such cancellations are common and amount to breach of contract and fraud. If a flight has so few passengers that the airline wants to cancel it, it should do so at least two hours before, so that passengers do not come to the airport unnecessarily, and provide passengers with alternate transportation within an hour of the canceled flight time plus a ticket refund.

Otherwise, the airlines should provide passengers with compensation that is equivalent to normal breach of contract compensation (normally the cost of the covering the service defaulted upon with another provider and sometimes consequential damages) or at least equivalent to bumping compensation, perhaps capped at several thousand dollars. In case of any dispute, it should be presumed that a flight was canceled for economic reasons if there was no ground hold by air traffic control and the flight was was less than 30% booked.

Passengers, who are **stranded by airline delays and cancellations overnight, away from their home city, should receive ground transportation and over night accommodations**. Airlines use to provide this a matter of course, but now many do not or do so only for certain favored passengers. This has led to chronic choke-point airports like O'Hare in Chicago being dubbed "Camp O'Hare" with over 50,000 passengers per year being stranded and cots being set up in the baggage claim areas after midnight during the last high air traffic years (1998-2000).

Inflation Adjustment for Bumping and Lost Baggage

Legislation is also needed for **automatic inflation increases in compensation for bumping** (involuntary denied of boarding of passengers with confirmed reservations due to airline overbooking). The present rule caps cash compensation at $400 or $200 and has not been changed or updated for inflation for over 25 years.

The compensation cap for lost or damaged luggage on international flights to or from the US is about $1,500 (this cap is based on an arcane treaty which provides for a compensation cap based on IMF special drawing rights or SDRs, this compensation cap is now badly outdated.) Under the common law of bailment, airlines would have unlimited liability. While legislation cannot change this treaty, it could mandate excess liability insurance be offered to passengers by airlines flying to or from the United States.

On domestic flights, the US DOT has recently increased lost baggage compensation limit to $3,000 from $2,800 under an inflation adjustment rule.

Enforcement

Finally, a **bill of rights for airline passengers needs to include a way for passengers to enforce their rights in a timely and inexpensive way**. This is something totally lacking in the present system. Complaints to airlines or the US DOT are regularly blown off (ACAP gets copies of some of these and a study can easily be done of the thousands of complaints to the US DOT consumer affairs office that are simply logged for statistical purposes).

ACAP suggests mandating a small claims arbitration process (which could be a private alternate dispute resolution service that uses retired judges, consumer affairs, or experienced arbitrators), as is typical in insurance and securities industry contracts with consumers, with the option for the customer going into local small claims court if the dispute is over a certain amount, like $1,000. For disputes involving many passengers, and millions of dollars of claims, class actions in state or federal courts should be authorized, as well as through arbitration. There also needs to be a provision that would require the airline to pay the litigation expenses of the passenger if the resulting decision exceeds a rejected settlement offer. Now, there is no arbitration process, and airlines who are sued in state courts try to get the cases dismissed on jurisdictional grounds.

Conclusion

The above provisions would cover the largest number of complaints of airline passengers, which are Flight Delays and Cancellations and Lost or Mishandled Luggage, as well as their most egregious complaints and abuses of

Stranding and Wrongful Imprisonment. These reforms would also enhance and reward honest competition among the airlines and US economic productivity by discouraging abusive scheduling and service practices now causing unnecessary air transportation delays by reducing flight delays and cancellations that now impose unnecessary costs on the overall economy as well as individual passenger inconvenience and hardship.

Specific comments on the legislation recently introduced by Senators Boxer and Snowe, and by Congressperson Thompson of California are contained in Appendix A to this testimony. Thank you for holding this important and timely hearing. I look forward to responding to any questions of the Committee.

Paul Hudson, Executive Director
Aviation Consumer Action Project (ACAP)
PO Box 19029, Washington, DC 20036

Organizational Statement

The Aviation Consumer Action Project (ACAP) is a nonprofit corporation founded in 1971 which acts as voice for air travelers on national issues of aviation safety, security, and consumer rights. Its publications include Facts & Advice for Airline Passengers (a pocket handbook for airline passengers). ACAP has been involved in rulemaking before the FAA and most particularly bumping, baggage compensation, medical kits on airliners, airline security, and air quality.

Paul Hudson is a New York attorney and has been executive director since 1997. He represents ACAP as a member of the FAA Advisory Rulemaking Committee (ARAC), Executive Committee and the Transportation Security Administration (TSA) Aviation Security Advisory Committee (ASAC). ACAP is also an active member of the ASHRAE Advisory Committee on Aviation Air Quality Standards.

ACAP intervened in a class action case on behalf of Northwest Airline passengers who were stranded in a snow storm in Detroit for many hours in 1999, the last major case involving stranded passengers; and was successful in achieving more thorough notices and robust compensation payments for several thousand passengers involved.

ACAP receives no funding from the federal government or airlines and has no contracts or business relationships with airlines or their organizations.

Appendix A. Comments on S. 678 and H.R. 1303 – Airline Passengers Bill of Rights Act of 2007

by Aviation Consumer Action Project (ACAP)
April 5, 2007

Overall Comment: Such legislation is necessary and long overdue. It should be comprehensive and address the major complaints of airline passengers which are flight delays and cancellations, mishandled baggage, and the lack of any enforceable rights re for service complaints. Finally, there should be consideration of rights of passengers concerning aviation security measures which have become a major concern since 9/11.

Specific Comments:

S. 678 (by Senators Boxer and Snowe) as introduced February 17, 2007

Sec. 41781 (a) (2) Right to Deplane

The right to deplane should be triggered after 2 hours or less, not three. Most flights are under 2 hours duration. Many passengers can obtain alternate transportation if they are permitted to deplane. Wrongful imprisonment lawsuits have resulted in recovery for unreasonable detention as short as 2 hours. This provision could be used by the airlines to legitimize involuntarily detaining passengers for 3 hours or more, and therefore could be a step backwards for passenger rights and could potentially lead to an increase in stranded and involuntarily detained passengers.

H.R. 1303 (Mr. Thompson of California, et al) as introduced March 1, 2007

Sec. 41782 Standards for air carrier passenger services

(a) This provision would allow for no change in existing procedures for handling passenger complaints, which give air carriers the near absolute power to reject complaints with no effective recourse or remedy for the complaints. Airline procedures generally provide that any pro-consumer policies and practices are not part of the contract for carriage and legally unenforceable, and there is no neutral third party mediation or arbitration for unresolved complaints.

(2) METHODS OF NOTIFICATION Should also provide for include direct notification of passengers by telephone or email of flight delays. Airlines now have phone numbers for all passengers and often email for passengers and should be required to directly notify them of delays or cancellations that are known more than two hours before flight time. This will prevent unnecessary or untimely travel to, congestion at airports, and general cost and aggravation for all concerned.

(1) RIGHT OF PASSENGERS TO EXIT AN AIRCRAFT Same comment as under Right to Deplane above.
After section on Chronically Delayed Flights there should be a section for Frequently Cancelled Flights (cancelled more than 5-10% of the time) that requires such to be discontinued and compensation paid to passengers as in bumping regulations.

Sec. 41783 Procedures for Departure Delays (a) Should also include permitting deplaning passengers without returning to gate which is often feasible especially where passengers are transported to aircraft by bus.

(2) MEETING This provision should include representatives of passengers, not just government and industry representatives.

Goal of contingency plans should be "graceful degradation" of national air traffic in weather related, natural, or man made disasters and emergencies, using diversion to pre-designated alternative and secondary airports and enhanced ground transportation. The current system effectively causes national air traffic brownouts and blackouts that take as long as a week to recover from, whenever a major airport is unavailable.

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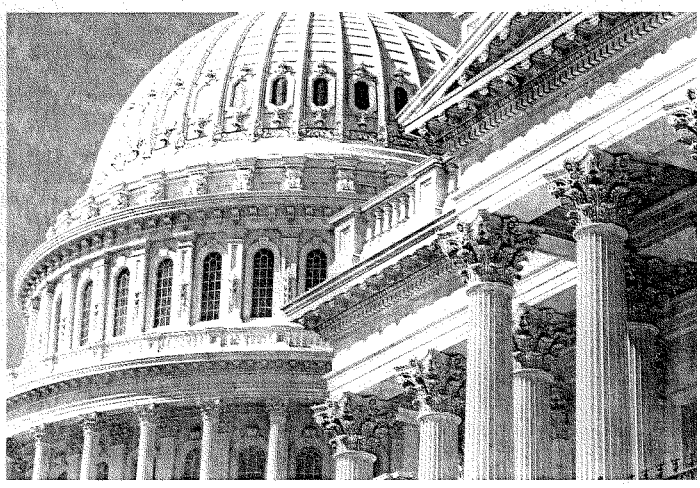
ATA TESTIMONY

Aviation Customer Issues



Statement of James C. May
President and CEO
Air Transport Association of America, Inc.
before the
Subcommittee on Aviation
of the
House Committee on Transportation and Infrastructure

April 20, 2007

AIR TRANSPORT ASSOCIATION

INTRODUCTION

The hallmark of the *Airline Deregulation Act of 1978* ("ADA") was Congress' policy determination to place "maximum reliance on competitive market forces and on actual and potential competition"[1] among airlines to drive efficiency, innovation and low prices, and to provide "the variety *and quality of*, and determine prices for, air transportation services."[2] While not always neat and clean, marketplace competition in the airline industry has produced stunning consumer benefits in the form of low fares, expanded service options and product differentiation, and a steady flow of new airlines eager to challenge incumbents. As a result, more Americans fly for business and pleasure, and ship goods by air, than ever before. Air transportation has become an indispensable element of America's infrastructure and our nation's economic well-being.

The proposed Airline Passenger Bill of Rights Act of 2007 (the "Bill") was offered in response to specific delay events involving two ATA member airlines. These events were serious and regrettable, and travelers' unhappiness is understandable. As explained below, however, the concerns that this Bill seeks to address do not require new legislation. The market forces the ADA unleashed, bolstered by existing regulatory mechanisms, are fully capable of bringing about appropriate changes to airline policies and procedures. Indeed, those changes are underway already. On the other hand, this Bill would undermine Congress' judgment to place "maximum reliance" on market forces, add costs for airlines and reduce consumer benefits going forward. In addition, the Bill would have numerous unintended consequences that would increase, rather than prevent, customer inconvenience.

AIRLINES CARE ABOUT AND PROVIDE GOOD CUSTOMER SERVICE

It should be obvious that no one cares more about completing scheduled flights on time than the airlines and their employees. After safety, on-time service is critical for success in the airline business. Good service and on-time performance are what the airlines sell, and the reputation an airline earns for good customer service is the currency it has to offer in the marketplace for passengers. Good service and on-time performance ensure repeat business, and that is the goal for all airlines because it leads to commercial success. On the other hand, poor service and long delays drive customers away and, ultimately, lead to failure. No airline is in business to fail.

Every year, airlines spend millions of dollars on new products and upgrades, reservations and check-in systems, online systems, personnel and training to make it easier for passengers to purchase tickets, print boarding passes, obtain special services, and enhance the inflight experience. They do this not only because of competition, to differentiate themselves from their competitors and to drive customer satisfaction, but also because the easier it is for passengers to access their flights and services, the more efficient the airline operation becomes. This, in turn, drives down costs and frees up resources for growth, capital spending and further product enhancements.

A good example is online check in. Many airlines have now deployed this service, which allows passengers to print their boarding passes at home or work and bypass traditional airport passenger processing. This benefits passengers and airlines alike, reducing the passenger's time at the airport, easing crowded airport lobbies, and allowing gate agents and customer service representatives to focus on passengers who need personal assistance.

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[1] 49 U.S.C. § 40101(a)(6).
[2] 49 U.S.C. § 40101(a)(12).

Other examples abound. Airlines have begun introducing Spanish-language check-in kiosks, and many airlines are adding check-in kiosks throughout their systems as e-ticketing becomes more prevalent. New terminals are being constructed and aircraft interiors are being refurbished with new seats and entertainment systems.

In response to the 1999 Customer Service Commitment, ATA member airlines instituted a variety of measures and developed new systems to improve customer service, such as automated voice and Internet messaging about delays and schedule changes, automated re-booking systems when forecasts lead airlines to proactively cancel flights in advance of extreme weather conditions, and re-booking hotlines. They also have developed internal policies and procedures to monitor delay situations, including taxi-out delays, and to implement event-specific plans to minimize customer inconvenience.

Notwithstanding these varied customer service initiatives, airline customer satisfaction is measured first and foremost by on-time service and flight completion. Airline operations are incredibly complex, intricate systems with a significant number of moving parts that airlines can control, but also two major external factors that are completely out of their control: weather and the air traffic control (ATC) system. These two factors greatly affect on-time performance and flight completion and, for this reason, can be the source of great frustration for airlines. ***Together they accounted for approximately 66 percent of all delays in 2006, according to FAA data.***[3] When bad weather hits, the best efforts of the airlines sometimes cannot overcome the impact on operations. That was the case in December 2006 and February 2007.

LEGISLATION IS NOT NEEDED

Unusual Weather Conditions Triggered Unusual Delays

The two delay events that led to the proposed Bill were caused by extraordinary weather conditions. This factor alone distinguishes these two events. In the case of American Airlines on December 29, a storm pattern in north Texas affecting Dallas-Ft. Worth International Airport (DFW) that normally would have dissipated relatively quickly (often in less than an hour) kept reforming over a period of eight hours. Every time it appeared that an operational window was about to open, the storm refocused and the window slammed shut. The storm literally defied years of experience and weather-forecasting expertise. On almost any other day, the planes diverted to Austin would have recovered to DFW within two or three hours. In fact, American experienced more diversions on that day than any other day in its history except 9/11.

Likewise, in the case of JetBlue Airways, the winter storm that struck John F. Kennedy International Airport (JFK), which also affected most of the northeastern U.S., was extremely intense and unlike forecasts for much of the time consisted of a particular type of precipitation known as "ice pellets." FAA recently had dictated severe departure restrictions in ice-pellet conditions and these restrictions unexpectedly but effectively prevented JetBlue and other airlines from being able to operate departures. The airport continued to accept arrivals, however, and it quickly became gridlocked, with aircraft unable to either take off or return to the terminal.

In both cases, there were numerous factors that led to passengers being onboard some airplanes much longer than ever expected. Chief among them were (1) the reasonable expectation, based on past experience and current forecasts, that weather and airport conditions would change and permit operations to resume; (2) the knowledge that the overwhelming majority of passengers

[3] FAA Opsnet, http://www.apo.data.faa.gov/opsnet/entryOPSNET.asp. The Bureau of Transportation Statistics, which DOT uses for its monthly "Air Travel Consumer Report," uses slightly different data and categories, reported that just under 60 percent of 2006 delays were caused by weather and ATC.

much prefer to take a delay but get to their destinations rather than have their flights cancelled, especially over holiday travel periods; (3) crew members, like passengers, prefer to depart late and get home or to their intermediate destination rather than have a flight cancelled – particularly if the flight has been diverted; and (4) operational recovery occurs more quickly, and all upcoming passengers benefit, if as many airplanes and crew members as possible are able to reach their scheduled destinations, even if delayed. In short, these incidents are classic cases of "creeping delays" and the best intentions of carriers gone awry.

In hindsight, could these situations have been handled better? Undoubtedly so, as the carriers themselves have stated. But it is also true that these airlines, and every other U.S. airline, learned valuable lessons from these incidents. As a result, ATA member airlines are all taking steps to prevent a recurrence of events such as these. Can we say they will never occur again? In truth, no. But the likelihood they will is extremely small.

Extreme Delays are Rare

Another reason why this legislation is not needed is that extreme taxi-out delays are rare. In 2006, 36 out of 7,141,922 flights reported had delays of more than five hours after pushing back from the gate. That is just 0.0005 percent, or five ten-thousandths of a percent. This statistic is hardly reason to justify legislation to substitute the judgment of Congress for that of the executives who run these businesses on a daily basis and are responsible for their safe and timely operations.[4]

Even if this number were to double in 2007, which we do not believe will be the case, it would not support new governmental impositions on the airlines. Likewise, if we consider the 2006 delays of three to five hours, there were only 1,259 flights affected. That amounts to 0.018 percent of the 7,141,922 flights reported. In short, for a system that operates 24 hours a day, 365 days a year, that must respond to winter snowstorms and summer thunderstorms, and that safely moves more than 740 million passengers and 2.5 million tons of cargo annually, there are remarkably few extreme delays.

Delays are Costly for Airlines and Passengers

Delays and cancellations are the enemies of every airline. They interfere with customers' plans, drive missed connections and mishandled baggage, upset carefully balanced flight schedules, throw off carefully planned crew scheduling, and potentially create a cascading effect that can spread to many cities and disrupt passengers' plans for several days. DOT has estimated the cost of delays to U.S. airline passengers in 2005 at $9.4 billion. At $62 in direct operating costs *per minute* of flight delay, DOT has estimated that in 2005 delays cost airlines an additional $5.9 billion.

Market Forces and Existing Regulatory Oversight are Working

Regulation of an industry or enterprise is justified when market/economic forces do not cause that industry or enterprise to conform to social norms or to protect the health and safety of workers and the public. That is not the case here. On the contrary, the intense media coverage of the negative public reaction to these incidents caused both American and JetBlue to promptly modify their policies and procedures. American, for example, has adopted an internal policy that will prevent onboard delays from exceeding four hours. Likewise, JetBlue voluntarily adopted a

[4] To put that number into perspective, the chance of a flight delay of greater than five hours (approximately one-in-200,000) is approximately the same as dying from falling down the stairs, based on National Safety Council statistics. *See*: http://www.nsc.org/lrs/statinfo/odds.htm.

policy that will prevent onboard delays of more than five hours. JetBlue also implemented its own Customer Bill of Rights that covers (and in certain cases compensates for) delays and cancellations. This positive response by both carriers demonstrates that the pressure of market forces is working and that government intervention is not necessary.

Other carriers, likewise, have heard customer concerns and have responded by initiating internal reviews of their policies and procedures to deal with extended delays, by reviewing and updating contingency plans, and by engaging their key airports in discussions about how best to deal with these kinds of situations. Carriers also are examining the capacity of their call systems, adopting contingency plans for handling high volumes during emergencies, as well as evaluating and implementing computer-based systems that automatically re-book passengers whose flights are cancelled.

In addition to airlines' voluntary responses, Department of Transportation (DOT) Secretary Peters has asked the DOT Inspector General (IG) to investigate these incidents in light of the airlines' commitment to meet customers' essential needs during extended onboard delays and to have contingency plans in place for such events. The 1999 "Airline Customer Service Commitment" by 14 ATA member airlines provides that "the airlines will make every reasonable effort to provide food, water, restroom facilities and access to medical treatment" in the event of extended onboard delays consistent with safety considerations. The Secretary also requested the IG to provide recommendations on what airlines, airports and the government might do to prevent a recurrence of these kinds of extended delays and to highlight industry best practices. American and JetBlue, as well as many other airlines, have cooperated with the IG's office during this investigation and have provided numerous documents and extensive data not only about these events, but also about their internal policies and procedures.

The IG's report, due in mid-May, thus will identify potential measures for carriers and other stakeholders to consider adding to their policies and procedures with respect to avoiding, and responding to, significant delays. ATA looks forward to the IG's report because it will also clarify the facts of these incidents – and correct inaccurate media reports indicating that particular flights had no food, water or working lavatories. We understand that neither American nor JetBlue flights were without food, drinks or water, and at least one working lavatory.

Finally, the proposed legislation is unnecessary because DOT already has existing authority to investigate air carrier compliance with its consumer protection regulations, including the prohibition against unfair and deceptive trade practices, and to fine carriers for violations of these obligations. DOT's enforcement office executes this authority and has a long history of actively protecting consumer rights, including issuing fines to airlines.

Congress' determination to rely on market forces clearly was the right judgment. As the carrier responses to the recent problems demonstrate, market forces are driving improvements to customer service. And the market-driven responses already undertaken by airlines have been bolstered by the Secretary's request for an investigation and report by the IG. When issued, the IG's report may identify additional measures the carriers can take. Finally, not to be overlooked is the significance of congressional hearings like this one and the previous hearing before the Senate Commerce, Science and Transportation Committee. Together, these measures are more than adequate to ensure that consumer rights and interests are protected.

AIRLINE OPERATIONS ARE COMPLEX AND THE PROPOSED BILL WOULD HAVE ADVERSE CONSEQUENCES FOR PASSENGERS

The proposed Bill provides that any passenger who wants to get off an airplane delayed on departure for three hours must be deplaned if safe to do so, unless the pilot reasonably believes the plane will take off within 30 minutes (plus one additional 30-minute extension). A hard and

fast rule like this will have numerous unintended consequences that, ultimately, will create even more inconvenience for passengers and lead to even more flight cancellations.

No passenger likes delay, especially long delays. But what the majority of passengers like even less is not being able to get to their destination at all. A late flight is better than no flight, and can mean the difference between attending and not attending an important event or long-planned vacation. If the flight returns to the gate and is cancelled, then the passengers will very likely be delayed at least into the next day, if not longer. Even if the flight is not cancelled, planes will lose their place in line to depart by being forced to go back to the terminal or getting out of line to deplane passengers by air stairs. This, necessarily, will cause even longer delays for everyone else. Consequences that will occur, particularly from a return to the gate to deplane a passenger, include:

- Cancellations because crews "time out"[5]
- Flights delayed because they lose their place in the departure line
- Unplanned overnight stays for unaccompanied minors
- Mishandled baggage
- Missed meetings and vacations
- Cascading cancellations and delays caused by planes and crews out of position, especially when diversions are involved
- An overall increase in cancellations because airlines will pre-cancel flights to limit passenger inconvenience and operational complications caused by the Bill's requirements

These consequences are likely to be exacerbated if a flight cancels at a city to which it has been diverted.

The impact of flight cancellations extends beyond the passengers on the cancelled flight. Operationally, the consequences for airlines and the next day's passengers include:

- Crews and aircraft are 'out of position' and the next day's schedule is compromised
- Passengers at the destination city must wait for the aircraft to arrive the following day, delaying or cancelling *their* departures
- Flight crews 'deadheading' on the cancelled flight will not reach their destinations and will not be available to operate their scheduled flights
- Aircraft will be forced to traverse congested runways/taxiways when logistically possible (as it was not for long periods at JFK during the storm gridlock) to return to the terminal

With respect to other aspects of Congressman Thompson's Airline Passenger Bill of Rights Act of 2007 (HR 1303), the ATA awaits the final report from the Inspector General. It is the current policy of airlines to provide passengers with timely information about delays and cancellations and to provide passengers with essential services during long on-ground arrival or departure delays. Also, on-time performance information is available from carriers and is on some carrier Web sites, the Department of Transportation Web site, Global Distribution Services Web sites, and the Bureau of Transportation Statistics Web site. In addition, carriers make every effort to return misplaced checked baggage to passengers within 24 hours. The ATA would welcome a Secretary of Transportation study, as set forth in section 3 of the bill, on the ability of air carriers to provide for essential services during air carrier diversions to unscheduled landings.

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[5] FAA regulations on duty limits and rest requirements for pilots and flight attendants, as well as carrier collective bargaining agreements that go beyond the regulations, limit the amount of time pilots and flight attendants may be on duty without a rest break. Limited provisions that allow the duty day to be extended because of reasons beyond the control of the airline assist in dealing with weather-related delays. However, the utility of these provisions will be curtailed significantly by forcing planes back to the gate to deplane passengers.

AIRLINE CUSTOMER SERVICE IN THE POST-9/11 ERA

On a broader basis, airline customer service in the post-9/11 era is a relevant discussion point for this hearing. Good customer service is important to our members and they understand it drives consumer choices. But, as with virtually every other aspect of airline operations, the effects of 9/11 continue to be felt in the customer service area. While our members have done much to address customer service concerns over the last five-plus years, they also recognize that in some respects customer service is not at the level they want it to be or provided in the preferred manner. The reasons for this are many. Chief among these are the operating limitations imposed by an aged and inefficient air traffic control (ATC) system.

The Air Traffic Control System is at Capacity

The current ATC system relies on a series of ground-based platforms that are linked to form a very complex network system that supports airways, through which aircraft fly. The system was designed to create point-to-point routings which we now recognize are inherently limiting and inefficient. Today, airways increasingly resemble many highways: they have become saturated. Even in good weather, the system is just able to handle the traffic demand. When severe weather disrupts the airway system, the impact on airline operations is immediate and often widespread. FAA has developed a number of programs to ensure safe operations in these conditions, but the effect of these programs is flight delays and cancellations, which inexorably leads to unhappy passengers.

Government must do everything it can both in the near term and long term to improve airspace capacity and system performance, particularly during adverse weather conditions. Point-to-point airways cannot produce substantial new capacity, or allow operations in weather conditions that today force FAA to reduce airway capacity. In the long term, we have no choice but to introduce new technology to generate needed capacity and new operating capabilities. Potential capacity enhancements and efficiency improvements, so critical to meeting growing air traffic demand and responding to environmental concerns, will remain unrealized unless the ATC system is promptly and thoroughly transformed. In the near term, incremental capacity enhancements must be pursued vigorously. These include the New York and Chicago airspace redesign projects, ADS-B implementation and expedited development of RNAV/RNP procedures.

Most Airlines Remain Financially Precarious

The well-documented drop in traffic after 9/11 and the related external shocks of SARS, the Gulf War and skyrocketing jet fuel prices brought the industry to its knees. From 2001 through 2006, the industry lost $33 billion, including 2006 estimated net earnings of $2 billion in 2006.[6] These conditions put four major airlines into Chapter 11 and forced the industry to shed jobs and airplanes, slash capital spending, and take on massive amounts of new debt, just to survive. Through 2006, airlines cut more than 150,000 jobs, shed more than $8 billion in annual labor costs and parked hundreds of airplanes. At its peak in 2004, industry debt is estimated to have exceeded $107 billion, and most recently stood at approximately $79 billion. In short, the airline industry as a whole remains in extremely fragile condition. Earnings in 2006 and projected earnings for 2007 are helping to revive the industry, but it is far from where it needs to be to weather the next exogenous shock or economic recession. In fact, only one U.S. passenger airline enjoys an investment-grade credit rating from Standard and Poor's. Moreover, the industry's recovery remains hostage to stable oil prices, as the recent spike in oil prices stemming from

[6] By comparison, the industry earned only $23 billion in 1995-2000, the industry's most profitable period ever. DOT has not yet released airline industry financial results for the fourth quarter of 2006.

Iran's capture and detention of fifteen British sailors demonstrates. In short, the projected 2007 earnings would quickly disappear should oil and jet fuel prices surge for a sustained period of time.

Cost and Capacity Discipline Remain Critical

Assuming the industry recovery continues, airlines have many financial demands. These include repairing their balance sheets, funding fleet acquisitions to meet growing demand while reducing growth in emissions, improving wages and benefits for their employees who have endured significant reductions since 9/11, funding airport development projects intended, in part, to improve customer service, acquire or upgrade ground service equipment to meet both operational needs and emissions reductions targets, modernize reservations and online booking systems to meet customer needs, and so forth. The point here is that as much as airlines might like to redirect even more financial resources at improving customer service – by hiring new staff and deploying new equipment – they must act deliberately to make sure that all priorities are met, including those related to passenger safety, and that they do not lose control of their costs. Airlines simply cannot afford a "fix it at any cost" mentality.

The same holds true with respect to capacity. The industry was finally able to achieve a profit in 2006 largely because supply began to align with demand. Prior to that point, supply – seat capacity – outstripped demand and, as a result, revenue could not keep up with costs. While our members recognize that increased capacity could, perhaps, make planes less crowded and provide a cushion to accommodate passengers when their flights are cancelled, the unfortunate truth is that this would greatly increase airline costs. Airlines either would have to raise prices, which is difficult to do in a highly competitive pricing environment driven by low-cost carriers, find new ways to cut costs, which could include more service cuts, or slip back into the category of money-losing enterprises.

The Current FAA Funding System Hobbles the Airlines

As we have stated in previous testimony concerning FAA reauthorization, the current funding system for the FAA unfairly burdens commercial airlines. There is no correlation today between revenue collected and services consumed. Airlines pay well over 90 percent of Trust Fund revenues but drive less than 70 percent of ATC system costs. The result of this inequity is that airlines, and ultimately their customers, are heavily subsidizing other users of the system – corporate aviation users in particular. A cost-based usage fee system would correct this disparity and, in the process, free up significant resources for airlines that can be used for, among other things, improving customer service.

CONCLUSION

While commendable for its goals, the Bill is neither necessary nor prudent. Extreme weather conditions of the kind that struck in December 2006 and February 2007 are unusual, and DOT statistics demonstrate that, in fact, extreme delays are rare. And just as Congress anticipated when it enacted the Airline Deregulation Act, market forces have already caused airlines to change the way they prepare for, and respond to, extreme weather conditions and resulting delays and cancellations. Additionally, existing regulatory mechanisms are ensuring appropriate action by carriers and while protecting consumer interests.

As we all know, weather remains, by far, the chief cause of airline delays and cancellations. When weather hits, FAA slows down the system and airports often lose runway capacity. Because the existing ATC system is, for all intents and purposes, maxed out, the ripple effect on airline operations that results from ATC responses is enormous. Rather than layer on additional regulatory burdens that could prove costly and result in greater numbers of passengers being

inconvenienced, we urge the Committee to pass legislation that will enable FAA to modernize the ATC system as quickly as possible. Expanding system capacity and putting technology in place that will allow better operations when weather hits is the most effective action for improving customer service.

Testimony of Kevin P. Mitchell

Chairman, Business Travel Coalition

Before the House Committee on Transportation and Infrastructure's Subcommittee on Aviation

Regarding Aviation Consumer Issues

April 20, 2007

Kevin P. Mitchell
Business Travel Coalition
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Mr. Chairman and Members of the Committee, thank you for inviting the Business Travel Coalition (BTC) to testify before this Committee again and to today provide our views on the subject of airline passenger service. I am here representing the interests of corporations that purchase billions of dollars of commercial air transportation services, and dispatch millions of travelers each day.

Formed in 1994, BTC has consistently advocated on behalf of business travelers the need for improved airline service and has provided the Congress and U.S. Department of Transportation specific suggestions on how to ensure such improved service in the marketplace. However, federal legislation in this area is not needed and, in BTC's view, would make matters worse, not better, in terms of reduced safety margins, more flight cancellations and higher airfares.

BACKGROUND

BTC testified in 1999 against proposed passenger rights legislation. The Coalition believed it was a bad idea then, and believes it still is today. Congressional mandating of customer service standards in any industry represents a dangerous precedent. In the case of the airline industry, such legislation would increase business travel costs, stifle innovation and raise safety issues.

The proximate cause of the legislative initiative in 1999 was a Northwest Airlines' plane and its passengers that had been stuck on the tarmac in Detroit during a horrendous snow storm in January of that year. Investigative reporters at *The Wall Street Journal* later uncovered that it was managerial incompetence manifest in a series of poor decisions that led to the customer service meltdown. That discovery certainly would not have appeased any passenger that was on that plane that day.

THRESHOLD FOR LEGISLATION

However, like the present day's issue during recent storms in Texas and New York, these unfortunate incidents do not rise to a level of national seriousness to warrant federal laws governing airline industry customer service. Massive delays are unusual. According to the *Bureau of Transportation Statistics,* in 2006 just 36 out of 7.1 million commercial flights sat on the ground for five hours or more.

In vivid contrast, an aviation issue that has reached the threshold of national seriousness, sufficient to warrant federal legislation, is, by way of example, that of outsourcing aircraft heavy maintenance to overseas contractors with less expertise, virtually no background checks on mechanics and woefully inadequate oversight. It is literally an accident waiting to happen.

THE BULLY PULPIT

This is not to say that Congress does not have an important role to play. Indeed, this hearing is timely in a much larger airline industry customer service sense. Progress at the beginning of the decade against airline voluntary customer service commitments was recorded for several quarters, but then fell off.

Suddenly in early 2001, a fundamental marketplace shift caught the airlines off guard. Then the tragedy of September 11 and new security requirements struck, followed by SARS, the Iraq war, sky-high jet fuel prices and $40 billion dollars in losses. Painful restructurings eliminated more than 147,000 airline industry jobs — many were customer-facing. During this period, cutbacks in customer service and passenger amenities were implemented just for basic survival. Airlines, passengers, consumer groups, press and government all lost their focus on the industry customer service commitment.

Indeed, it is time for airlines to refocus on customer service. Importantly, the U.S. Department of Transportation (DOT) is already moving on the issue. Secretary Mary Peters recently issued an urgent call for the department's Inspector General to review the current state of airline customer service and to develop proposals to address any problems. In addition, the FAA is examining its own role in contributing to extended delays. For example, the confusion created during the New York storm by the varying interpretations of the FAA regulation concerning ice pellets.

DOT, Congress, passenger groups and the press are a potent combination, a highly visible bully pulpit to inform consumers who in turn make purchasing decisions that drive the market. Reporters and customers, for example, pounded JetBlue in the aftermath of its customer service fiasco.

"Thousands of fuming JetBlue passengers were grounded this weekend"...said the *New York Post.* "JetBlue red-faced over strandings at JFK" read a *Star-Ledger* headline. "In today's society we as citizens/customers have the opportunity to disrupt a company's reputation," stated the founder of JetBlueSucks.net. "The cancellations raise new questions about whether JetBlue's management is equal to its ambitions," exclaimed the *New York Times.*

MARKETPLACE SOLUTIONS

In the marketplace for commercial airline services, customers do have choices and the power to effect change. In the case of JetBlue, the operational debacle cost it millions of dollars in near-term lost revenue and higher costs, and badly tarnished its superior customer service image. The effectiveness of management in responding with changes to policies and procedures will determine its future success. The marketplace is holding JetBlue accountable, and like competitors before them, the pounding has led to positive change with a passenger bill of rights and a compensation plan for inconvenienced customers.

JetBlue's CEO David Neeleman is a smart, world-class entrepreneur and an airline industry icon. He will be driven to make sensible adjustments for the benefit of his customers and shareholders. In the immediate aftermath of the terrible conditions American Airlines' customers endured on December 29, 2006, during a storm that paralyzed air traffic in Texas, the airline implemented new policies and procedures. The infamous January 1999 debacle at Detroit, during a horrendous snow storm, led to structural changes at Northwest Airlines and the justification of a new runway at Detroit Metro Airport.

THE PROBLEM WITH A LEGISLATIVE SOLUTION

Legislation is not the answer. One proposal calls for the return of jets to gates after three hours. Consider this Friday afternoon scenario at O'Hare: arriving planes take up most of the gates, 50 jets are lined up, but unable to take off due to deteriorating weather. At the three-hour point, like a line of dominos, the aircraft become paralyzed in regulatory limbo with nowhere to go. The impact would ripple through the system. Travelers would be stuck in Chicago for the weekend; those in distant cities would likewise be stranded as their aircraft are at O'Hare. There is little doubt that such legislation would lead to higher airline staffing and operational costs, and increased business airfares.

Another proposal would require compensation to passengers when airlines fail to deliver services as promised. This may be well intentioned, but it is an example of a dangerous idea with all manner of potential unintended consequences. It is imprudent to mix government-imposed financial incentives and penalties with airline operations, go, no-go decisions and safety judgments.

On February 19, 2005, the No. 2 engine of a Boeing 747 failed after takeoff from LAX on a flight to Heathrow with 351 passengers on board. The captain decided to continue anyway with 3 engines. Because it was unable to attain normal cruising speeds and altitudes, the aircraft was forced to divert to Manchester, England. Under European Union passenger rights legislation, had the plane returned to LAX, BA would have had to compensate passengers some $250,000. BA denies that the penalty influenced its go, no go decision.

A BTC survey underscores the safety concern. Of 144 corporate travel managers recently surveyed, only 10% would support a Passenger Bill of Rights in the absence of an ironclad guarantee that safety margins would not be decreased. There are safety concerns as well as questions regarding the efficacy of Congressional intervention. Consider this representative comment from survey participants:

> *"Not to minimize this recent event, but let's focus on the millions of airline flights across America and the world that take place every day without incident. Do we really need the government legislating "common sense" customer service. No doubt, JetBlue will handle the bad publicity and attempt to appease those unfortunate passengers. No amount of vouchers or free tickets can undo their intolerable experience. How about we take a business approach and let the marketplace decide what retribution JetBlue should suffer, if any."*

The Coalition has never adopted the premise of ideological purists who insist the marketplace will solve all of the travel industry's ills. There's a place for regulation. It's just that it's not in this arena, and not at this point.

As aviation attorney Susan Jollie states, "The questions I wished politicians asked themselves are, 'Is there a significant persistent market failure that can only be remedied by government involvement?' And perhaps more importantly, 'Why do I believe that government personnel would have the necessary background, intelligence,

integrity and dedication to make better decisions than those in industry whose role they would be taking over?"'

STEPS GOVERNMENT CAN TAKE TO IMPROVE THE FLYING EXPERIENCE
There are actions the federal government can take to improve the experience of the flying public.

1. Increase airline competition through open skies agreements and the promotion of new entrants such as Virgin America. Prevent radical consolidation of the airline industry. The greater the level of competition, the more influence the consumer has in driving the market and airline service improvements.

2. Invest in a new satellite system for air traffic control to reduce delays and improve system efficiency, especially during times of severe weather systems. Pass FAA reauthorization so that the government and the industry can head off a real crisis in passenger service.

3. Build more runways such as the Chicago O'Hare modernization, which BTC supported.

4. Insist on better, more inclusive decision making on rules promulgated by the FAA to prevent highly confusing and service degrading circumstances such as the ice pellet regulation.

5. Require greater DOT enforcement of existing carrier commitments and existing regulations and laws.

While BTC believes that the airlines can and must do more to reduce delays and minimize consumer hardship during delays, we believe that federal customer service legislation would prove to be counterproductive and thus something BTC cannot support.

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STATEMENT

OF

DAVID NEELEMAN

CHIEF EXECUTIVE OFFICER
JETBLUE AIRWAYS CORPORATION

Before the

Committee on Transportation and Infrastructure
Subcommittee on Aviation

Friday, April 20, 2007

Introduction

Mr. Chairman, Ranking Member Petri and Members of the subcommittee: I am grateful for the opportunity to appear before you to discuss Aviation Consumer issues.

Regrettably, JetBlue Airways operational performance during and following the severe Valentines Day ice storm in the northeast negatively impacted thousands of our customers directly and numerous more thousands indirectly. Many of our customers experienced extensive delays, multiple cancellations and worse still, the harrowing experience of being stranded on our aircraft on the airport tarmac for up to ten hours. This past Valentines Day proved to be the singular worst operational day in our company's seven year history and for this, the impact on our customers and especially the impact on our most treasured asset, all of our crewmembers, we are deeply sorry.

Yet, on behalf of our more than 11,000 passionate and hardworking crewmembers who are the very essence of our airline, I can inform you that during the past two months we have examined every aspect of our company, its culture, its leadership structure, its processes and its systems and we have learned a great deal which has enabled us to actively address and permanently rectify many shortcomings which lead to our terrible day. And our efforts in this regard continue.

Customer Service

The tragic irony of JetBlue being at the center of a debate on negative customer service is hardly lost on me. Any airline can fly a customer from point A to point B, but the hallmark of JetBlue has always been excellent customer service. JetBlue is an airline that was founded to bring humanity back to air travel by exceeding customer's expectations and offering everyday affordable airfares. Inaugurated in February 2000, we entered the competitive landscape at a time when customer service in the airline industry was perceived to be at an all-time low level. The industry had collectively, in response to this perception and a series of storm-related strandings, issued its own Airline Customer Service Commitment, with individual carriers each issuing their own Customer Service Plans. JetBlue was not a party to this industry Commitment as we were not a certified airline when it was crafted. However, since our first flight, we have complied with nearly all of the provisions of the Customer Service Commitment and surpassed its commitments in many ways.

Today, JetBlue operates a fleet of 126 jets to 51 cities in 21 states and 6 countries with 550 daily flights. Each of our planes has leather seats featuring the most legroom in coach of any US airline, 36 channels of LiveTV, a selection of pay-per-view movies and our fleet is currently being upgraded to also include 100 channels of Satellite Radio. Yet, these features and our low fares only serve to compliment our signature product – our customer-focused crewmembers (employees).

Our genuine commitment to excellent customer service is why JetBlue has won award after award, including thc both the highest low-cost carrier Customer Satisfaction Award by J.D. Power and Associates and the Best Domestic Airline award by Conde Nast Traveler's Reader's Choice Awards, which we have won for the past four years. Our commitment to excellent customer service is why our customers keep coming back. The dedication of our crewmembers and the loyalty of our customers are the key ingredients that have enabled JetBlue to successfully grow and weather the many obstacles that have confronted us such as September 11th, SARS, record high fuel prices, storms such as Katrina and intense industry competition.

Against this background, when JetBlue realized what it put its loyal customers through, we truly feared that our airline might lose all of the good will we had engendered over seven years and perhaps see our customers go elsewhere. Faced with this possibility and while simultaneously working around the clock to get our airline operating again, we immediately went to work to examine what caused our failures and to take steps to prevent it from ever reoccurring. We also took immediate steps to reassure our customers, both those impacted and those who only learned about our failings through the media, that we were taking concrete steps to protect their interests.

The Storm

As the well-predicted winter storm approached New York from the south and was impacting Washington D.C. on Tuesday, February 13th, JetBlue was preparing for its arrival at our home base of operations at John F. Kennedy International Airport ("JFK") the next day – Valentines Day. Although the storm produced a significant amount of ice in the nation's capital, the consistent forecasts for JFK, located on the Atlantic shoreline of Long Island, indicated snow, followed by only a limited window of icing activity with a turnover to all rain. Based on these forecasts, including those issued early in the morning of February 14th, and based on JetBlue's historic inclination not to cancel flights and negatively impact our customers (for which we have lead the industry with the fewest cancelled flights for many years), few JFK departures were in fact pre-cancelled. In retrospect, this was clearly a mistake and one at the crux of our forthcoming difficulties.

At our JFK home, JetBlue operates 21 gates and a hardstand that can normally hold up to 14 aircraft. On February 14th, the Wednesday before the busy President's Day getaway weekend, our JFK flights were heavily booked to a load factor of 94 percent. On the 14th, all of our gates were occupied by a plane and our hardstand was being used for planned deicing. We were operating at full capacity. All of our originating JFK departures were, based on the latest weather forecasts as of 6 a.m., dispatched for flight with deicing to precede their departure. All scheduled arrivals into JFK which had departed their originating city the night before (primarily from the west coast) and early on the 14th

from other cities were en route with plans to utilize gates scheduled to have been vacated by our first JFK departures.

The very nature of this carefully choreographed but very complex operation makes it ripe for failure should something go wrong. On the 14th, something went terribly wrong. In addition to JetBlue's forecast-based decision to not to cancel many flights, the weather forecasts proved inaccurate and JFK experienced nearly eight hours of continuous icing conditions – an extremely rare weather phenomenon and one simply not forecast. This was further complicated by an interpretation of FAA rules which prohibited JetBlue departures in ice pellet conditions even though international carriers at JFK were not subject to these restrictions nor was one airline in the New York region which had obtained FAA authority to work around these rules. With aircraft off the gates and in various stages of readying for departure (taxiing to the runway or deicing), inbound flights began to arrive. Yet, with the deteriorating weather conditions, planes were not departing off of their gates as scheduled which impacted arriving flights ability to park and deplane customers at those gates. Further, aircraft deicing was taking far longer than planned and departures were greatly slowed and at some points stopped, due to the worsening weather conditions.

JetBlue's operations team, recognizing this dynamic situation, began to cancel flights across our system and especially at JFK to minimize the growing problem. However, with still more flights en route to JFK and not enough cancellations having been previously implemented, operating conditions worsened. In total, on the 14th at JFK, JetBlue alone had nine aircraft with stranded customers on board for more than five hours. Of these, four were arriving flights and five were departing flights. By mid-afternoon, JetBlue enlisted the assistance of the Port Authority, the airport operator, and with their assistance, customers were safely deplaned and bussed back to our terminal.

At no point on any of these stranded flights did JetBlue run out of drinking water, other beverages and snacks or lose functionality of all of the lavatories on board. At no point were customers without the ability to have emergency medical care sought as JetBlue

maintains a med-link connection on each aircraft. While these minimal benefits pale in comparison to the suffering of those customers on board these impacted aircraft, establishing the facts and not solely relying on media reports is important.

By the end of the operating day of February 14th, JetBlue only operated 17 flights out of 156 scheduled JFK departures. This immense disruption to our internal operational plan, with crews and aircraft out of position, caused the operational disruptions to continue well into Friday, by which point we had increased operations to 136 flights out of 183 scheduled JFK departures. Finally, in order to effectively restart the airline and end the cycle of not fulfilling our published schedule, JetBlue cancelled approximately a quarter of our flying for three days, Saturday through Monday, mostly by cancelling all service on our fleet of 23 Embraer E-190 jets. This decision, while terribly stressful for impacted customers and crewmembers, allowed our operations and crew services teams to reposition assets and successfully restart the operation and by Tuesday the 20th, systemwide, JetBlue operated 100 percent of its scheduled flights.

The Impact

While government statistics clearly demonstrate that extended periods of being delayed on a plane are extremely rare, such statistics ring hollow with our customers who were stranded. Thousands of customers experienced lengthy delays onboard our planes at the gate or on the tarmac. Even more customers planning to begin their holiday vacation found themselves in crowded, tense and confusing conditions in our JFK terminal and throughout our system as a result of the JFK operational conditions. With hours of delays and expectations that their flights would eventually operate, many customers understandably reached their breaking point.

As difficult as the situation our customers faced proved to be, it was equaled by that endured by JetBlue's crewmembers, from pilots and flight attendants to reservations agents, airport crew and business partners in our terminal. Each of these individuals worked tirelessly to be responsive to our angry customers while only receiving

information, which in many cases, due to the changing weather conditions, proved inaccurate. The emotions they experienced from our customers tested their professionalism time and time again. Once past this very difficult week, the emotional toll on our crewmembers and customers alike was heavy. JetBlue provided customers millions of dollars in refunds and travel vouchers and this negatively impacted our First Quarter operating margin.

JetBlue Airways Customer Bill of Rights

Recognizing the depth of what we put our customers through and wanting to both make amends and ensure we always would keep their best interests in mind, we published a Customer Bill of Rights. An apology letter with a link to this document was emailed to all of our impacted customers as well as millions of other customers who had ever flown JetBlue. This document, our commitment to customers on how we would handle operational interruptions going forward, and made retroactive to cover those impacted by the February storm, was unprecedented in its scope.

Key commitments in JetBlue's Customer Bill of Rights include:

- JetBlue will promptly notify customers of delays, cancellations or diversions along with the cause.
- If JetBlue cancels a flight, in addition to either a refund or rebooking, and the cancellation is due to events within our control and within twelve hours of the scheduled flight time, JetBlue will provide a credit in the amount paid for the customer's roundtrip travel.
- If a JetBlue customer is involuntarily denied board (bumped), JetBlue will pay that customer $1000.
- If JetBlue delays a flight prior to its scheduled departure time for reasons within our control, starting at one hour, customers will be compensated with a $25 travel voucher, between two and four hours – a $50 voucher, between four and six hours a full one-way voucher and beyond six hours a full roundtrip travel voucher.

- For ground delays of five hours, JetBlue will ensure the customers are deplaned. Further, during ground delays, customers will have access to food and drink, restrooms and as necessary, medical attention.
- For arriving flights on ground delays, starting at 30 minutes, customers will be compensated with a $25 travel voucher, between one and two hours, compensation will be a $100 travel voucher, between two and three hours, a one-way voucher and for more than three hours, a roundtrip travel voucher.
- For departing flights on ground delays, customers experiencing a three hour delay will receive a $100 travel voucher and beyond four hours, compensation will be a full roundtrip travel voucher in amount the customer paid.

Each of these commitments by JetBlue far supersede anything required by law or any level of commitment made by other carriers to their customers. JetBlue initiated these steps in reaction to our operational failings in February and we believe our customers have been receptive.

The aviation marketplace is a fiercely competitive one. While JetBlue's signature customer service and low fares served as a strong competitive advantage over the past seven years, so too has the customer reaction and negative publicity of Valentines Day served as an enormous competitive disadvantage in the consumer marketplace.

Customers do have choices. In every single JetBlue market, customers have choices to get to the same destination on another airline. If JetBlue fails to perform, customers will rightly book elsewhere. We failed to live up to our customer's expectations in February and we took immediate and proactive steps to begin to regain the trust of our customers. No act of Congress or government regulation can repair the damage JetBlue has suffered. No act of Congress or government regulation can impose on JetBlue more penalty than the marketplace has already imposed on JetBlue. Conversely, JetBlue is uniquely situated to address the problems that JetBlue itself created.

Moving Forward

Over the past two months, while several audits and reviews were being conducted of our operations, JetBlue has significantly altered its leadership reporting structure. We have made several key personnel hires, including the very talented Russ Chew to be our Chief Operating Officer. Russ is a familiar face to this subcommittee, having lead the remarkable transformation of the FAA's Air Traffic Organization into an accountable, business-like entity with budgets, goals and performance standards. Prior to that leadership position, Russ played a significant role in leading the operational team at American Airlines. We are delighted he has joined our team and look forward to his guidance and wisdom as we raise JetBlue to greater levels of operational excellence.

In addition to leadership team enhancements, JetBlue has undertaken significant reviews of all of its processes and systems, from crew scheduling, aircraft schedule planning, airport operations, information technology and distribution, reservations, staffing and other areas. Each of these components of JetBlue is being thoroughly reviewed and enhanced, with many enhancements already complete. We will not rest until every single area of our airline has been examined, enhanced and tested to meet a new and greatly improved level of customer service excellence.

Conclusion

JetBlue let our customers down and we know it. Our customers deserved better from us and they know it. We were embarrassed by the service they experienced and we are deeply sorry. JetBlue has made clear to all of its customers, without any mandates from Washington, that we deeply regret our actions and we will work vigorously to regain their trust. If we fail to do so, our customers will simply exercise their freedom to choose another carrier for their travel needs.

I can think of no greater incentive for JetBlue to improve its operations and make things right for its customers. Thank you Mr. Chairman.

Submitted by:

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CUSTOMER RIGHTS

JetBlue Airways' Customer Bill of Rights

Above all else, JetBlue Airways is dedicated to bringing humanity back to air travel. We strive to make every part of your experience as simple and as pleasant as possible. Unfortunately, there are times when things do not go as planned. If you're inconvenienced as a result, we think it is important that you know exactly what you can expect from us. That's why we created our Customer Bill of Rights. These Rights will always be subject to the highest level of safety and security for our customers and crewmembers.

INFORMATION

JetBlue will notify customers of the following:

- Delays prior to scheduled departure
- Cancellations and their cause
- Diversions and their cause

CANCELLATIONS

All customers whose flight is canceled by JetBlue will, at the customer's option, receive a full refund or re-accommodation on a future JetBlue flight at no additional charge or fare. If JetBlue cancels a flight within 12 hours of scheduled departure and the cancellation is due to a *Controllable Irregularity*, JetBlue will also provide the customer with a Voucher valid for future travel on JetBlue in the amount paid by the customer for the roundtrip (or the oneway trip, doubled).

DEPARTURE DELAYS

1. Customers whose flight is delayed prior to scheduled departure for 1-1:59 hours due to a *Controllable Irregularity* are entitled to a $25 Voucher good for future travel on JetBlue.
2. Customers whose flight is delayed prior to scheduled departure for 2-3:59 hours due to a *Controllable Irregularity* are entitled to a $50 Voucher good for future travel on JetBlue.
3. Customers whose flight is delayed prior to scheduled departure for 4-5:59 hours due to a *Controllable Irregularity* are entitled to a Voucher good for future travel on JetBlue in the amount paid by the customer for the oneway trip.
4. Customers whose flight is delayed prior to scheduled departure for 6 or more hours due to a *Controllable Irregularity* are entitled to a Voucher good for future travel on JetBlue in the amount paid by the customer for the roundtrip (or the oneway trip, doubled).

OVERBOOKINGS (As defined in JetBlue's Contract of Carriage)

Customers who are involuntarily denied boarding shall receive $1,000.

ONBOARD GROUND DELAYS

For customers who experience an onboard Ground Delay for more than 5 hours, JetBlue will take necessary action so that customers may deplane. JetBlue will also provide customers experiencing an onboard Ground Delay with food and drink, access to restrooms and, as necessary, medical treatment.

Arrivals:

1. Customers who experience an onboard Ground Delay on Arrival for 30-59 minutes after scheduled arrival time are entitled to a $25 Voucher good for future travel on JetBlue.
2. Customers who experience an onboard Ground Delay on Arrival for 1-1:59 hours after scheduled arrival time are entitled to a $100 Voucher good for future travel on JetBlue.
3. Customers who experience an onboard Ground Delay on Arrival for 2-2:59 hours after scheduled arrival time are entitled to a Voucher good for future travel on JetBlue in the amount paid by the customer for the oneway trip, or $100, whichever is greater.
4. Customers who experience an onboard Ground Delay on Arrival for 3 or more hours after scheduled arrival time are entitled to a Voucher good for future travel on JetBlue in the amount paid by the customer for the roundtrip (or the oneway trip, doubled).

Departures:

1. Customers who experience an onboard Ground Delay on Departure for 3-3:59 hours are entitled to a $100 Voucher good for future travel on JetBlue.
2. Customers who experience an onboard Ground Delay on Departure for 4 or more hours are entitled to a Voucher good for future travel on JetBlue in the amount paid by the customer for the roundtrip (or the oneway trip, doubled).

jetBlue AIRWAYS

JetBlue Airways
118-29 Queens Blvd
Forest Hills, NY 11375

jetblue.com

*These Rights are subject to JetBlue's Contract of Carriage and, as applicable, the operational control of the flight crew, and apply to only JetBlue operated flights.

This document is representative of what is reflected in JetBlue's Contract of Carriage, the legally binding document between JetBlue and its customers.

TESTIMONY OF THE

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON AVIATION

"Aviation Consumer Issues"

Presented by:

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April 20, 2007

Testimony of the American Society of Travel Agents

The American Society of Travel Agents (ASTA) offers this testimony on the Subcommittee's deliberations on the treatment of air travel consumers by airlines. ASTA and its members very much appreciate the opportunity to present ideas once again on this troublesome subject.

Since the major airlines adopted the twelve so-called "voluntary" passenger service commitments in 1999, there have been two reports by Department of Transportation (DOT) Inspectors General regarding the airlines' compliance with those commitments. The first report was discouraging in that it indicated there was little progress among the adopting airlines for actually fulfilling the commitments they had made. The second report, just this past November, 1/ portrays widespread non-performance, neglect and abandonment of solemn promises made to the government and to the traveling public --and it covered only four of the twelve commitments. Here are a few of the findings:

1. "Quality assurance and performance measurement systems are being implemented at just five of the ATA airlines [through which 14 adhered to the commitments]."2/
2. "Information being provided about delays and cancellations in boarding areas was not timely or adequate ...."3/
3. "Only 5 of the 16 airlines ... make on-time performance data available on their Internet sites."4/
4. "Twelve of the 15 airlines and their contractor personnel who interact with passengers with disabilities were not complying with the training requirements of [governing regulations] or with their own policies."5/
5. "Nine airlines were not adhering to their own policies for compensating passengers who voluntarily gave up their seats."6/

A third report has now been requested by the Secretary of Transportation and history suggests it will closely resemble the prior reports.

And so we, who represent the people who account for a substantial majority of the consumers who buy airline services, come here to say: enough is enough. It is time, it seems to us -- after eight years of futility -- to achieve closure with these problems. Looking at the incidents that have recently attracted many headlines, we say unequivocally that, as a matter of fundamental principle, absent an unforeseen but clear present threat to safety, passengers should not be

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1 Follow-Up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment, Department of Transportation, Report No. AV-2007-012, November 21, 2006.
2 *Id.* at 4.
3 *Id.* at 4.
4 *Id.* at 5.
5 *Id.* at 5.
6 *Id.* at 7.

forced to remain on aircraft without adequate food, water and toilet facilities for periods such as six, eight or even more hours while waiting to take off.7/

ASTA also rejects the argument that tarmac detentions are too infrequent, affect too few passengers, and are too unpredictable to warrant more than apologies and perhaps a coupon for a future discount. There are elements of unpredictability, to be sure, but at the same time it is highly predictable that there will be severe snowstorms every winter and severe disruptive thunderstorms every summer that will affect one or more major airports. It is time to stop looking for reasons not to deal with these problems and act decisively with a program reasonably calculated to alter the present culture of denial and resistance to change.

Nor should airlines be able to avoid responsibility by claiming that these incidents are too costly to cure on an assured basis. The cost of respect for customers is an inherent part of doing business. Firms that cannot do it should exit the market.

Finally, there is the issue of the "market forces solution," supported by the airlines, preferred by the Department of Transportation (DOT) and advocated even by some customer groups. The problems with relying on the marketplace to fix these problems are: (1) the airlines typically do not compete on the basis of customer service, even though, unlike price, there are aspects of customer service that cannot easily or quickly be replicated by competitors, (2) as a result, marketplace forces did not resolve the problems even after the ATA carriers pledged to the twelve service commitments, and (3) no airline followed Jet Blue's lead into enhanced customer rights commitments following the debacles of this past winter.

In short, there is no reason to withhold decisive action to address these issues. The question is: what action?

It is essential to recognize that a single-minded focus on tarmac detentions could eventually defeat everyone's good intentions. The problems of customer service in the airline industry extend well beyond the snowstorm incidents, as powerfully shown by the November 2006 report of DOT Inspector General Scovel. We should not let our mutual frustration with the airlines and these seemingly intransigent problems lead us to quick and easy solutions that fail to address the fundamental problems and that may have consequences many air travelers will come to regret.

A meaningful solution to passenger treatment issues should address all of the elements of the airlines' unfulfilled commitments.

It is easy, of course, to be against things. Much of the debate about passenger rights has centered on negative ideas. Everyone is against strandings, involuntary detentions and inadequate provisions as well as being opposed to unintended consequences, excessive regulation and unnecessary costs. Agreement on those negative ideas has not, however, advanced the debate toward solutions.

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7 The recent incidents involving American Airlines and Jet Blue are well known and we will not duplicate here the many accounts of those nightmarish situations.

ASTA seeks to move the debate forward by suggesting a reasonable path to a solution that embraces some elements of what all parties appear to be seeking. If something like this path were to be followed in a timely and aggressive manner, much could be accomplished to reduce the likelihood of future detention incidents as well as their impact when they do happen. And along the way we would resolve many of the lingering concerns about the other elements of the passenger service commitments.

What is called for is not a quick legislative strike at the incidents that attracted the headlines, but a fundamental and principled solution, combining legislative, regulatory and, yes, perhaps some self-help by the airlines. We need an approach that accounts for the roots of the problems as well as the symptoms, a solution that stands a chance to actually change airline performance in the areas of customer service in question. And, of course, the solutions should apply to all airlines, not just those who happen to be members of the Air Transport Association (ATA).

The Path Forward -- Congressional Action Now

ASTA believes there are three steps Congress could take right away that would have potentially huge benefits in the area of customer treatment by airlines.

First, enact a limitation on the scope of statutory preemption of state consumer protection laws. This single step would correct the excessively broad interpretation of 49 USC sec. 41713 of the Federal Aviation Act that has effectively deprived many air travelers of legal remedies at the state level. The heart of that section provides that

> "a State ... may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier...."

We have attached to this testimony as Exhibit A an analysis of the preemption issue entitled "One Nation Divided By Law," which shows the confusion and loss of consumer rights that court interpretations of state law preemption have engendered.8/

Empowering the states to act against abuses of air travelers' consumer interests in the same way that they can act against other industries would, in one simple step, effect a drastic change in airline attitudes and performance. Based on past experience the airlines, faced with a restriction in the scope of state law preemption, likely will predict the end of aviation as we know it, but other multi-state and inter-state industries have learned to live with state consumer protection laws and we are confident that they too can do so.

It is highly likely, for example, that airline funding would significantly increase for training of employees who are often left to fend for themselves with angry air travelers facing massive delays and cancellations of their travel plans. Communications between and among elements of each airline would also likely improve so that employees managing delay, diversion,

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8 The paper was produced in 2001 but nothing has happened since then to change its major conclusions. See also "Statement of the American Society of Travel Agents" before the Senate Committee on Commerce, Science and Transportation, Hearing on Airline Customer Service, June 28, 2000, attached to this testimony as Exhibit B.

detention and cancellation situations would have to say "I have no information" a lot less frequently.

Second, Congress should appropriate funds sufficient to equip DOT's enforcement staff with the resources needed to fulfill their statutory mission of compelling airline compliance under section 41712 of the Federal Aviation Act (the former section 411) that forbids unfair and deceptive practices. The 2006 Inspector General's report details the funding issue and explains how it has impaired DOT's ability to act decisively and has left it without resources to follow up with compliance audits on such enforcement actions as it does take. The appropriation should require specific reports to the DOT Inspector General and/or this Subcommittee showing how the money is spent.

Third, Congress should mandate that all elements of the airlines' service commitments be made part of their contracts of carriage. This would mean that provable violations of those portions of the commitments that are real promises and not aspirational "best efforts to do better" would be actionable in state courts as breaches of contract. This step would make clear that a promise is a promise.

Action by Congress is not, however, sufficient to solve the problems of customer treatment in air transportation. The Department of Transportation has an obligation, we suggest, to play a critical role in refining the actual service issues – either for regulatory intervention, industry action or, if necessary, for further Congressional action.

The Path Forward – Department of Transportation

The DOT can and should play a pivotal role in bringing together the parties necessary to an informed and viable regime that assures, to the maximum extent practical, that airline customers will be treated as they deserve to be treated.

The most valuable service that DOT can perform in the short term is to establish and manage a joint fact-finding process.9/ Joint fact-finding is critical to achieving a number of goals in the present debate. Among them are discovering the real facts and developing trust in the good faith of all parties. Being informed by the country's experience with security measures after the 9/11 attacks, ASTA believes everyone interested in these issues must be sensitive to the problem of unintended consequences that can arise from regulatory strictures imposed on a very complex and highly networked system.

By way of illustration only, the current leading solution to the tarmac detention problem appears to be a law that would require, with the usual safety caveat, that aircraft return to the terminal gates after three hours, unless actual take-off is believed to be imminent (30 minutes). Such a law may well be necessary, but the airlines say that there could be serious unintended consequences from such a rigid law. Many passengers might see the situation differently if they believed that returning to the terminal would defeat their vacation plans or prevent them from keeping an important business appointment that more "patience" might yet save. The ATA says that any mandatory return rule should be accompanied by a Federal Aviation Administration (FAA) guarantee of the aircraft's place in line.

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9 This discussion is based on the "Mutual Gains Framework" developed by the MIT-Harvard Public Disputes Program for parties who are, as we are, dealing with an angry public, usually in situations where a catastrophic event has occurred.

Again just looking at this one narrow problem, despite the horrific nature of very long tarmac detentions, the issue of unintended consequences is one that deserves to be thoroughly examined before adopting a hard and fast rule to govern all these situations. Does it matter, for example, whether the flight in question is a domestic two hour trip or a 12 hour international trip? Is a "position in line guarantee" feasible? What is required if all the gates are occupied by other aircraft when the deadline arrives? Under current FAA rules and airline operating procedures, who makes the decisions regarding return to the gate: the pilot? Company managers at the airport? Company managers not at the airport? The FAA? What is the influence of FAA and airline work rules on flight delays, detentions and cancellations? Should rules governing responses to flight delays have a principle of proportionality related to the length of the next flight stage? Is it possible to do simulations that would assist in evaluating the consequences of various approaches?

These are only examples of areas where joint fact finding could develop both understanding and innovative approaches to solving the problem of tarmac detentions.

What does joint fact finding mean in this context? It means that a workable number of representatives of legitimately interested and responsible parties should be convened under DOT auspices in this case to develop a factual understanding of what has happened and why it has happened. Joint fact finding in this context does not require that the airlines give up any power they currently have, nor does it require that consumers be subjected to unilateral outcomes dictated by the airlines. It does mean, however, that the process should not be limited to insiders such as the airlines and the government.

To achieve legitimacy among all constituencies and to assure that all relevant issues are addressed, joint fact finding managed by DOT must include representatives of: consumers and travel agents, along with the airlines, airports and the FAA. This task will be materially assisted, of course, by the work of the independent Inspector General but there will almost certainly be questions that are not covered by the report. Those questions should be the subject of joint fact-finding in which the airlines participate fully with the other interested parties.10/

ASTA believes that the only real chance of a long-term and mutually acceptable resolution of the passenger service issues lies in a process such as we have described. We have a situation now where the airlines are resisting compulsion, promising, as they did before, to do better, while DOT is inclined, so far, to prefer marketplace solutions that have no history of success, and the public frustration with repeated instances of mistreatment must surely be at or near an all-time high. Hurling counter-proposals for various kinds of legislative or regulatory solutions at each other may lead to some rules, but it is unlikely at the end of the day that they will deal comprehensively with the entire array of problems because those problems are not fully understood.

DOT's role in this process is to expeditiously select representatives for the industry discussions we have outlined and begin, on an expedited basis, to drive those discussions to conclusion.

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10 ATA has repeatedly declined ASTA's offers to meet and discuss solutions to these issues. We doubt they would refuse an offer from DOT. What is critical is that all the parties be together in the discussions. This has been done before with success on issues such as reporting of on-time performance, so we are confident it can work here.

Here are some additional issues raised by the airlines 12-point passenger service commitments that need to be addressed:

"1. Offer the lowest fare available
Each airline will offer the lowest fare available for which the customer is eligible on the airline's telephone reservation system for the date, flight and class of service requested."

ASTA Comment: This is simply no longer accurate. In November, 2004, DOT issued a notice to airlines observing, among other things, that prices were then often higher on services booked by telephone as opposed to through the Internet, because airlines were routinely surcharging the telephone bookings.11/ That practice continues today for at least some airlines.

"2. Notify customers of known delays, cancellations and diversions
Each airline will notify customers at the airport and on board an affected aircraft, in a timely manner, of the best available information regarding known delays, cancellations and diversions. In addition, each airline will establish and implement policies for accommodating passengers delayed overnight. A clear and concise statement of airlines' policies in these respects will also be made available to customers."

ASTA Comment: In 1999 ASTA regarded this as one of the most important commitments, because it is in the terminal that passengers have the best, and perhaps only, chance to make alternative plans. We noted then, and now, that this commitment is hedged – it does not include an unqualified obligation to truthfully explain the reasons for delays, yet we believe this is the main customer grievance – failure to tell the whole truth about what is going on so consumers can make informed decisions. And it does not require any airline to do anything substantive for any passenger even if the delay is chargeable to the airline.

Each airline should be prepared to make necessary investments that will assure communication between the airline components responsible for rational decision-making and execution in crisis situations, as well as airports and other ancillary support services that could be called into play in an emergency.

"3. On-time baggage delivery
Each airline will make every reasonable effort to return checked bags within 24 hours and will attempt to contact any customer whose unclaimed, checked luggage contains a name and address or telephone number."

ASTA Comment: There is no commitment to return checked baggage when the aircraft arrives at its destination. That is what passengers expect. Even the 24 hour return promise is hedged by "every reasonable effort."

....

11 See Notice: Disclosure of Higher Prices for Airfares Purchased Over the Telephone Via Airline Telephone Reservation Centers of at Airline Ticket Counters, and Surcharges That May Be Listed Separately in Fare Advertisements," Department of Transportation, Assistant General Counsel for Aviation Enforcement and Proceedings, November 5, 2004.

"7. Properly accommodate disabled and special-needs passengers
Each airline will disclose its policies and procedures for handling special-needs passengers, such as unaccompanied minors, and for accommodating the disabled in an appropriate manner."

ASTA Comment: The issue here is not disclosure; the issue is performance, as indicated in the Inspector General's 2006 report.

"8. Meet customers' essential needs during long on-aircraft delays
The airlines will make every reasonable effort to provide food, water, restroom facilities and access to medical treatment for passengers aboard an aircraft that is on the ground for an extended period of time without access to the terminal, as consistent with passenger and employee safety and security concerns. Each carrier will prepare contingency plans to address such circumstances and will work with other carriers and the airport to share facilities and make gates available in an emergency."

ASTA Comment: This is the crux of the current crisis in confidence. When this commitment was adopted in 1999, ASTA thought it was nothing more than a restatement of existing policy. Later events have shown that the airlines have failed to live up to this commitment. Interestingly, following the recent high-profile detentions, there has been no disclosure of the existence of such contingency plans and sharing arrangements.

What contingency plans do exist? How can sharing of facilities be facilitated?

"9. Handle "bumped" passengers with fairness and consistency
Each airline will disclose to a passenger, upon request, whether the flight on which the passenger is ticketed is overbooked, if, within the usual and ordinary scope of such employee's work, the information is available to the airline employee to whom the request is directed. Each airline will also establish and disclose to the customer policies and procedures, including any applicable requirements (such as check-in deadlines), for managing the inability to board all passengers with confirmed reservations."

ASTA Comment: Why should the passenger have to inquire about overbooking in order to be told? This is a trap for the unwary. And there is no actual commitment here. Who in fact has this information? Can an airline comply by providing no information to its selling staff? If the airline reservationists don't have it, the concept means little or nothing. What steps can reasonably be taken to assure that airline employees, in the usual and ordinary scope of their work, have access to this information?

....

"11. Ensure good customer service from code-share partners
Each airline will ensure that domestic code-share partners make a commitment to provide comparable consumer plans and policies."

ASTA Comment: Alliance partners have been claiming "seamlessness" as one of the benefits of alliances from the beginning. But why does this obligation not extend to international alliance partners where the risk to the passenger is the highest?

"12. Be more responsive to customer complaints
Each airline will assign a Customer Service Representative responsible for handling passenger complaints and ensuring that all written complaints are responded to within 60 days. Each airline will develop and implement a Customer Service Plan for meeting its obligations under the Airline Customer Service Commitment. Customer Service Plans will be completed and published within 90 days and will be fully implemented within 6 months. Airline implementation will include training for airline reservation, customer service and sales personnel to enhance awareness of the responsibilities involved in implementation of the Customer Service Commitment and Plans. The Airlines will publish and make available their Customer Service Plans: (i) on airline Internet Web sites; (ii) at airports and ticket offices (upon request); and, (iii) to travel and reservation agents."

ASTA Comment: This "commitment" refers only to response, not to resolution. It can be satisfied by a postcard or e-mail saying "we have received your complaint and will be in touch soon."

CONCLUSION

The time for so-called "voluntary" passenger service commitments has passed. Congress and DOT should now act expeditiously to change the legal framework within which consumer rights issues are resolved by (1) limiting the scope of federal preemption of state consumer protection laws, (2) requiring that passenger service policies be integrated into the airlines' contracts of carriage, (3) adequately funding DOT enforcement budgets and (4) promptly convening a meeting of relevant and responsible interests, including ASTA and representatives of consumer interests, airlines, airports, the FAA and the DOT Inspector General, to discuss and development a plan for resolving, through legislation, regulation or self-help, the many issues outstanding in connection with airline treatment of air travel consumers, as set forth in the above testimony.

Respectfully submitted,

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EXHIBIT A

One Nation Divided By Law:

Position of the American Society of Travel Agents On Clarification Of Federal Preemption Under The Airline Deregulation Act
(February 2001)

- ***Airline accountability to passengers should not depend on where in the Country they live.***
- ***Interpretation of the present Federal preemption provision has led to widely differing views and results among judges.***
- ***An overly broad application of preemption has denied consumers and small businesses a fair day in court against airlines, who have used preemption to become a virtual law unto themselves. Preemption has become civil immunity, service suffers, the public is frustrated.***
- ***Congress must fix this, the Supreme Court can't or won't. Over the objections of the Chief Justice and Justices O' Connor and Thomas the Supreme Court has declined to review lower court decisions holding the two conflicting analyses of the preemption provision. They can't both be right.***
- ***ASTA supports language that balances airlines' need to be free of state economic regulation with the rights of consumers and small businesses to take airlines to court when necessary.***

Mistreatment of passengers and small businesses with commercial disputes by denial of their fair day in court[1], together with criticism by leading jurists of overly broad judicial interpretations of the Federal protection given the airlines, leads the American Society of Travel Agents ("ASTA")[2] to conclude that immediate, remedial congressional action is needed.

[1] No one knows for sure how many instances there are of passengers and small businesses being denied their day in court on account of Federal preemption under the Airline Deregulation Act. ASTA does not attempt to document them all here. Our purpose is to show the lack of uniformity throughout the Federal appellate circuits into which the Country is divided, and how your rights now depend on where you live. Certainly, there are dozens if not hundreds, of these cases reported at the Federal trial court level, that never make it to the appellate courts. And for every case that does make it to court, it is likely that many consumer and small business complaints never do because of the expense, difficulty, and discouragement resulting from the present uncertainty in the law. Clearly, the number of such instances can only increase every day.

[2] ASTA was established in 1931 and is the largest professional travel trade organization in the world. It represents all facets of the travel industry, including travel agencies and travel service suppliers. ASTA has appeared in numerous legal proceedings and provided testimony before various legislative bodies. It is generally recognized as responsibly representing the interests of its members and the travel agency industry. See e.g. Investigation into the Competitive Marketing of Air Transportation, C.A.B. Docket 36595, aff'd; Republic Airlines, Inc. v. C.A.B., 756 F.2d 1304 (8th Cir. 1985); In re Domestic Air Transportation Antitrust Litigation, 148 F.R.D. 297, 61 USLW 2610, 1993-1 Trade Cas.(CCH) ¶70,165 (N.D.Ga., 1993); U.S. v. Airline Tariff Publishing Co. , 1993-1 Trade Cas. (CCH) ¶70,191 (D.D.C., 1993);

When Congress deregulated the airline industry by passage of the Airline Deregulation Act of 1978 ("ADA"), it prohibited the States from *"enact[ing] or enforc[ing] any law *** relating to rates, routes, or services."* 49 U.S.C. App. § 1305(a)(1). Obviously, such a provision was necessary to prevent the States from subjecting to their regulation that which Congress had just removed from Federal regulation. That Federal preemption provision, meant to shield airlines from state regulation, has now been turned by the airlines into a sword. They wield it to bar the general public and small businesses from holding them accountable under the same state laws that applies to virtually every other industry in the Country.

One result is that the airlines have become a veritable law unto themselves, immune from state-law suits seeking to hold them responsible for harm to passengers as well as their obligations to small businesses. Once a court decides that a party's state law claims are preempted, he is frequently left without any avenue of relief at all. The Department of Transportation "has neither the authority nor the apparatus required to superintend a contract dispute resolution regime."[3] Clearly, DoT would also be unable to adjudicate tort claims. At the same time, the airlines remain free to call upon, and do call upon, these same state law principles against other parties when their own interests are served.

Fifth Circuit

The difficulties and lack of consensus experienced by judges struggling to define the scope of the ADA's preemption provision is illustrated by the case of Hodges v. Delta Airlines, Inc., twice before the U.S. Court of Appeals for the Fifth Circuit.

Frances Hodges was injured on a flight from the Caribbean to Miami, when a fellow passenger opened the overhead compartment directly above her seat, dislodging and spilling a case containing several bottles of rum. The box fell on Ms. Hodges, lacerating her left arm and wrist.

Bound by previous precedent, Baugh v. Trans World Airlines, Inc., 915 F.2d 693 (5th Cir.1990), a Fifth Circuit panel held that Federal preemption barred Ms. Hodges' suit against the airline. It quickly added, however, that it believed this result to be wrong, and urged that all of the Circuit's judges re-hear the case, en banc.[4]

On rehearing, the Fifth Circuit overruled its prior decision in Baugh. Even then, however, separate opinions reflect at least three different views held among Fifth Circuit judges as to the scope of preemption Hodges v. Delta Airlines, Inc., 24 Avi. 18,361 (1995).

The *en banc* Fifth Circuit held that Federal preemption did not displace state tort actions for personal, physical injuries or property damage caused by the operation and maintenance of aircraft. The majority noted that statements of the Civil Aeronautics Board implementing airline deregulation strongly support the view that the Airline Deregulation Act was concerned solely with economic deregulation, not with displacing state tort law. Two judges disagreed, holding that the scope of Federal preemption was broader and barred Ms. Hodges' suit.

Spiro v. Delmar Travel Bureau, Inc., 591 N.Y.S.2d 237 (A.D. 3 Dept. 1992); and Crowder v. Kitagawa, 81 F.3d 1480 (9th Cir. 1996).

[3] American Airlines, Inc. v. Wolens , 513 U.S. 219 (1995) at 232.

[4] Hodges v. Delta Airlines, Inc., 24 Avi. 17,722 (1993).

On the other hand, Judge Jolly, concurring in the result, observed that the very fact that the court divided only on the application of the principle (that a claim is preempted only if it relates to services not a part of the maintenance or operation of an aircraft) reveals that such a rule promises uncertain and inconsistent results.

In Judge Jolly's view, suits involving efforts by private individuals under state common law tort rules are not instances of a state imposing its own substantive standards with respect to rates, routes, or services, which is what the ADA was meant to preempt.

Ninth Circuit

No less than the Fifth, the Ninth Circuit has struggled mightily with the scope of preemption under the ADA, taking at various times no less than four distinct positions. Initially, in West v. Northwest Airlines, Inc., 995 F.2d 148 (9th Cir.1993) and Lathigra v. British Airways PLC , 41 F.3d 535, 540 (9th Cir.1994), the Ninth Circuit held that the ADA did not preempt state tort claims that did not undermine the goals of airline deregulation or were too tenuously connected to it.

One year later, however, the court took a different approach. In Harris v. American Airlines, Inc., 55 F.3d 1472 (9th Cir.1995) it held that the ADA preempted a tort suit against American Airlines for continuing to serve alcohol to an intoxicated passenger. Over Judge Norris's dissent, the court concluded that serving drinks "relate[d] to [a] service" that the airline rendered, thereby falling within the scope of the federal preemption.

That approach lasted only two years, when in Gee v. Southwest Airlines, 110 F.3d 1400 (9th Cir.1997), the court expressed doubts about the validity of its Harris analysis . In an attempt to mitigate the impact of Harris, the Ninth Circuit expressly adopted the *en banc* Fifth Circuit's "service" versus "operations and maintenance" test.[5] Claims related to an airline's "operations and maintenance" were not preempted, but claims related to an airline's "service" were.

That interpretation too only survived a year. In Charas v. Trans World Airlines, Inc., 160 F.3d 1259 (9th Cir.1998), consolidated with four other cases, an *en banc* Ninth Circuit *sua sponte* expressly overruled its rationale in Harris and Gee. It held that Congress used the word *"service"* in the phrase *"rates, routes, or service"* in the ADA's preemption clause to refer only to the prices, schedules, origins and destinations of the point-to-point transportation of passengers, cargo, or mail. "Service" was not intended to include an airline's provision of in-flight beverages, personal assistance to passengers, the handling of luggage, and similar amenities.

Disavowing the Fifth Circuit test as elusive and unworkable, the Ninth noted Judge O'Scannlain's observation in Gee: "the operations-versus-service dichotomy invites nonsensical, inequitable, and inconsistent results, and in any event has nothing to do with the purpose of airline deregulation."[6]

The Charas court concluded that when Congress enacted federal economic deregulation of the airlines, it intended to insulate the industry from possible state economic regulation and encourage the forces of competition. It did not intend to immunize the airlines from liability for personal injuries caused by their tortious conduct.

[5] 110 F.3d at 1407.

[6] 110 F.3d at 1410.

Seventh Circuit

The U.S. Court of Appeals for the Seventh Circuit follows the Fifth Circuit's Hodges definition of airline "services" as including not only transportation, but also ticketing and all other elements of the air carrier bargain. Travel All Over The World, Inc. v. Kingdom of Saudi Arabia, 73 F. 3d 1423, 1433 (7th Cir. 1996).

This, of course, contrasts sharply with the Ninth Circuit's conclusion that the preemption clause's word "service" in the phrase "rates, routes, or service" refer only to the prices, schedules, origins and destinations of point-to-point transportation and was not intended to include in-flight beverages, personal assistance to passengers, the handling of luggage, and similar amenities.

The results in the Seventh Circuit's case are as follows: claims by a travel agency against an airline for failure to honor confirmed reservations were not preempted to the extent they sought compensatory damages, but were preempted to the extent they sought punitive damages; defamation claims against the airline for false statements asserting the agency's dishonesty and failure to book seats were not preempted because they did not refer to, or have, a forbidden significant economic effect on airline rates, routes or services; claims of tortious interference, intentional infliction of emotional distress, and fraud, based on the airline's refusal to transport passengers who had booked their flights through the travel agency, were preempted, while those based on the airline's defamatory comments were not.

These conclusions as a good example of the "nonsensical, inequitable, and inconsistent results" Judge O'Scannlain suggested would follow from the operations-versus-service approach to Airline Deregulation Act preemption.[7]

Fourth Circuit

The Fourth Circuit follows the Fifth Circuit analysis. Although observing that the treatment to which a passenger had been subjected was "unquestionably rude and unprofessional," in Smith v. Comair, Inc. , 134 F.3d 254 (1998), it held that Federal preemption barred the passenger from suing an airline for breaching its contract to fly him to Minneapolis.

First Circuit

Apparently, the First Circuit follows the 'operations versus service' analysis. In Chukwu v. Board of Directors British Airways , 101 F.3d 106 (1996) it affirmed, without opinion, the decision of the U.S. District Court for Massachusetts, that whether tort claims were preempted depended upon whether they "relate to" a "service."[8]

Eleventh Circuit

The U.S. Court of Appeals for the Eleventh Circuit, in Parise v. Delta Airlines, Inc., 141 F.3d 1463 (1998), held that a former airline employee's state law age discrimination claim was not barred by preemption, but cited, apparently approvingly, the Seventh Circuit's Travel All decision in doing so.

[7] Fn. 6 *supra*.

[8] Chukwu v. Board of Directors British Airways, 889 F.Supp. 12 (1995).

Sixth Circuit

In Wellons v. Northwest Airlines, Inc., 165 F.3d 493 (1999), the majority of a Sixth Circuit panel held that a former airline employee's state statutory race discrimination and related common law tort claims bore only the most tenuous relation to airline rates, routes, or services, and therefore were not barred by preemption. Judge Krupansky, however, dissented on the grounds that "all employment-related activities undertaken by a regulated airline are 'related to' its provision of 'services' to its patrons" and, therefore, preempted.[9]

Third Circuit

Noting that the rulings in the post- Morales v. Trans World Airlines, Inc., 504 U.S. 374 (1992), appellate case law have not been consistent, as the Courts of Appeals struggle with the ADA's "ambiguous preemption terminology," the Third Circuit casts its lot with the Ninth, and in opposition to the Fourth, Fifth, Seventh, and possibly First Circuits. In Taj Mahal Travel, Inc. v. Delta Airlines Inc., 164 F.3d 186 (3rd Cir.1998), the court held that a travel agency's defamation claim could go forward against an airline that distributed letters advising a number of the agency's clients that their tickets were considered to be stolen. The proper inquiry, the court said, is "whether a common law tort remedy frustrates deregulation by interfering with competition through public utility-style regulation."

Supreme Court

The present state of uncertainty and confusion exists despite the fact that the ADA's preemption provision has already been before the U.S. Supreme Court for interpretation on two separate occasions, once in Morales and again in Wolens .

Speaking as well for the Chief Justice and Justice Blackmun, Justice Stevens has written:

> the presumption against preemption of traditional state regulation counsels that we not interpret §105(a) to pre-empt every traditional state regulation that might have some indirect connection with, or relationship to, airline rates, routes, or services unless there is some indication that Congress intended that result. To determine whether Congress had such an intent, I believe that a consideration of the history and structure of the ADA is more illuminating than a narrow focus on the words "relating to." Morales v. Trans World Airlines, Inc., 504 U.S. 374 (1992) at 421 (Stevens, J., dissenting).

Recently, The Chief Justice and Justices O' Connor and Thomas took the unusual step of dissenting from the Supreme Court's denial of a writ of certiorari to express their dissatisfaction with the current state of the law of preemption under the ADA.

The case, on petition, from the Ninth Circuit, presented the " important issue that has divided the Courts of Appeals: the meaning of the term 'service' in the portion of the Airline Deregulation Act of 1978 that preempts any state law 'related to a price, route, or service of an air carrier.' 49 U. S. C. §41713(b)(1). I would grant the petition to resolve this issue and bring needed certainty to this area of the law," Justice O' Connor wrote.[10]

[9] 165 F.3d 496.

[10] Northwest Airlines v. Duncan, 531 U.S. (2000).

But, it does not end there. Having refused to review the Ninth Circuit's state economic regulation approach, the Supreme Court has also denied review in a case applying the Seventh Circuit's service versus operations approach.[11]

In the case in which review had been sought, United Airlines, Inc. v. Mesa Airlines, Inc., 219 F.3d 605 (7th Cir. 2000), United sued Mesa for a declaratory judgment that changes it made in the parties' code share arrangement were permitted. It also sought damages from Mesa for breach of contract. Mesa counter sued for breach of contract, tortious interference with contractual relations, breach of fiduciary duty, and fraud.

Holding that Mesa's tortious interference, breach of fiduciary duty, and fraud claims were preempted, the Seventh Circuit reaffirmed its view that a claim was preempted if either the state rule expressly refers to air carriers' rates, routes, or services, or application of the state's rule would have a significant economic effect upon them. "Nothing any other circuit has said about the subject persuades us to alter course," the Seventh Circuit said.[12]

Differences of interpretation in the scope of the ADA's Federal preemption, not only among the Federal judicial circuits, and even among judges on the same circuit, but among the Justices of the Supreme Court, as well as instances of members of the public and small businesses being denied a forum for their claims, clearly demonstrate that legislative clarification of this troublesome provision is essential.

It is past time for the Congress to clarify what the courts have termed "ambiguous."[13] The preemption law has for more than 20 years defied the federal judiciary's analytic powers and led to the application of different law in different parts of the Country. Congress should once and for all make clear that the scope of Federal preemption of state law under the Airline Deregulation Act is limited to state economic regulation that would have the effect of re-regulating the airlines.

ASTA supports statutory language it believes strikes the appropriate balance between the airlines' need to be free of state economic re-regulation of fares and routes, and the rights of consumers and others to have redress against airlines for their failures to abide by the same state law standards of conduct all others must observe.

That language amends 49 U.S.C. Section 41713(b) by providing:

> **This subsection shall not bar any cause of action brought against an air carrier by one or more private parties seeking to enforce any right under the common law of any State or under any State statute, other than a statute purporting to directly prescribe fares, routes, or levels of air transportation service.**

This language (or language to the same effect) currently appears as Section 5 in S. 200, the *Air Travelers Fair Treatment Act*, Section 3 in H.R. 332, the *Aviation Consumer Right To Know Act* and Section 3 in H.R. 384, the *Airline Passenger Fair Treatment Act*. This language is suitable for inclusion in other legislation.

[11] Mesa Airlines, Inc. v. United Airlines , U.S. (Decided Dec. 4, 2000).

[12] 209 F.3d 609.

[13] 164 F.3d 194.

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Circuit	Service/Operations Analysis: "Service" means in-flight beverages, personal assistance to passengers, the handling of luggage, etc.	Economic Regulation Analysis: "Service" means utility service, the places the airline serves
First	X	
Third		X
Fourth	X	
Fifth	X Divided Court	
Sixth	? Divided Court	? Divided Court
Seventh	X	
Ninth		X
Eleventh	?	?

Federal Courts Apply Two Different Standards of Preemption Under ADA:
Is Your State In the Red Zone?

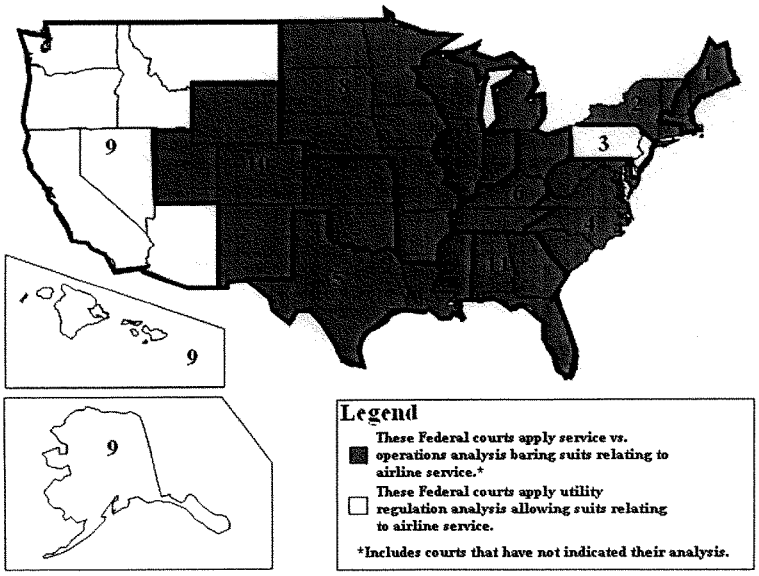

EXHIBIT B

Statement of the American Society of Travel Agents
Senate Committee on Commerce, Science and Transportation

Hearing on Airline Customer Service
June 28, 2000

The American Society of Travel Agents (ASTA)[12] applauds Senator McCain's endeavors to monitor the airline industry's voluntary commitment to improve passenger rights and services as evident by the June 28, 2000 Senate Commerce hearing on Airline Customer Service. ASTA submits the following statement for the hearing record.

It comes as no surprise to travel agents that the voluntary plans put forth by the airlines have not yielded satisfactory results. Passenger complaints to the DOT more than doubled between 1998 and 1999 from 7,980 to 17,381. What's more, since the airline plans took effect, complaints from passengers climbed another 74 percent. ASTA renews its call for swift passage of an Air Travelers Bill of Rights and is pressing for the introduction of a Senate version of HR 2200, legislation that would establish a national policy of fair treatment for airline passengers and travel agents.

ASTA, the world's largest travel trade association, also calls for a halt to government consideration of approval for any airline merger or alliance until customers can fly with the respect, courtesy, convenience and reliability to which they, as the ultimate owners of the air space, are entitled.. What is needed is a national policy of passenger rights and that policy can be found in the provisions of HR 2200, the *Omnibus Airline Passenger Fair Treatment Act.* This legislation ensures that consumers of air travel will be treated with respect and dignity, will be afforded full access to fare and schedule information, and will have access to the travel distribution channel of their choice.

As a first step in correcting the inequities, there is one huge gap that Congress must address and that is the right of air passengers and travel agents to resolve disputes with airlines under state law. That action alone would give air consumers the same rights that consumers of any other product have, the right to sue under state law.

In some cases, the Airline Deregulation Act has been misinterpreted as preventing air travelers and other businesses with claims against airlines from exercising their basic right--to resolve a dispute in court. There are currently three bills that address the preemption issue--HR 272, the *Airline Competition and*

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[12] The mission of the American Society of Travel Agents is to enhance the professionalism and profitability of members worldwide through effective representation in industry and government affairs, education and training, and by identifying and meeting the needs of the traveling public. The Society, the world's largest and most influential travel trade association, and its affiliates represent over 26,000 members in more than 170 countries.

Lower Fares Act, introduced by Rep. Louise Slaughter (D-NY); HR 2200, the *Omnibus Airline Passenger Fair Treatment Act*, introduced by Rep. John E. Sweeney (R-NY); and S 477, the *Airline Competition Act of 1999*, introduced by Sen. Charles Schumer (D-NY).

Clarification of the preemption language is supported by the National Association of Consumer Agency Administrators (NACAA). They, like ASTA, believe that the public must be able to access state consumer laws to resolve disputes with the airlines. Federal preemption provisions embodied in the Airline Deregulation Act were intended as a shield primarily to protect the airline industry from random re-regulation by the states. The airlines, however, have turned it into a sword with which they deflect small business and consumers who seek to hold them legally accountable.
ASTA's call for a moratorium on all mergers and joint ventures until the issue of passenger rights has been adequately addressed was supported by the Inspector General's report which read: AIn the long run if the number of actual *or potential* competitors in the air markets declines, there is likely to be less competitive pressure on the remaining air carriers to offer improved service amenities or introduce additional ones."

Approving another large merger and further reducing competition in the industry only serves to compound the customer service and passenger rights problem, ASTA's message is this: No more mergers, no more alliances and no more airline joint ventures should be permitted as long as passengers are screaming for relief from airline arrogance and indifference resulting from this ever-growing oligopoly in the skies. As the rightful owners of the airways and airport facilities, the public has a right to respect, fair dealing and truthfulness. Deliver that first and then the government can consider the rest.

ASTA has been at the forefront of the air travelers rights issue. Two years ago, ASTA unveiled the Air Traveler's Bill of Rights, asking that the airlines voluntarily adopt the program. When that effort was rejected by the airlines, ASTA turned to lobbying efforts on Capitol Hill. The passenger rights movement has gained significant support from several Congressional leaders. Sen. Ron Wyden (D-OR) has been a particularly staunch supporter of the movement and was successful in amending the DOT Appropriations Bill last session to fund the DOT IG investigation. Other efforts have been made by Sen. Richard Shelby (R-AL) and Reps. Peter A. DeFazio (D-OR), John D. Dingell (D-MI), Bud Shuster (R-PA), Sweeney (R-NY) and Edolphus Towns (D-NY).

The *Omnibus Airline Passenger Fair Treatment Act* HR 2200, introduced by Rep. John Sweeney (R-NY), includes the following rights:

- Full access to fares regardless of the method a consumer uses to purchase the ticketBtravel agent; direct-call and Internet users would have access to the same price.
- Accurate and timely explanation of flight delays and related problems.
- Right to use all or part of any ticket purchased if doing so saves the consumer money.
- Access to state consumer laws to resolve disputes with airlines.
- Right to deplane a delayed aircraft parked at the terminal ramp.
- Access to reasonable in-flight emergency medical care.

ASTA has received the backing of a number of other travel organizations and consumer advocacy organizations such as the National Tour Association and the Coalition for Travel Industry Parity.

ASTA's renewed call for a legislated solution comes in the wake of the Interim Report on Airline Customer Service Commitment issued by Kenneth Mead, Inspector General of the Department of Transportation. Mead's testimony before the Committee on Commerce, Science and Transportation hearing on the apparent lack of progress made by the airlines in their voluntary customer service commitments, as well as problems with overbooking and consumer access to low fares

The Inspector General noted that despite the Airlines' publication of their "commitments by Sept. 15, 1999, not all plans had been fully implemented a full three months later. He further reported that Athe airlines' commitment for better customer service was essentially a recommitment to place substantially greater emphasis on existing law," not a significant move toward new and higher standards of customer care. Though optimistic in certain respects, the Report was fundamentally and broadly critical of the airlines' compliance with their "voluntary" customer service commitment plans.

Key findings included:

- The airlines' customer service commitment "**does not directly address the underlying reasons for customer dissatisfaction**, such as extensive flight delays, baggage not showing up on arrival, long check-in lines and high fares in certain markets … until these areas also are effectively addressed by the airlines, FAA and others there will continue to be discontent among air travelers."
- "**Less than half (the airlines) had comprehensive customer service contingency plans** in place for handling extended delays on-board aircraft at all the airports they served. The provision(s) use general terms such as *food, every reasonable effort, for an extended period of time* or *emergency*. These terms are not clearly defined and do not provide the passenger with a clear understanding of what to expect."
- The commitment and the airlines' plans "while conveying promises of customer service standards do not necessarily translate into legally enforceable passenger rights…. The enforceable contract between the airlines and their passengers may be less advantageous to the passengers than the provisions found in the airlines plans."
- (There is) "major room for improvement in the accuracy, reliability and timeliness of the Airlines' communications to customers about the status of flights."
- **"Information being provided about known delays and cancellations at airport check-in counters and in the boarding areas was frequently inaccurate, incomplete or unreliable. ...** Simply communicating is not sufficient if the information is not accurate."
- There were a "sufficient number of cases in which the lowest fare was not offered to warrant that the airlines pay special attention to this area."
- With respect to low price guarantees, "when a ticket purchase was required, **we typically were not told by the reservation agents that we could receive a full refund** if the reservation was canceled within 24 hours."

Before the Committee on Transportation and Infrastructure
Subcommittee on Aviation
United States House of Representatives

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Actions Needed To Improve Airline Customer Service

Statement of
The Honorable Calvin L. Scovel III
Inspector General
U.S. Department of Transportation

Chairman Costello, Ranking Member Petri, and Members of the Subcommittee:

We are pleased to be here today to discuss airline customer service and the actions needed from the Department of Transportation (DOT), Federal Aviation Administration (FAA), airlines, and airports to improve customer service. This hearing is both timely and important given the events that occurred this past winter involving extended ground delays. In some cases, passengers were stranded aboard aircraft at the gate or on the airport tarmac for 9 hours or longer due to severe weather conditions.

It is also important to recognize that Secretary Peters has serious concerns about the airlines' treatment of passengers during extended ground delays; as such, she requested that we examine the airlines' customer service plans, contracts of carriage,[1] and internal policies dealing with long, on-board delays and the specific incidents involving American Airlines and JetBlue Airways when passengers were stranded on board aircraft for extended periods of time. She also requested that we provide recommendations on what actions should be taken to prevent a recurrence of such events.

Currently, the debate is over the best way to ensure improved airline customer service: either through voluntary implementation by the airlines, legislation, additional regulations, or some combination of these. This is clearly a policy issue for Congress to decide. As it did in 1999 and 2001, Congress is once again considering whether to enact a "passenger bill of rights," with legislation pending in both the House and Senate.

Our testimony today is based on the results of our previous airline customer service reviews as well as our ongoing work. I would like to discuss three key points dealing with actions that would help to improve customer service:

- **The airlines must refocus their efforts to improve customer service.** In November 2006, we reported[2] that Air Transport Association (ATA)[3] airlines' customer service plans were still in place to carry out the provisions of the Airline Customer Service Commitment that the airlines promised to execute. These provisions include meeting passengers' essential needs during long, on-board delays. However, we found that the airlines must refocus their efforts on airline customer service by resuming efforts to self-audit their customer service plans,

[1] A contract of carriage is the document air carriers use to specify legal obligations to passengers. Each air carrier must provide a copy of its contract of carriage free of charge upon request. The contract of carriage is also available for public inspection at airports and ticket offices.

[2] OIG Report Number AV-2007-012, "Follow-Up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment," November 21, 2006. OIG reports and testimonies can be found on our website: www.oig.dot.gov.

[3] The Air Transport Association is the trade association for America's leading air carriers. Its members transport over 90 percent of all the passenger and cargo traffic in the United States.

emphasizing to their customer service employees the importance of providing timely and adequate flight information, disclosing to customers chronically delayed flights, and focusing on the training for personnel who assist passengers with disabilities.

- **The Department should take a more active role in airline customer service issues.** Oversight and enforcement of air traveler consumer protection rules are the responsibility of the Department's Office of General Counsel. These rules encompass many areas, including unfair and deceptive practices and unfair methods of competition by air carriers and travel agents, such as deceptive advertising. We found that while the Office has made efforts to enforce civil rights violations, it needs to improve its oversight of consumer protection laws, including its efforts to monitor compliance with the terms and conditions of enforcement actions. In recent years, the Office has not conducted on-site compliance reviews, relying instead on self-certifications and company-prepared reports submitted by the air carriers without supporting documentation.
- **The airlines must overcome challenges in mitigating extraordinary flight disruptions.** This past winter's severe weather events underscored the importance of improving customer service for passengers who are stranded on board aircraft for extended periods of time. According to the Department's Bureau of Transportation Statistics (BTS), approximately 722,600 flights were delayed in 2006 *due to poor weather conditions* (10 percent of all commercial flights). Meeting passengers' essential needs during long, on-board delays is a serious concern of Secretary Peters and the Department. Therefore, she asked our office to examine the American Airlines and JetBlue Airways events of December 29, 2006, and February 14, 2007, respectively, and provide recommendations as to what, if anything, the airlines, airports, or the Government—including the Department—might do to prevent a recurrence of such events.

Before I discuss these points in detail, I would like to briefly describe why airline customer service is a "front-burner" issue and highlight a few statistics on the development of the current aviation environment.

As this Subcommittee is aware, airline customer service took center stage in January 1999, when hundreds of passengers remained in planes on snowbound Detroit runways for up to 8 and a half hours. After those events, both the House and Senate considered whether to enact a "passenger bill of rights."

Following congressional hearings on these service issues, ATA member airlines agreed to execute a voluntary Airline Customer Service Commitment[4] to demonstrate

[4] ATA signed the Commitment on behalf of the then 14 ATA member airlines (Alaska Airlines, Aloha Airlines, American Airlines, American Trans Air, America West Airlines, Continental Airlines, Delta Air Lines, Hawaiian Airlines, Midwest Express Airlines, Northwest Airlines, Southwest Airlines, Trans World Airlines, United Airlines, and US Airways).

their dedication to improving air travel (see figure 1), with provisions such as meeting passengers' essential needs during long, on-board delays.

However, aviation delays and cancellations continued to worsen, eventually reaching their peak during the summer of 2000. In 2000, more than 1 in 4 flights (26 percent) were delayed, with an average arrival delay of 51 minutes.

Congress then directed our office to evaluate the effectiveness of the Commitment and the customer service plans of individual ATA airlines.

Figure 1. Provisions of the Airline Customer Service Commitment

- Offer the lowest fare available.
- Notify customers of known delays, cancellations, and diversions.
- Deliver baggage on time.
- Support an increase in the baggage liability limit.
- Allow reservations to be held or cancelled.
- Provide prompt ticket refunds.
- Properly accommodate disabled and special-needs passengers.
- Meet customers' essential needs during long, on-aircraft delays.
- Handle "bumped" passengers with fairness and consistency.
- Disclose travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration.
- Ensure good customer service from code-share partners.
- Be more responsive to customer complaints.

Source: Airline Customer Service Commitment, June 1999

We issued our final report[5] in February 2001. Overall, we found that the ATA airlines were making progress toward meeting the Commitment, which has benefited air travelers in a number of important areas. We found that the airlines were making the greatest progress in areas that are not directly related to flight delays or cancellations, such as offering the lowest fare available, holding reservations, and responding in a timely manner to complaints.

Although the ATA airlines made progress toward meeting the Commitment, we found that the Commitment did not directly address the underlying cause of deep-seated customer dissatisfaction—flight delays and cancellations. This is still the case today.

Since our 2001 report, the air carrier industry has faced a series of major challenges, including a weakened economy; the terrorist attacks of September 11, 2001; the Severe Acute Respiratory Syndrome epidemic; the war in Iraq; and soaring fuel prices. As we reported in November 2006, the network air carriers generated about $58 billion in net losses from 2001 through 2005. They have also made unprecedented changes to their operations to regain profitability. Eight commercial air carriers have filed bankruptcy, two major air carriers have merged, and one has ceased operations. While four of the eight air carriers have emerged from bankruptcy, fuel prices continue to climb; this makes cost control a key factor in not only sustained profitability but also in overall survival of an airline.

We revisited airline customer service issues to a limited extent following the December 2004 holiday travel period, when weather and other factors led to severe

[5] OIG Report Number AV-2001-020, "Final Report on Airline Customer Service Commitment," February 12, 2001.

service disruptions in some parts of the country. While our review[6] focused on the inconveniences experienced by Comair and US Airways passengers, we found that nearly half of all flights, system-wide, during the 7-day travel period were either delayed or cancelled, affecting hundreds of thousands of passengers.

Flight delays and cancellations continue as a major source of customer dissatisfaction. A review of vital statistics shows the environment that air travelers faced in 2006 compared to peak year 2000.

Traffic and Capacity:

- The number of scheduled flights (capacity) declined from 8.1 million in 2000 to 7.6 million in 2006, a drop of 6.4 percent. Scheduled seats declined by 9.5 percent between 2000 and 2006, from 921 million to 834 million.

- Even as the number of flights and scheduled seats declined, passenger enplanements were up nearly 7 percent, from 699 million passengers in 2000 to 745 million passengers in 2006.

- Reduced capacity and increased demand led to fuller flights. For 2006, load factors averaged nearly 80 percent for 10 of the largest ATA airlines, compared to average load factors of just over 72 percent for 2000.

- *Reduced capacity and higher load factors can also result in increased passenger inconvenience and dissatisfaction with customer service. With more seats filled, air carriers have fewer options to accommodate passengers from cancelled flights.*

Flight Delays:

- The number of delayed flights declined from 2.09 million in 2000 to 2.02 million flights in 2006, a decrease of 3.5 percent.

- The percentage of delayed flights also declined from approximately 26 percent in 2000 to 25 percent in 2006.

- Nevertheless, the average flight delay increased from 51 minutes in 2000 to 53 minutes in 2006.

- While flight delays have declined nationwide since 2000, some individual airports experienced significant reductions in service and a subsequent reduction in delays. However, traffic and delays continued to increase at other airports. For example, between 2000 and 2006, George Bush Intercontinental/Houston Airport experienced a 27-percent increase in scheduled flights and a 55-percent increase in delays. This increase is important to note because Houston added a new runway

[6] OIG Report Number SC-2005-051, "Review of December 2004 Holiday Air Travel Disruptions," February 28, 2005.

in 2003 at a cost of $267 million that was supposed to alleviate delays. In comparison, Newark International Airport had a 3-percent reduction in scheduled flights but experienced a 34-percent increase in flight delays during this same time period.

Airlines Have Experienced Increasing Delays and Cancellations in Early 2007:

Historically, most chronically delayed and cancelled flights occur during the winter and summer months. While it is too early to tell what the summer months will hold, the picture in 2007 so far shows that the number of delayed flights is on the rise and that delays are somewhat longer in duration. Flight cancellations and extended ground delays have also increased.

During the first 2 months of 2007:

- Nearly 1 in 3 flights (31 percent) were delayed, cancelled, or diverted, affecting approximately 22.8 million passengers. This represents an increase over the same period in 2006 when nearly 23 percent of scheduled flights were delayed, cancelled, or diverted, affecting an estimated 16.6 million passengers.

- Of those flights arriving late, the average delay was 54 minutes—over 3 minutes longer than those for the same period in 2006.

- BTS reported that flight cancellations nearly doubled (21,080 to 41,115) as compared to the same period in 2006.

- According to BTS data, the number of flights experiencing taxi-in and taxi-out times of 1 to 2 hours increased by nearly 136 percent (from 5,044 to 11,889) as compared to the same period in 2006. Flights with taxi-in and taxi-out times of 2, 3, 4, and 5 hours or longer increased at even higher rates (see table).

- The number of flights that were chronically delayed (by 30 minutes or longer), diverted, or cancelled 40 percent or more of the time increased by more than 400 percent over the same period in 2006 (from 12,596 in 2006 to 63,524 in 2007).

Table. Number of Flights With Long, On-Board Tarmac Delays of 1 to 5+ Hours January Through February of 2006 and 2007

Time Period	2006	2007	% Change
1-2 Hrs.	5,044	11,889	135.7%
2-3 Hrs.	381	946	148.3%
3-4 Hrs.	67	193	188.1%
4-5 Hrs.	10	67	570.0%
5 or > Hrs.	3	24	700.0%
Total:	**5,505**	**13,119**	**138.3%**

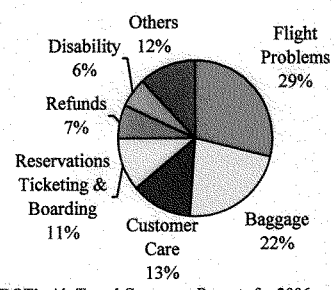
Source: BTS data

Consumer Complaints:

- Consumer complaints are rising. While the 2006 DOT Air Travel Consumer Report disclosed that complaints involving U.S. airlines for 2006 had declined by 6.6 percent (6,900 to 6,448) compared to complaints in 2005, February 2007 complaints increased by 57 percent (423 to 666) over complaints in February 2006, with complaints relating to delays, cancellations, and missed connections nearly doubling (127 to 247) for the same period.

- Over the last several years, DOT ranked flight problems (i.e., delays, cancellations, and missed connections) as the number one air traveler complaint, with baggage complaints and customer care[7] ranked as number two and number three, respectively. As shown in figure 2, flight problems accounted for more than one-quarter of all complaints the Department received in 2006.

Figure 2. Air Travel Consumer Complaints, 2006



Source: DOT's Air Travel Consumer Reports for 2006

The busy summer travel season will soon be upon us, and the extent to which delays and cancellations will impact passengers in 2007 depends on several key factors, including weather conditions, the impact of the economy on air traffic demand, and how existing capacity is managed at already congested airports.

I would now like to turn to my three points on airline customer service.

Airlines Must Refocus Their Efforts To Improve Customer Service

In June 2005, the Chairman of this Subcommittee requested that we follow up on the performance of U.S. air carriers in implementing provisions of the Commitment since the issuance of our 2001 report.

Unlike our prior work, which reviewed each provision, this review focused on selected Commitment provisions.[8] We reviewed implementation of the selected

[7] Complaints such as poor employee attitude, refusal to provide assistance, unsatisfactory seating, and unsatisfactory food service are categorized as customer care complaints.

[8] Our 2006 review focused on notifying passengers of delays and cancellations, accommodating passengers with disabilities and special needs, improving frequent flyer program redemption reporting, and overbooking and denying boardings. We did not include the Commitment provision regarding on-time checked baggage delivery, which was subject to a hearing before this Subcommittee in May 2006.

Commitment provisions by the 13 current ATA member airlines; this included JetBlue Airways, which became an ATA member in 2001. JetBlue has not adopted the June 1999 Commitment and does not consider itself bound by its provisions. We also reviewed implementation of the selected provisions by two non-ATA airlines that are not signatories to the Commitment—AirTran Airways and Frontier Airlines.

In November 2006, we reported that the ATA airlines' customer service plans were still in place to carry out the provisions of the Commitment and that the Commitment provisions were still incorporated in their contracts of carriage, as we recommended in our 2001 review. This is important because unlike DOT regulations, which are enforced by the Department and may result in administrative or civil penalties against an air carrier, contracts of carriage are binding contracts enforceable by the customer against the air carrier.

However, we found that the airlines must refocus their efforts on airline customer service by taking the following actions.

- **Resuming Efforts To Self-Audit Their Customer Service Plans:** In our 2001 report, we recommended, and the ATA airlines agreed, that the airlines establish quality assurance and performance measurement systems and conduct internal audits to measure compliance with the Commitment provisions and customer service plans.

  In June 2001 (about 5 months later), we confirmed that 12 of the 14 ATA airlines that were signatories to the Commitment had established and implemented their quality assurance and performance measurement systems. In our 2006 review, however, we found that the quality assurance and performance measurement systems were being implemented at just five of the ATA airlines.[9] The other ATA airlines had either discontinued their systems after September 11, 2001, or combined them with operations or financial performance reviews where the Commitment provisions were overshadowed by operational or financial issues. We also found that the two non-ATA airlines we reviewed did not have comprehensive quality assurance and performance measurement systems or conduct internal audits to measure compliance with their customer service plans.

  A quality assurance and performance measurement system is necessary to ensure the success of the Commitment and customer service plans. Therefore, the success of the customer service plans depends upon each airline having a tracking system for compliance with each provision along with an implementation plan for the Commitment. These systems and audit procedures will also help DOT to more efficiently review the airlines' compliance with the Commitment.

[9] At the time of our 2006 review, quality assurance and performance measurement systems were being implemented at Alaska Airlines, Continental Airlines, Delta Air Lines, Northwest Airlines, and United Airlines.

- **Emphasizing to Their Customer Service Employees the Importance of Providing Timely and Adequate Flight Information:** The ATA airlines committed to notify customers who are either at the airport or on board an affected aircraft of the best available information regarding delays, cancellations, and diversions in a timely manner.

  All of the airlines included in our 2006 review made up-to-date information available about their flights' status via their Internet sites or toll-free telephone reservation systems. However, we still found that the information provided in boarding areas about delays and cancellations was not timely or adequate during our tests. In 42 percent of our observations, airline gate agents did not make timely announcements (defined as approximately every 20 minutes) about the status of delays, and the information they provided was not adequate about 45 percent of the time.

  This is one area where the airlines' self-audits would be effective in monitoring compliance with the Commitment provision and their own internal policies.

  Disclosing Chronically Delayed Flights to Customers: On-time flight performance data should also be made readily available to passengers at the time of booking. We recommended in our 2001 report that the airlines disclose to passengers at the time of booking—without being asked—the prior month's on-time performance for those flights that have been consistently delayed (i.e., 30 minutes or longer) or cancelled 40 percent or more of the time. We have recommended this several times, but none of the airlines to date have chosen to adopt it.

  Instead, as an alternative, the airlines agreed to make on-time performance data accessible to customers through either the airlines' Internet sites or toll-free telephone reservation systems or a link to the BTS Internet site. Only 5 of the 16 airlines[10] included in our 2006 review made on-time performance data available on their Internet sites.

  Currently, the airlines are required to disclose on-time performance only upon request from customers. However, the information that the agents provide about on-time performance through the airlines' telephone reservation systems is not always accurate or adequate. In 41 percent of our 160 calls to the airlines' telephone reservation systems, agents either told us that the information was not available, guessed what they thought the on-time performance was, or gave the data for only the previous day.

[10] Alaska Airlines, America West Airlines, Northwest Airlines, United Airlines, and US Airways.

The on-time performance for consistently delayed or cancelled flights is readily available to the airlines. Continuing to operate chronically delayed flights could potentially constitute a deceptive business practice, and not disclosing such delays could be viewed as contributing to a deceptive practice. Therefore, we continue to believe—as we recommended in 2001—that on-time performance should be disclosed at the time of booking for those flights that have been consistently delayed and should not require a customer request.

- **Focusing on the Training for Personnel Who Assist Passengers With Disabilities.** The needs and perspectives of passengers with disabilities are of paramount importance in providing satisfactory service. This is especially true during extended flight delays whether the passengers are on board aircraft or in the airlines' gate area.

  The ATA airlines committed to disclose their policies and procedures for assisting special-needs passengers, such as unaccompanied minors, and for accommodating passengers with disabilities in an appropriate manner.

  In our 2001 review, the airlines performed well with respect to this provision. However, in our 2006 review, we found that the majority of airlines (12 of 15) and their contractor personnel who interact with passengers with disabilities were not complying with the Federal training requirements or with their own policies. In over 15 percent of the 1,073 employee training records we reviewed, airline employees were either not trained, not promptly trained, did not have records to support completion of training, or were not current with annual refresher training.

  The airlines need to refocus their attention in this area and ensure that employees who assist passengers with disabilities are properly trained.

The Department Should Take a More Active Role in Airline Customer Service Issues

Oversight and enforcement of air traveler consumer protection rules are the responsibility of the Department's Office of General Counsel. These rules encompass many areas, including unfair and deceptive practices and unfair methods of competition by air carriers and travel agents, such as deceptive advertising.

In our 2001 customer service report, we recommended that the Department be given additional resources to investigate and enforce cases under its statutory authority, and Congress did so. As part of our 2006 review, we examined how the Department has used the additional resources Congress appropriated to oversee and enforce air travel consumer protection requirements.

We found that DOT was using its additional resources to oversee and enforce air travel consumer protection requirements with a focus on investigations and

enforcement of civil rights issues, including complaints from passengers with disabilities. But, when DOT discovered violations and assessed penalties, it almost always forgave or offset a significant portion of the penalty if the air carrier agreed to mitigate the conditions for which the penalty was assessed. DOT's follow-up monitoring of compliance with these conditions was limited, and in some cases there was no follow-up monitoring at all. In recent years, DOT has not conducted on-site compliance reviews, relying instead on air carriers' self-certifications and company-prepared reports submitted without supporting documentation.

We also found that DOT's increased responsibilities—especially as they relate to civil rights issues—had diverted resources away from its other consumer protection activities, such as regular on-site consumer protection and related compliance and enforcement visits to airlines.

Additionally, DOT has acknowledged that chronically delayed and cancelled flights are clearly examples of deceptive practices by the airlines. However, DOT's current position is that chronically delayed flights are mostly due to reasons beyond the air carriers' control—these are mostly weather-related but also include congestion. As a result, in DOT's view, a successful enforcement action for unrealistic scheduling would be difficult at best.

We believe that DOT should revisit its current position regarding unrealistic scheduling and take enforcement action against carriers that consistently advertise flight schedules that they cannot meet, regardless of the causes of the delay.

Given the results of our 2006 review and the extended ground delays that stranded passengers on board aircraft this past winter, DOT should take a more active role in overseeing airline customer service.

The Airlines Must Overcome Challenges in Mitigating Extraordinary Flight Disruptions

The airlines continue to face challenges in mitigating extraordinary flight disruptions, including long, on-board delays during extreme weather. According to BTS, approximately 722,600 flights were delayed in 2006 *due to poor weather conditions* (10 percent of all commercial flights). For that same year, over 73,000 flights experienced taxi-out and taxi-in times of 1 hour or longer. The airlines, FAA, and the Department cannot prevent significant weather events. What they can do, however, is work together to plan for such events and minimize the impact on passengers.

This past winter's severe weather events underscored the importance of improving customer service for passengers who are stranded on board aircraft for extended periods of time.

- On December 20, 2006, severe blizzards closed Denver's airport, causing several airplanes to divert to other airports. United Airlines diverted two flights to Cheyenne, Wyoming. The following morning, United's flight crew and attendants boarded the aircraft and departed, leaving all 110 passengers behind to fend for themselves.

- On December 29, 2006, the Dallas-Fort Worth area experienced unseasonably severe weather that generated massive thunder, lightning storms, and a tornado warning; this caused the airport to shut down operations several times over the course of an 8-hour period. American Airlines diverted over 100 flights and many passengers were stranded on board aircraft on the airport tarmac for 6 hours or longer.

- On February 14, 2007, snow and ice blanketed the northeastern United States. JetBlue Airways stranded scores of passengers aboard its aircraft on the tarmac at John F. Kennedy International Airport (JFK). At 1 point during that day, JetBlue had 52 aircraft on the ground with only 21 available gates. JetBlue has publicly admitted shortcomings in its systems that were in place at the time for handling such situations.

- On March 16, 2007, an ice storm hit the Northeast, causing numerous delays and cancellations and forcing passengers to endure long, on-board flight delays. In fact, several Office of Inspector General staff were flying that day and experienced a 9-hour, on-board delay.

Meeting Passengers' Essential Needs During Long, On-Board Delays Is a Serious Concern of Secretary Peters and the Department. As a result of the December 29, 2006, and February 14, 2007, incidents; Secretary Peters expressed serious concerns about the airlines' contingency planning for such situations. On February 26, 2007, she asked our office to do the following:

- Examine the airlines' customer service commitments, contracts of carriage, and policies dealing with extended ground delays aboard aircraft.

- Look into the specific incidents involving American and JetBlue, in light of whatever commitment these carriers made concerning policies and practices for meeting customers' essential needs during long, on-board delays.

- Provide recommendations as to what, if anything, the airlines, airports, or the Government—including the Department—might do to prevent a recurrence of such events and highlight any industry best practices that could help in dealing with such situations.

Our work in this area began on March 12, 2007, with site visits to JetBlue Airways in New York (including JFK) and American Airlines in Texas—specifically, Dallas-Fort Worth International and Austin-Bergstrom Airports. During the past 40 days, we have done the following:

- Collected voluminous amounts of information and data from American and JetBlue regarding the events of December 29, 2006, and February 14, 2007. We are in the process of analyzing this information. While we are in the early stages of our review, we can report that American and JetBlue have revised their operating practices for mitigating long, on-board delays. For example, American instituted a new policy designed to prevent on-board delays from exceeding 4 hours. JetBlue also set a time limit of 5 hours maximum duration for any long, on-board delay away from a gate.

- Received information from other carriers providing service from Dallas-Fort Worth, Austin, and New York airports and met with officials from FAA air traffic control and those three airports. We are in the process of receiving contingency plans from the ATA airlines (system-wide plans) and the major airports they serve (each airport operator's plan).

We expect to brief the Secretary by the end of June and issue a report shortly thereafter.

Airlines Must Implement More Effective Contingency Plans. One observation we can share today regarding our current review is that contingency planning for extreme weather is not a new concern for airlines, as evidenced by the June 1999 Commitment provision, which states that:

- The airlines will make every reasonable effort to provide food, water, restroom facilities, and access to medical treatment for passengers aboard an aircraft that is on the ground for an extended period of time without access to the terminal, as consistent with passenger and employee safety and security concerns.

- Each carrier will prepare contingency plans to address such circumstances and will work with carriers and the airport to share facilities and make gates available in an emergency.

However, as we noted in our 2001 report, the airlines had not clearly and consistently defined terms in the Commitment provision such as "an extended period of time." We also noted that only a few airlines' contingency plans specify in any detail the efforts that will be made to get passengers off the aircraft when delayed for extended periods, either before departure or after arrival. Our opinion was then, as it is now, that this should be a top-priority area for the airlines when implementing their

contingency plans, especially with long, on-board delays on the rise from 2005 to 2006—particularly those exceeding 4 hours.

In response to our 2001 report recommendations, the airlines agreed to do the following:

- Clarify the terminology used in their customer service plans for extended delays.
- Establish a task force to coordinate and develop contingency plans with local airports and FAA to deal with lengthy delays.

While a task force was formed, the effort never materialized as priorities shifted after September 11, 2001. We are examining airline and airport contingency planning as part of our ongoing review.

We are also examining the actions taken by each airline to clarify terms relating to customers' essential needs during long, on-board delays. To date, we found that:

- Five of the 13 airlines[11] still had not clearly and consistently defined terms in the Commitment provision, such as "an extended period of time," for meeting customers' essential needs during long, on-board delays.
- Of the eight airlines that have defined "an extended period of time," the trigger thresholds for meeting passengers' essential needs vary from 1 to 3 hours. We think it is unlikely that a passenger's definition of an extended period of time will vary depending upon which airline they are flying.

Furthermore, preliminary data show that only 6 of the 13 airlines have defined what constitutes a "long, on-board delay" and have set a time limit on delay durations before returning to a gate or, when a gate is not available, deplaning passengers using mobile air stairs; loading passengers onto buses; and returning to the terminal.

Given the extended ground delays that stranded passengers on board aircraft this past winter, all airlines should specify in detail the efforts that will be made to get passengers off the aircraft when delayed for extended periods, either before departure or after arrival.

JetBlue and ATA Announced Initiatives To Address Long, On-Board Delays but More Needs To Be Done. These two initiatives address the recent events. First, on February 20, 2007, JetBlue published its own customer bill of rights. JetBlue plans to offer compensation in the form of vouchers for flight disruptions, such as cancellations. While this is a step in the right direction, this bill of rights is limited; JetBlue needs to clarify some of the terms. The JetBlue bill of rights only addresses

[11] Aloha Airlines, Delta Air Lines, JetBlue Airways, Midwest Airlines, and United Airlines.

3 of the 12 Commitment provisions: flight delays and cancellations, on-board delays, and overbookings. Also, JetBlue needs to clearly define all terms in its bill of rights, such as "Controllable Irregularity," so that passengers will know under what specific circumstances they are entitled to compensation.

JetBlue believes that its bill of rights goes beyond the Commitment provisions in some areas, but re-accommodating passengers for flight cancellations is already required under its contract of carriage. Additionally, while JetBlue will compensate its customers for being bumped from their flights, compensation is already required under an existing Federal regulation but not to the extent of JetBlue's compensation of $1,000.

Second, on February 22, 2007, ATA announced the following course of action:

- Each airline will continue to review and update its policies to ensure the safety, security, and comfort of customers.
- Each airline will work with FAA to allow long-delayed flights to return to terminals in order to offload passengers who choose to disembark without losing that flight's position in the departure sequence.
- ATA will ask the Department to review airline and airport emergency contingency plans to ensure that the plans effectively address weather emergencies in a coordinated manner and provide passengers with essential needs (food, water, lavatory facilities, and medical services).
- ATA will ask the Department to promptly convene a meeting of air carrier, airport, and FAA representatives to discuss procedures to better respond to weather emergencies that result in lengthy flight delays.

While we understand the current pressures that ATA and its member airlines face in maintaining profitability, we are concerned that the actions proposed merely shift responsibility from ATA to the Department. We agree that the Department must be an active partner, but ATA's proposed course of action is not significantly different than what the airlines agreed to do in response to our 2001 recommendations, such as "to establish a task force to coordinate and develop contingency plans with local airports and FAA to deal with lengthy delays."

As mentioned earlier, how to ensure airline customer service is clearly a policy issue for Congress to decide. Given the problems that customers continue to face with airline customer service, Congress may want to consider making the Airline Customer Service Commitment mandatory for all airlines.

However, there are actions that the airlines, airports, the Department, and FAA can undertake immediately without being prompted by Congress to do so. For example:

- Those airlines that have not already done so should implement quality assurance and performance measurement systems and conduct internal audits of their compliance with the Commitment provisions. The Department should use these systems to more efficiently review the airlines' compliance with those Commitment provisions governed by Federal regulation.

- The airlines should post on-time performance information on their Internet sites and make it available through their telephone reservation systems and should not require a customer request.

- The Department should revisit its current position on chronic delays and cancellations and take enforcement actions against air carriers that consistently advertise flight schedules that are unrealistic, regardless of the reason.

- The airlines, airports, and FAA should establish a task force to coordinate and develop contingency plans to deal with lengthy delays, such as working with carriers and the airport to share facilities and make gates available in an emergency.

- The Department's Office of General Counsel—in collaboration with FAA, airlines, and airports—should review incidents involving long, on-board ground delays and their causes; identify trends and patterns of such events; and implement workable solutions for mitigating extraordinary flight disruptions.

That concludes my statement. I would be glad to answer any questions you or other Members of the Subcommittee might have.

STATEMENT OF
ANDREW B. STEINBERG
ASSISTANT SECRETARY FOR
AVIATION and INTERNATIONAL AFFAIRS
U.S. DEPARTMENT OF TRANSPORTATION

before the

SUBCOMMITTEE ON AVIATION
U.S. HOUSE OF REPRESENTITIVES COMMITTEE
ON TRANSPORTATION AND INFRASTRUCTURE
on

AVIATION CONSUMER ISSUES

April 20, 2007

Chairman Costello, Congressman Petri, and Members of the Committee, thank you for inviting me to this hearing. I appreciate the opportunity to testify today on behalf of the Department of Transportation.

I want to emphasize to the Committee at the outset of my statement that the issue prompting this hearing today, which involves the treatment of consumers by airlines during extended on-ground flight delays, commonly referred to as tarmac delays, is being taken seriously by the Department, as evidenced by our prompt action following the recent incidents, which I will discuss shortly. Before I discuss that action, however, I would like to give you a broad overview of our authority to regulate in matters involving airline consumer protection, including tarmac delays, and our continuing efforts to ensure that passenger carriers meet their obligations to consumers.

Since deregulation of the airline industry nearly 30 years ago, the Department – as well as its predecessor, the Civil Aeronautics Board – has sought to balance the public interest in protecting consumers from unreasonable practices with our statutory mandate to permit market forces to operate to the maximum extent possible in order to determine what services are best provided the public by airlines. When action has been required, we have tried, wherever possible, to implement measures to enhance the functioning of the marketplace, such as publishing carrier performance data, or requiring the airlines themselves to disclose data to consumers that may be of use in making their choices of which carriers to use. We continue to believe this approach to be the proper one.

The cornerstone provision for DOT's consumer protection program covering all economic regulatory matters, as opposed to those involving safety, is section 41712 of title 49 of the U.S. Code, which broadly prohibits unfair and deceptive practices and unfair methods of competition in air transportation. The Secretary's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) acts as the prosecuting office for aviation consumer enforcement cases, including those involving unfair and deceptive practices. That office may act on its own initiative, and it also reviews formal third-party complaints alleging violations of the statute or the Department's consumer protection rules and either dismisses them or pursues enforcement action. It also has the authority to enter into settlements relating to those cases. Section 41712 is enforceable in its own right, but violations can be difficult to demonstrate. Even if a prosecution is ultimately successful, such cases are resource intensive, time consuming, and of limited precedential value because each is highly

dependent on its own set of facts. That section is more important as the basis for DOT rulemaking and policy making, where the public interest dictates, to define the extent of its statutory reach. For example, section 41712 provides the statutory basis for our airline full fare advertising and oversales compensation rules.

The Aviation Consumer Protection Division, within the Enforcement Office, handles all consumer complaints and inquiries involving economic regulatory matters and works with airlines and other companies to resolve informal consumer complaints relating to air transportation. Complaints filed with that division are often helpful to us in reviewing specific problem areas or industry trends that may need to be addressed through administrative action. That division also investigates apparent violations of consumer protection requirements, refers matters to the Enforcement Office where appropriate, and performs consumer protection rulemaking functions. In addition, the Aviation Consumer Protection Division has significant public information, education, and outreach programs, including publications that provide general air travel consumer information, such as the Department's monthly *Air Travel Consumer Report*. That report summarizes data filed with DOT by carriers on flight delays, mishandled baggage, and denied boardings, and also lists by carrier the number of complaints registered in a variety of areas, including baggage, refunds, and flight irregularities. Complaints filed with the Department over the past several years have trended downward from a high of about 23,000 in calendar year 2000, with about 8,300 being filed with us last year. However, complaint numbers are starting to increase this year.

Let me now touch upon the incidents of this past winter involving airline passengers being trapped for many hours on aircraft on the ground. The most highly-publicized events included serious service disruptions and lengthy tarmac delays experienced by American Airlines in late December of last year after severe weather hit the Southwest. Also, more recently, JetBlue Airways experienced severe flight irregularities and lengthy on-ground delays on Valentine's Day and the days that followed during a period of adverse weather in the Northeast. Although American and JetBlue received extensive media attention, virtually all carriers have had problems related to customer service, including, on rare occasion, flights that experience long tarmac delays.

Secretary Peters and the Department were troubled by incidents like these, particularly to the extent that food, water, and other basic needs were not being met by the airlines. That is why we were pleased to see that the airlines involved in these specific incidents appeared to be taking substantial corrective actions. In response to its December incident, American Airlines reportedly instituted new guidelines, which included limiting tarmac delays to no more than 4 hours. JetBlue very publicly accepted responsibility for its shortcomings and took a number of steps to address its customers' concerns. Significantly, it adopted what it termed a "Customer Bill of Rights," by which it promises to (1) provide passengers on lengthy on-board delays with food, water, and medical care, if necessary; (2) compensate passengers for extended tarmac delays; and (3) set a time limit of 5 hours on the maximum duration of any tarmac delay. This policy has been widely disseminated and made available to the public on the carrier's web site. Importantly, JetBlue incorporated its bill of rights into its contract of carriage, providing

passengers a legally binding avenue of redress if the carrier fails to follow through on its promises.

Although extended tarmac delays are statistically rare (as I'll discuss in a moment), airlines must have adequate plans in place to deal with these situations as they arise. Clearly, stranding hundreds of passengers aboard aircraft sitting on tarmacs for as many as nine hours is not acceptable, and incidents like these raise serious concerns about planning for such events. Passenger carriers should do everything possible to ensure that situations like these do not occur again.

The Department strongly prefers that the airlines address customer service issues rather than the federal government, but sometimes outside action may be necessary. That is why Secretary Peters formally asked the Department's Inspector General (IG) to conduct an investigation into these incidents and further requested that the IG examine how all the major airlines are doing on the commitment they made nearly eight years ago to ensure that the basic needs of passengers are met during long ground delays. After the IG's review, we will consider what, if any, further action is appropriate. This review will also look at whether any "best practices" exist that can afford an opportunity for all carriers to learn from these experiences and ensure they are not repeated.

It is important to keep the issue of tarmac delays in context. Our Aviation Consumer Protection Division records complaints concerning the number of unreasonable tarmac delays, which have ranged from 753 during the year 2000 to just over 100 last year.

Tarmac delay complaints have not only generally decreased in absolute numbers over the years, but importantly, the number of such complaints as a percentage of total complaints has decreased from 3.2 percent in the year 2000 to only 1.3 percent last year.

Separately, the Bureau of Transportation Statistics collects data regarding taxi-out times for the 20 largest airlines. With regard to recent tarmac delays, our statistics show that in 2006, out of a total of more than 7.14 million flights, just under 1,300 (1,295) were delayed more than three hours in taking off after leaving the gate. Excluding flights that were diverted or ultimately canceled (our reporting requirements do not capture data on delays associated with such flights), this means that less than two hundredths of one percent (0.018 percent) of all these flights experienced tarmac delays in excess of three hours after leaving the gate. Last year, your chances of being on the tarmac for more than five hours after leaving the gate were about 1 in 200,000.

Of course, we recognize that statistics mean nothing to the passengers who are themselves the victims of unreasonable tarmac delays and therefore statistics cannot be the sole factor to consider in determining what, if anything, we should do to address tarmac delays. Indeed, the Department is of the firm belief that each carrier should, at a minimum, make clear what passengers can expect with regard to extended ground delays and, in particular, should have in place comprehensive plans to ensure that efforts will be made to get passengers off an aircraft when ground delays, involving either departing or arriving flights, are expected to extend beyond a reasonable period of time.

What the Secretary has asked the Inspector General to do is a challenging task. I assure the Committee that the Department will review the report carefully and, if necessary, take appropriate actions to ensure that airlines are adequately protecting consumers in relation to the possibility of extended on-ground delays.

As policymakers consider these incidents, it is important to understand that airline networks in the 21st century are extremely complex operations involving myriad operational, mechanical, safety, regulatory, and other constraints. Unlike many other service industries and despite technological advances, air transportation is still a complicated process that requires close coordination among many different organizations, including various divisions of an airline, an airport, the Federal Aviation Administration's (FAA) Air Traffic Organization, and many ground service and maintenance providers. As we have seen, when complex airline operating systems are interrupted by weather or other irregularities, a breakdown in the business or operational practices anywhere in the system can have significant ripple effects from which it becomes increasingly difficult to recover.

Given this complexity, we believe the facts must be better understood before determining what, if any, action by the government is warranted. We empathize with passengers delayed on airplanes for long periods of time. We also empathize with passengers who want to get to their destinations and -- despite weather-induced delays -- would like airlines to make every effort to get them there as quickly as possible. We first need to understand better the root causes of extended tarmac delays and determine whether the causes are specific to an individual airline's business and operational procedures or more

systemic in scope. That is why we asked the IG to investigate with a view toward not only understanding the issues, but also exploring industry best practices that may address them.

A discussion of what today's aviation passenger faces in our current system would not be complete without a discussion of our plans for transforming the system to the Next Generation Air Transportation System (NextGen). I know this Committee has scheduled a hearing for next week on the work of the Joint Planning and Development Office (JPDO), but it is worth a brief mention here because unless we lay the foundation today for NextGen, airline passengers will encounter untold delays and service disruptions in the future. If an overloaded system begins to grind to a halt, it will matter little how well airlines handle customer service.

We already see the impact of the effects of increased demand for service on the air transportation system. Last year stands as one of the worst on record for delays, with about one in four flights of the 20 largest carriers arriving late. This year is looking no better. In February, only 67.3 percent of the domestic flights by those carriers arrived on time, making it the 5th worst month for on-time performance since 1995. Looking well down the road, we predict delays will increase 62 percent by 2014 without NextGen. There is simply no way we can overcome congestion of this magnitude without transforming the air traffic management system. Other issues, ranging from environmental concerns to the complexities of homeland security, are placing additional stress on the system. It's a sobering picture. Without NextGen, some parts of the system

will "freeze" first. Then other areas will follow. The system will reach its absolute breaking point, and our customers, especially the passengers, will be the ones who suffer.

The people whom we serve—our customers—don't deserve to be mired in congestion. Investing now in NextGen systems will avoid that outcome. We must replace our outdated air traffic control architecture with a 21st Century automated satellite-based air transportation system. Such a system will safely handle dramatic increases in the number and type of aircraft using our skies, without being overwhelmed by congestion. The JPDO released the NextGen Concept of Operations for public comment on February 28th. It is now available on the JPDO website for review and comment by aviation stakeholders. The NextGen Enterprise Architecture and the Integrated Work Plan should be released within the next few months. These documents provide us with that picture of where we want to go and the plans for how to achieve it.

As you know, the Administration believes that the current funding system is out of step with critical future needs. Without a rational funding mechanism that is tied to costs and future infrastructure development needs, the best laid plans for the NextGen system could be wasted, and long delays, on the ground and in the air, will only get worse. In other words, passenger well-being in the future depends on what the federal government does now as much as what the airlines do. I know you have already held hearings on the specifics of our funding proposal, so I won't repeat them here. I would, however, like to emphasize the urgent need for a more equitable system of fees that more accurately reflects the true cost of services that various types of users actually consume.

Thank you again for this opportunity to testify. I would be happy to answer any questions you may have.

4/20/07

Answers of Jim May to Questions Raised by Congressman Daniel Lipinski
Subcommittee on Aviation
House Committee on Transportation and Infrastructure

QUESTION 1: Federal regulations require compensation for "bumped" passengers and it appears that individual carriers have individual policies dealing with the regulation. Do the individual carriers have specific policies to compensate passengers where flights have been canceled due to other reasons?

ANSWER: You are correct that carriers have policies for complying with Department of Transportation regulations regarding situations where flights are oversold and passengers must be "bumped" involuntarily. As you know, carriers want to avoid having to bump passengers involuntarily and offer incentives to obtain volunteers to take later flights. Carriers also have their own policies on compensating passengers when flights are canceled. In general, if a flight cancels for a reason within the carrier's control, it will first seek to accommodate passengers on later flights or, if necessary, flights on other airlines. If passengers cannot be accommodated, then airline policies contemplate refunds to those passengers, including taxes and fees.

QUESTION 2: According to the Department of Transportation Inspector General's (DOT IG) testimony, information provided in boarding areas concerning delays and cancellations is less than timely and often inadequate. Moreover, the DOT IG's testimony notes that on-time performance for flights is not readily available to consumers, and when made available, it is not always accurate or complete. If this information is readily available to the airlines, why is it not made readily available for consumers?

ANSWER: DOT regulations require that airlines provide on-time information when asked for it by a passenger making a reservation by telephone. All ATA member airlines have systems that allow their reservations agents to provide that information when requested. In addition, some passenger airlines make on-time information available on their Web sites. On-time information is currently available from DOT's Bureau of Transportation Statistics (BTS) Web site and, in addition, some independent booking sites make this information available. Given that on-time information is widely available online from multiple sources, and that a passenger can call an airline and inquire about specific flights, we believe this information is made readily available to consumers. Passengers who consider on-time performance when making travel plans should have no problem obtaining the desired information.

QUESTION 3: The 2006 DOT IG report recommended that greater oversight and enforcement be taken with regard to airlines and the issue of "unrealistic" flight schedules. What accounts for these "unrealistic" schedules? And how can "unrealistic" schedules be more closely aligned to historical on-time performance, existing weather conditions or other applicable factors that can provide a more accurate schedule for consumers?

ANSWER: Numerous factors go into determining published flight schedules, including (but not limited to) actual flight time, estimated taxi times, average wind conditions for the time of year and historical operating information. Airlines also must make assumptions about the efficiency of the air traffic control system even as we work with members of Congress to completely revamp that outmoded, analog system with the next generation of digital technology. The ever-increasing rise of unscheduled flights by corporate high-performance jets is also worsening the situation in our increasingly congested airspace.

To the extent some flights regularly vary from their published schedules (we do not agree that our members publish "unrealistic" schedules), those situations typically result from factors outside the airlines' control and can only be identified after a period of time demonstrates a consistent problem. Revising schedules when such flights are identified occurs over time but requires schedule analysis to make sure necessary changes fit within the overall network schedule and do not create new, unintended problems.

QUESTION 4: Can ATA provide an airline-by-airline (for all current ATA members) compilation of legroom statistics in economy class? This information should also be organized over the time period of 1990-2005.

ANSWER: A number of our member carriers were having difficulties obtaining historic legroom information for the variety of aircraft they used over the fifteen-year period you described in your question. In consultation with the office of Congressman Lipinski, it was decided that the ATA should indicate a Web site that provides access to current information about the legroom for each seat on each type of aircraft that our carriers presently use.

This information is readily available for each seat (including first class, business, and coach) and can be found at the Web site: www.seatguru.com. We appreciate your understanding of the difficulties in obtaining that volume of information for the full fifteen years, ending in 2005.

U.S. Department of Transportation
Office of the Secretary of Transportation

The Inspector General

Office of Inspector General
Washington, DC 20590

June 13, 2007

The Honorable Jerry F. Costello
Chairman, Subcommittee on Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Costello:

Per your request, we have enclosed the answers to Representative Daniel Lipinski's questions for the record regarding your subcommittee's hearing on Aviation Consumer Issues on April 20, 2007. Specifically, these questions and answers relate to flight delays and cancellations, which were a major topic of discussion during the hearing.

If I can answer any questions or be of further service, please contact me at (202) 366-1959 or Todd J. Zinser, Deputy Inspector General, at (202) 366-6767.

Sincerely,

Calvin L. Scovel III

Calvin L. Scovel III
Inspector General

Enclosure

Control Number CC-2007-064

April 20, 2007
Subcommittee on Aviation
Hearing on
Aviation Consumer Issues

Answers to Questions for the Record
To:

The Honorable Calvin L. Scovel, III,
Inspector General, U.S. Department of Transportation

1. The 2006 report found that "information provided at the boarding gates about delays and cancellations was frequently untimely and inadequate." Could you please expand on what types of inadequate information was provided and the underlying data that supported this finding?

   Inspector General Scovel: With the assistance of the Federal Aviation Administration's air traffic controllers, the airlines' operation centers personnel, and airline employees at the airports, we were able to identify developing delays and observe flights from the earliest stages of the delays.

   When observing flight delays, we focused on two primary areas: (1) frequency of announcements in the boarding area and (2) adequacy of information provided to passengers on the status of the flight delay, including the reason for the delay.

   In testing these areas, we gave the airlines some flexibility and allowed for 30 minutes between information updates given in boarding areas about delays. Nearly all airlines we tested have policies that require announcements about delays and cancellations every 15 to 20 minutes. We did not expect the airlines' gate agents to provide a detailed or complex explanation on the reason for the delay. We also gave the airlines flexibility in determining what constituted adequate information and looked for information as minimal as "the flight will be delayed 30 minutes due to weather at the connecting airport."

   The following are examples of what we observed during our testing:

   - During a 1½-hour delay on a flight from Atlanta to Houston, only one announcement was made regarding the delay, and no reason was provided. Two agents were assigned to the gate and were simultaneously working other flights. During our observation, this flight's information disappeared from the gate information display monitor. The flight had been cancelled, but this was not announced until passengers began questioning the agent (who was busy with the boarding process of another flight) about why the Houston flight had disappeared from the display.

- During a 2½-hour delay on a flight from Dallas-Fort Worth to Philadelphia, no announcements were made at the boarding gate regarding the delay, and only the airport's flight information display monitor showed the flight as being delayed. It was not until our inquiry that we discovered weather was the cause of the delay.

While the number of tests was limited, we found a wide disparity among the airlines in both the timeliness and adequacy of flight delay and cancellation announcements, ranging from total failure to complete success.

2. There appears to be a significant number of flight cancellations due to "mechanical" reasons. Has your office evaluated the specific issue of flight cancellations due to "mechanical" reasons and has your office collected historical data for such flight cancellations? Or more broadly, does your office have historical or recent data pertaining to the accuracy of flight cancellation information provided by the carriers?

   Inspector General Scovel: We have conducted a series of reviews on air carrier flight delays and cancellations to examine their sources and causes. However, we have not examined flight cancellations due to mechanical reasons nor have we evaluated the accuracy of flight cancellation information provided by the air carriers.

   Our latest report on this subject, issued in July 2000, recommended that the Department develop a common system for tracking delays, cancellations, and associated causes; the Department agreed and completed the system in July 2003.

   Under 14 Code of Federal Regulations (CFR) Part 234, "Airline Service Quality Performance Reports," air carriers that account for at least 1 percent of domestic scheduled passenger revenues must submit monthly reports to the Department's Bureau of Transportation Statistics (BTS) that include, among other things, the number of (1) flights that departed and arrived on time by airport, (2) flights delayed, cancelled, and diverted, and (3) flights delayed or cancelled by cause.

   However, the causal categories for reporting flight delays and cancellations are broad (e.g., caused by severe weather, air traffic control, or air carrier), and there is no specific category for reporting flight delays or cancellations due to mechanical reasons. Therefore, the reports submitted by the air carriers to BTS cannot be used to determine the number of flights cancelled due to mechanical problems.

3. Can you comment on the current statutory authority vested with the U.S. Department of Transportation, and if any of the consumer protection provisions are sufficient to deal with any potential anti-consumer practices dealing with the specific issue of inaccurate flight cancellation information.

   Inspector General Scovel: The Department's Office of Aviation Enforcement and Proceedings (Office) is the division within the Office of the General Counsel that enforces the Department's air travel consumer protection rules. These rules encompass many areas, including unfair and deceptive practices and unfair methods of competition by carriers and travel agents.

   The Office also has the authority to investigate and enforce violations of rules governing denied boarding compensation, access for travelers with disabilities, ticket refunds, and airline quality service performance reporting. When violations occur, the Office can pursue enforcement action, which may range from warning letters, to civil penalties, to litigation in U.S. District Courts.

   Under 14 CFR Part 234, air carriers are required to submit monthly reports to the Department that include, among other things, the number of flight delays, cancellations, and associated causes. The Office oversees the air carriers' compliance with the Part 234 requirements and can, at its own discretion, conduct on-site reviews of the air carriers' compliance with such requirements and take enforcement actions against the air carriers that are not complying with reporting requirements (e.g., submitting inaccurate flight delay or cancellation data).

   In our opinion, the Office's authority to oversee the air carriers' compliance with the Part 234 requirements is sufficient to deal with the specific issue of inaccurate flight cancellation information if the Office actually verifies the data being reported. However, we are not aware of any review that the Office or BTS has conducted regarding the accuracy of airline quality service performance data that includes data accuracy for numbers and causes of flight delays, cancellations, and diversions. The Office relies primarily on self-certification by the air carriers that the information reported is complete and accurate. BTS runs computer edits against the air carriers' reported data to check for certain anomalies, but there are no computer edits for causes of delays or cancellations.

U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

Washington, DC 20515

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

May 25, 2007

Hon. Andrew B. Steinberg
Asst. Secretary for Aviation and International Affairs
U.S. Department of Transportation
Department of Transportation
400 7th St., S.W.
Washington, D.C. 20590

Dear Honorable Steinberg,

On April 20, 2007, the Subcommittee on Aviation held a hearing on **Aviation Consumer Issues.**

Attached are questions to answer for the record submitted by Representative Daniel Lipinski. I would appreciate receiving your written response to these questions within 14 days so that they may be made a part of the hearing record.

Sincerely,

Jerry F. Costello
Chairman
Subcommittee on Aviation

Questions to Hon. Andrew B. Steinberg, Assistant Secretary, DOT
From Aviation Subcommittee
House Hearing on Aviation Consumer Issues
April 20, 2007

Question1.
Part 250 of Title 14 of the Code of Federal Regulations prescribes compensation for involuntarily "bumped" passengers who are then delayed as a result. What are the current levels of compensation, and how are the compensation levels determined? Moreover, our understanding is that the U.S. Department of Transportation (DOT) was evaluating the compensation levels to determine whether increases are needed. What is the status of that review, and if it has been completed, what were the findings and were any actions undertaken to change compensation levels?

Answer 1.
The key features of the current requirements regarding oversold flights and "bumped" passengers, including compensation levels and how they are determined, are as follows:

(1) In the event of an oversold flight, the airline must first seek volunteers who are willing to relinquish their seats in return for compensation offered by the airline.

(2) If there are not enough volunteers, the airline must use non-discriminatory procedures ('boarding priorities') in deciding who is to be bumped involuntarily.

(3) Most passengers who are involuntarily bumped are eligible for denied boarding compensation, with the amount depending on the price of each passenger's ticket and the length of his or her delay. If the airline can arrange alternate transportation that is scheduled to arrive at the passenger's destination within 2 hours of the planned arrival time of the oversold flight (4 hours on international flights), the compensation equals 100% of the passenger's one-way fare to his or her next stopover or final destination, with a $200 maximum. If the airline cannot meet the 2 (or 4) hour deadline, the compensation rate doubles to 200% of the passenger's one-way fare, with a $400 maximum. This compensation is in addition to the value of the passenger's ticket, which the passenger can use for alternate transportation or have refunded if not used.

(4) There are several exceptions to the compensation requirement. Compensation is not required if the passenger does not comply fully with the carrier's contract of carriage or tariff provisions regarding ticketing, reconfirmation, check-in, and acceptability for transportation; if an aircraft of lesser capacity has been substituted for operational or safety reasons; if the passenger is offered accommodations in a section of the aircraft other than that specified on the ticket, at no extra charge (a passenger seated in a section for which a lower fare is charged is entitled to an appropriate refund); or if the carrier arranges comparable transportation, at no extra cost to the passenger, that is planned to arrive at the passenger's next stopover or final destination not later than 1 hour after the planned arrival time of the passenger's original flight.

(5) A passenger who is denied boarding involuntarily may refuse to accept the denied boarding compensation specified in the rule and seek monetary or other compensation through negotiations with the carrier or by private legal action.

(6) Carriers must post counter signs and include notices with tickets to alert travelers to their overbooking practices and the consumer protections of the rule. In addition, they must provide a detailed written notice explaining their oversales practices and boarding priority rules to each passenger involuntarily denied boarding, and to any other person requesting a copy.

On July 3, 2007, the Department issued an Advance Notice of Proposed Rulemaking seeking comments on, among other matters, whether the maximum amount of denied boarding compensation should be doubled. The Department will review the comments, which are due within 60 days of the date of issuance, and determine what steps to take next.

Question 2.
To what extent do current Federal regulations provide for compensation to passengers who are delayed for reasons other then being "bumped"? For instance, if a flight was cancelled due to reasons that were within the airline's control- other than weather conditions, congestion problems, and similar issues- are there compensation provisions or other recourses for consumers if the canceled flights were due to the carrier's fault?

Answer 2.
There are currently no Federal regulations that require compensation to airline passengers in the event of a flight delay, whether due to weather or to other causes that might arguably be within the control of an airline. For at least the past 20 years, carriers have been free to take into account their own business plan in the context of existing marketplace conditions in setting the level of amenities or other services to be provided their customers in the event of a flight irregularity, such as a cancellation or delay. Such matters are generally made part of each airline's conditions of carriage. Consumers are not, however, without recourse. If a consumer feels a carrier has failed to provide services promised under a carrier's conditions of carriage, the consumer can take action in an appropriate civil court, including small claims court where an attorney generally is not required and procedures are simplified.

Question 3.
As the Department of Transportation Inspector General's (DOT IG) report found that inaccurate information was sometimes provided for flight cancellations, and anecdotal evidence suggests a continuing prevalence of canceled flights due to "mechanical" or other problems, has DOT looked into the accuracy of reasons provided for canceled flights and whether the practices are consistent with current consumer protection responsibilities vested with DOT?

Answer 3.
Most major airlines promise, in their Customer Commitments, conditions of carriage, or both, to provide timely and accurate information about flight irregularities to the best of their abilities. We have no evidence that airlines make it a practice to provide inaccurate information or intentionally mislead consumers about the reasons for flight irregularities. Where we have evidence of carriers failing to provide accurate information, we will investigate the matter, as warranted. For example, we recently took enforcement action against Comair after our investigation showed that incorrect information about the cause of flight cancellations apparently resulted in its representatives denying amenities to passengers who were due meal and hotel vouchers. We have on other occasions investigated claims that passengers were told their flight was cancelled for a specific reason (e.g., mechanical) but suspected their it was cancelled for "economic" reasons (i.e., because the passenger load was light), but have never found evidence to support such allegations.

Cancellation causation information is reported to the Department by the largest U.S. carriers (currently 20 carriers). Auditing of the reports that they file would be done by the Department's Bureau of Transportation Statistics or Office of the Inspector General, as resources permit and priorities dictate.

Question 4.
The DOT IG's testimony suggested that chronically delayed flights could "potentially constitute a deceptive business practice". Given its apparent linkage with what the 2006 DOT IG report termed as "unrealistic" flight schedules, what are DOT's current oversight activities in this area? Moreover, has DOT initiated any recent system-wide investigation into this, and if so, have enforcement actions been taken?

Answer 4.
The Department has authority under 49 U.S.C. 41712 to prohibit unfair and deceptive practices and unfair methods of competition in air transportation. Under the authority of that statute, the Department has enacted a regulation prohibiting unrealistic scheduling. The Department's Office of Aviation Enforcement and Proceedings has begun an industry-wide investigation of chronically delayed flights (i.e., those that are late more than 70 percent of the time over a three-month period) of all 20 airlines that are required to report on-time performance data to the Department. Carriers have been warned that they must act to correct any such flights or they will be subject to enforcement action.

Testimony Submitted To

Subcommittee on Aviation

Committee on Transportation and Infrastructure

On

Aviation Consumer Issues

April 20, 2007

By

Patricia A. Friend

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Chairman Costello and members of the subcommittee, thank you for holding this long overdue hearing on aviation consumer issues. The Passenger Bill of Rights may be the focus of today's hearing, but I trust that my submitted testimony provides you a broader perspective and a call for action to address the chronic problems that continue to plaque our nation's aviation system.

My name is Patricia A. Friend and I am the International President of the Association of Flight Attendants – CWA (AFA-CWA), AFL- CIO. AFA-CWA represents 55,000 flight attendants at 20 different airlines throughout the United States and is the world's largest flight attendant union.

Every day in the United States, the equivalent of the entire population of the city of Chicago steps onto an airplane. I am proud to represent AFA-CWA professional flight attendants who protect and serve millions of these passengers daily. Flight Attendants are on the front line of any debate regarding aviation consumer issues and they know first-hand that our nation's aviation system and policy are broken and therefore I appreciate the opportunity to present their voice through this testimony to you today.

AFA-CWA has long believed that fundamental and substantial investments in our aviation infrastructure and the passage of passenger-friendly legislation are the real answer to providing consumers protection when they fly. Ensuring that Flight Attendants and all aviation workers have adequate rest; clean cabin air; a consistent and enforced carry-on baggage policy, and workplace safety protections ultimately benefit consumers as well.

AFA-CWA strongly believes that passing a Passenger Bill of Rights will be an empty promise until congress enacts serious aviation policy reforms such as: substantial investments to update and upgrade our air traffic control system; increases in funding for Airport Improvement Projects (AIP's); a carry-on baggage policy that applies to every airline and every flight; ensuring Essential Air Service (EAS) to small communities;

improving cabin air quality for crewmembers and passengers, and providing a safe working environment on board aircraft for flight attendants.

Let's face it, airline management's track record on enforcing their voluntary pledge years ago to improve passenger service has been a failure, otherwise, you would not have had to hold this hearing today.

Consumers are right to call for a Passenger Bill of Rights when our fragile transportation network fails during weather events or over-taxed air traffic control systems. But the Passenger Bill of Rights is a patch work job that masks the real problems.

The Administration and Congress must first construct a sound aviation transportation policy to repair current and chronic problems and which provides an aviation infrastructure that can handle predicted future aviation traffic growth.

To understand why this hearing is necessary today, we must reflect on the history of how our nation's air traffic system has been mismanaged and how the very federal agencies tasked with delivering a sound aviation policy have failed in their mission.

My statements to follow are not a redress of past policy positions nor am I engaging in a dialogue of "I told you so", but I present these arguments to initiate an important conversation about the future of our aviation transportation system. If we do not have this conversation and we fail to develop a coherent policy for aviation in this country any action you take on adopting a Passenger Bill of Rights will be meaningless.

Since the passage of the Airline Deregulation Act of 1978, Congress and the executive branch have failed to provide the necessary investments to build a transportation infrastructure to meet the demands of passengers and aviation workers.

Frankly, the passage of the Airline Deregulation Act put the cart before the horse as airline management engaged in a thoughtless marketing strategy that mirrored the old phrase of "get there first with the most."

Airports, runways and the air traffic control system that were designed to handle flights from routes that were awarded in a measured and strategic manner, had to suddenly juggle thousands of new takeoffs and landings dictated by airline executives who only cared about the immediate bottom line.

Investments in our air traffic control system have not matched the growth in airline schedules. Airline management was more concerned with putting metal in the air rather than ensuring that our aviation infrastructure could handle the dramatic increase in traffic. The Reagan Administration's firing of air traffic controllers in 1981 diverted attention away from debate on building a sound aviation infrastructure at a most crucial time following deregulation.

Stakeholders then should have applied a common sense strategy to quickly invest in better airports, air traffic control systems and enforcement of policies that would have benefited consumers and communities. And the Bush Administration shredded the Gore Commission's report from the late 1990's that sought to address current and future aviation issues.

That's why in 2007, we are still feeling and reeling from the effects of federal mismanagement that started in 1978.

So here we today with a weakened transportation infrastructure threatened to a degree we have not seen before and the future looks bleak. This administration insists on negotiating international aviation agreements that could overwhelm an already burdened air traffic control system and flood airports with thousands of new passengers before critical investments are appropriated and utilized.

The Bush Administration wants "Open Skies" agreements signed in haste without adopting a comprehensive national aviation policy and this course, Mr. Chairman, will mean more delays for crews and passengers; strains on already over-crowded and cramped airports; runway traffic jams and endangerment to a fragile air traffic control system.

And this will occur on a good day.

When weather systems strangle a region or large portions of our country, these problems will only get worse and a Passenger Bill of Rights will be ineffective at best.

It's time to take a collective step back, review the causes of why so many passengers are frustrated and begin the debate to build a new national aviation policy. Passing the Passenger Bill of Rights may make for feel good headlines, but the next major weather system or air traffic system delays will wipe out any goodwill you seek to establish with the flying public.

Let's come to the realization that our aviation system is broken and engage consumers, communities, unions, management and federal stakeholders in a process to find short and long term solutions. We should also consider that word that many fear – re-regulation.

For far too long, airline executives have dictated federal aviation policy and the results have been that consumers and aviation workers have taken a back seat. It is no wonder why passengers are demanding Congressional action as they have found no allies or sympathies in the White House or in airline executive suites.

Chairman Costello, today's hearing is an opportunity for you and your colleagues to chart a different and productive course to addressing our national aviation policy problems.

I have outlined the broad AFA-CWA arguments and historical perspectives on why passengers are so angry. But I think it's vital that you hear specifics from AFA-CWA that can serve as building blocks for a new national aviation policy.

On March 22, 2007 AFA-CWA submitted comprehensive testimony to this subcommittee during a hearing you chaired that day regarding the FAA Reauthorization legislation. Some components of that testimony and briefing material should become part of the debate to address consumer issues now and developing a sound aviation policy in the near future.

While today's hearing centers on a possible Passenger Bill of Rights, AFA-CWA strongly believes that congress must adopt the following issues that I believe can be best described as a Flight Attendant Bill of Rights – all of which will also benefit the consumer:

Flight Attendant Fatique

We all know that the FAA's failure to address the growing problem of fatigue for numerous aviation industry workers – not just flight attendants, but pilots and air traffic controllers as well – could lead to an incident resulting in the loss of many lives. The FAA must be directed to continue research on this important aviation safety issue which would cover the recommendations from the initial CAMI study on flight attendant fatigue. Furthermore, it's crucial that such a study receive adequate funding to be completed. Most importantly, we feel that based on the FAA's clearly stated belief that "...rules on flight time and rest for both pilots and flight attendants are fundamentally sound." and their demonstrated efforts to stonewall and delay release of the initial report, that Congress must provide firm and strong guidance to the FAA to address this growing problem to aviation safety.

Workplace Safety and Health Protections

The lack of adequate OSHA workplace safety and health protections for those that work in the aircraft cabin – flight attendants – only jeopardizes the overall safety and health of

the traveling public. Injuries caused by malfunctioning beverage carts, inadequate sanitation, failure to provide running water, exposure to blood borne pathogens are all risks posed to flight attendants as well as passengers due to the lack of even the most basic OSHA protections.

Carry-on Baggage Limitations

Limiting the size and number of carry-on bags will provide a direct benefit to the airline passenger. Long delays and boarding time are often the result of individuals bringing too many or too large carry-on items. Many flights are often delayed from departing the airport due to the extra time needed to deal with carry-on bag issues. The concept of limiting the size, type and amount of carry-on baggage is nothing new and was recommended by an FAA Aviation Security Advisory Committee in 1996. International countries and bodies, such as the European Union (EU) which represents 25 member states, also recognize the security enhancements relative to limiting the number and size and have adopted a new rule effective April 2007 that would limit passengers to one carry-on item with a size limit of 56 cm by 45 cm by 25 cm (22 in by 17.75 in by 9.85 in approx).

Aircraft Cabin Air Quality

The issue of poor aircraft cabin air quality and in many cases the contamination of the air supply by potentially toxic chemicals continues to pose a threat to those that work onboard the aircraft as well as those that travel onboard the aircraft. At the heart of the failure of the US Federal Aviation Administration (FAA), the manufacturers, and the airlines to *resolve* problems with aircraft air quality is their failure to *acknowledge* problems with aircraft air quality. There are no standards for protective measures or access to information necessary to prove individuals' cases; there is effectively no government oversight, allowing the steady flow of "anecdotal" reports to be dismissed as unreliable, and therefore irrelevant.

It is imperative that the members of this Committee keep the FAA focused on addressing this serious issue and supporting vital research that will help clarify and solve this ongoing problem.

AFA-CWA believes these flight attendant issues, and their resolution, will provide real benefits to consumers as well and we look forward to continuing our working relationship with this Committee and the Chairman and I thank you again for the opportunity to submit this testimony today.

WHY ALCOHOL AWARENESS TRAINING FOR AIRLINE CUSTOMER SERVICE EMPLOYEES IS NEEDEED

Testimony of Adam Chafetz
President and CEO
Health Communications, Inc.
Arlington, VA
April 20, 2007

Mr. Chairman and members of the Aviation Subcommittee, thank you for allowing me to submit my testimony on this very important issue.

My name is Adam Chafetz, and I am the President and Chief Executive Officer of Health Communications, Inc., the company behind the TIPS programs for the training of servers and sellers of alcoholic beverages. My father, Dr. Morris Chafetz, the founding director of the National Institute on Alcohol Abuse and Alcoholism, started this company in 1982. I have been in this position since 1994.

I believe that legislation requiring alcohol awareness training for airline customer service employees is essential. It is my firm belief that anyone who serves or sells alcoholic beverages should be properly trained in order to prevent not only public drunkenness, but also underage drinking and drunk driving. I believe receiving this training is also important for airline employees who don't serve alcohol, such as gate or ticket agents, but need to know how to recognize the signs of an intoxicated passenger. In my opinion, training of airline customer service employees is just as important as it is for bartenders or convenience store clerks.

Scarcely a day goes by when we don't read of a tragedy caused by the irresponsible, and sometimes illegal, consumption of alcohol. We read of terrible traffic accidents, and of young people who literally drink themselves to death. I believe with all my heart that the answer to preventing these senseless tragedies lies, in a large part, in the training of people who serve and sell the beverages.

Intoxicated passengers are, at best, almost always a nuisance to other passengers, and at worst, a threat to the safety and security of the flight. In many cases, these people shouldn't even be allowed on the flight.

It has only been a few months since a tragic DUI accident in New Mexico killed six people, including five members of a family. The driver identified as having caused the crash had been drinking alcohol during a flight to Albuquerque. His blood alcohol content was measured after the crash at .32, four times higher than the state's DUI limit. The question must be raised, would this terrible tragedy had happened if the flight attendants had received alcohol awareness training? Would five members of a family be alive today? I can't answer that, but my guess is that the airline personnel who encountered that passenger now regret that they were not better prepared to intervene with him. I would argue that Congress has a responsibility to prevent those kinds of regrets for airline industry personnel in the future.

You have a draft bill before you to require this training, and I hope you will support it. I believe it is a good bill, and what's more, I believe it is in the best interests of the people of this country.

The bill requires that airline customer service employees (including flight attendants) receive training in the following areas:

1. How to recognize the signs of intoxication
2. How to check ID's.
3. How to use their customer service skills to discontinue service to a passenger who shows signs of intoxication.

The bill also sets standards for providing this training, to ensure that only the best, most qualified providers and trainers are allowed to conduct this training. It also requires airline customer service employees to be re-trained every three years.

There are those who will say that this is not a problem in this country, that there is no need for this training. I would respectfully disagree. Although you may not read about this in the Washington Post or other big city newspaper every day, we receive newspaper clippings from all around the country on a regular basis that suggest otherwise.

Members of the Subcommittee, I close by asking you to look at this draft bill and to give it your full support. It is a good bill for the flying public, the driving public, and our families. I urge you give this bill favorable consideration.

Thank you.

Adam Chafetz

KALISHER

Mr. Chairman and members of the committee, thank you for inviting me to submit written testimony. I am writing to discuss the need to protect children within the Airline Passengers Bill of Rights and specifically to raise awareness of the harm done to children when airlines air violent images on publicly viewable screens.

My wife Helen and I founded www.kidsafefilms.org after having struggled to protect our kids from violent images on publicly viewable drop-down screens on our third consecutive flight in a matter of months. As of today, we represent 1,400 Americans from Florida to Alaska who each signed our petition requesting Congressional action on this issue. We have the active support of The Parents Television Council and are working with several other like-minded organizations whose support we look forward to announcing soon.

While some airplanes now have individual screens which can be turned off, many (if not most) commercial airplanes still use publicly viewable entertainment screens which drop down from the overhead bin. These screens are positioned so that everyone in the cabin, including children, can see them. The industry estimate (according different airline spokespeople and the Airline Transport Association) for when most (but not all) commercial aircraft will be converted to individual, privately viewable screens is 3-5 years.

Today, most carriers regularly air PG-13 movies on their drop-down screens. The website for the Motion Picture Association of America (MPAA), the group that rates films for

movie theaters, states that, "A PG-13 film is one which leaps beyond the boundaries of the PG rating in theme, violence, nudity, sensuality, language, or other contents. Parents, by the rating, are alerted to be very careful about the attendance of their under-teenage children."

In effect, while Hollywood cautions parents against letting children watch PG-13 movies, airlines including United, Delta, US Airways, American and Continental regularly air these same PG-13 movies on screens where children of all ages can see them. What's particularly disturbing to us is that children can watch the visual content of these films whether or not their parents purchase headsets for them.

Some examples of scenes parents have attempted to protect their children from watching on publicly viewable screens on commercial flights in the past 12 months include images of torture, melting faces, murder, drive-by shootings, electrocution, and a child being run over and killed. Actual clips of violence seen on publicly viewable screens on in-flight films can be seen at www.kidsafefilms.org

Some of the PG-13 titles shown on recent commercial flights on the major carriers include: King Kong, Casino Royale, X-Men and Mission Impossible III.

The American Academy of Pediatrics (AAP) reports that a child's exposure to violent image leads directly to violent behavior as well as an overall increased appetite for violence. The AAP further states that more than 1,000 independent studies back up these

conclusions. In addition, the AAP's website reiterates the medically accepted fact that children under the age of six are incapable of discerning the difference between reality and make-believe.

As a result, parents have been registering complaints with the airlines about publicly viewable violent content since 1999 and with no effect. In many cases, the airlines failed to respond to the parents' concerns at all. In a recent conversation with me, the Manager for In-Flight Entertainment at Continental Airlines suggested that concerned parents should check to see which movies are playing before booking flights. The manager did not have a suggestion as to what a parent should do when booking a flight more than a month out, as airline movie schedules are not made public that far in advance.

In-flight films are chosen by the airlines in conjunction with third party content packagers such as Spafax and Pace Communications. Working through these and other content packagers, the airlines instruct the movie studios to edit the films for profanity, nudity and exploding airplanes. Graphic violence is left in these films.

While the theater versions of the in-flight films are rated by the MPAA, the in-flight versions are not reviewed and not rated by the MPAA. We believe that airlines have now become movie theaters and should become signatories to the MPAA and abide by the MPAA rating system.

In a letter published in USA Today on April 17th, 2007, we suggested that the MPAA add a new A-Safe, or airline safe, rating. Our proposed A-Safe rating would accommodate films with adult themes and language whose visuals are safe for children. To be clear, we are not advocating that airlines show children's movies. We simply request that the airlines, when using publicly viewable screens, show films which do not terrify, and thus harm, our children.

As it stands today, no government agency has regulatory authority over in-flight entertainment. Not DOT, FAA, FTC or the FCC. As a result, it is perfectly legal for airlines to air scenes of graphic violence on screens positioned directly in front of children. And the airlines, in an attempt to cater to adults, often do just this.

If legislation is necessary to protect children on airlines, our recommendation is a law which directs airlines to create a child-safe zone in which children will not be exposed to violent images of murder, torture and worse. This is critical for all children and no less os than for unaccompanied minors who travel without the benefit of a parent to advocate for their safety. We agree with the medical community and believe this change is necessary to protect America's flying children.

In conclusion, parents across America need your help. Children across America need your help. The airlines have our kids strapped into seats, held captive, and today, can drop a screen in front of them and show them scenes that America's medical community

has declared harmful to children. We respectfully request your help putting an end to this practice.

Thank you for holding this important hearing. We look forward to working with Congress and the airline industry to reach a quick, child-friendly and reasonable solution.

Yours,

Jesse Kalisher

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Written Testimony for the Record
of the
U.S. Public Interest Research Group

by Edmund Mierzwinski,
Consumer Program Director

Submitted 2 May 2007 for the

Hearing of 20 April 2007

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on Aviation Consumer Issues

Subcommittee on Aviation,
The Honorable Jerry Costello, Chairman
Of the Committee on Transportation and Infrastructure
The Honorable James Oberstar, Chairman

U.S. PIRG Written Testimony on Aviation Consumer Issues

Mr. Chairmen Costello and Oberstar, members of the committee: Thank you for the opportunity to present the views of the U.S. Public Interest Research Group,[1] for the written record of your recent hearing on Aviation Consumer Issues. U.S. PIRG serves as the non-profit, non-partisan federation of state PIRGs. We are pleased, on behalf of our one million members and all airline passengers, to support bi-partisan legislation (M. Thompson-Cubin) to improve airline passenger rights, HR 1303, The Airline Passenger Bill of Rights Act of 2007, and to offer other comments on airline customer service.

The frustrations travelers generally have with airlines are widely-reported. Major newspapers have columns, such as the Wall Street Journal's "The Middle Seat," and the New York Times' "On the Road" and "Memo Pad" from Joe Sharkey. Frustrated consumers have created websites such as http://www.untied.com/ (United), www.northworstair.org/ (Northwest) and www.dontflycontinentalairlines.com.[2] Travel sites and online newsletters provide tips to frequent travelers about a wide variety of problems air travelers face. Among the issues discussed are the following:

- flights that are chronically late,
- what to do if the airline loses your bags,
- the latest Transportation Security Administration issues,
- your incredibly shrinking airline miles (due to increased mileage requirements for "free flights," more blackout dates, and the threat of airline bankruptcy),
- shrinking seat sizes on some airlines, where you pay extra for a "real" seat,
- obnoxious fees and harsh restrictions for changing your flight for virtually any fare class, or new nuisance fees for all-of-a-sudden overweight or "too-many-pieces" of luggage, and even fees for so-called "snacks" or "meals" on board,
- the non-responsiveness of airlines to reasonable and legitimate service complaints, and
- numerous other problems.

But lately, the news has been about more than these hassles. It's about passengers being trapped on planes sitting on runways, in primitive non-hygienic conditions, or even left at airports to fend for themselves. The incidents appear to be getting worse:

- Hundreds of Jet Blue passengers were stranded for hours in planes on runways in mid-February, when weather incidents affecting some flights cascaded into a multi-day fiasco. While Jet Blue has made all the right promises, it is only one airline.
- Similarly, in late December, American Airlines passengers were stranded on runways in Austin, as my fellow witness Kate Hanni is more qualified to explain, since she was there for nine hours, stuck on one of those planes, without food, water or working toilets, or even helpful information other than airline propaganda announcements.

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[1] www.uspirg.org
[2] Note that these are examples. Not all these sites are still active. Others exist.

- 220 passengers on two separate flights were left stranded in Cheyenne on 21 December by United Express after their diverted planes inexplicably took off without them.[3] In February, two more planes, a United Express and an American Connection flight, similarly abandoned passengers in Nebraska.[4]

Whether these delays and significant hassles passengers face are due to the weather, the air traffic control system, increased security due to 9/11, carriers gaming the on-time takeoff data or airline cost-squeezing is not at issue here today.

What is at issue is simple: consumers should not be treated like cattle and should have rights and remedies when they are so treated.

It is important to note that these incidents are not new isolated one-off incidents. Similar runway problems – such as a well-publicized Detroit snowstorm that left passengers stranded for 8½ hours in 1999 -- as well as an increasing number of passenger complaints, led to Congressional consideration of an airline bill of rights in 1999-2000. As then-state attorney-general and current U.S. Senator Ken Salazar wrote to his Congressional delegation in 2000:

> As you are aware, airline passengers in Colorado and throughout the country are experiencing a disturbing number of flight delays and cancellations. This is particularly true with United Airlines, the primary carrier serving Colorado. I am particularly concerned about the reported accounts of United's failure to provide its advertised air transportation services, and by allegations that United is providing false or misleading information to the traveling public. Additionally, there are accounts of United failing to accommodate its stranded customers pursuant to applicable airline regulations.[5]

Yet, following a series of largely-failed voluntary promises by the airlines, this promising airline bill of rights effort was delayed. In February 2001, DOT Inspector General Kenneth Mead had told this committee[6] that delays and complaints were up, despite the voluntary commitment,[7]

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[3] "Airline officials say the jets flew without passengers to Kansas City and Indianapolis on Dec. 21 because the jets were needed for other routes." See 'Abandoned' In Cheyenne, by Gary Stoller, USA Today, 20 February 2007, available at http://www.usatoday.com/travel/flights/2007-02-19-cheyenne-cover-usat_x.htm last visited 10 April 2007.

[4] See "2 more flights abandoned fliers on way to Denver," by Gary Stoller, USA Today, 21 February 2007, available at http://www.usatoday.com/travel/flights/2007-02-20-airport-abandoned-usat_x.htm Last visited 10 April 2007.

[5] Letter of 9 Aug 2000 to Congressional delegation re "Deceptive Practices by Air Carriers" available at http://www.ago.state.co.us/press_detail.cfm?pressID=567 Last visited 10 April 2007.

[6] Hearing on the DOT Inspector General's Final Report on Airline Customer Service, U.S. Senate Committee on Commerce, Science and Transportation, Statement of The Honorable Kenneth M. Mead, Inspector General, Department of Transportation, 13 February 2001, available at http://commerce.senate.gov/hearings/0213mea.pdf Last visited 10 April 2007.

[7] From the Mead testimony: The Airlines Commit to: Offer the lowest fare available, Notify customers of known delays, cancellations, and diversions. On-time baggage delivery, Support an increase in the baggage liability limit, Allow reservations to be held or canceled, Provide prompt ticket refunds, Properly accommodate disabled and special needs passengers, Meet customers' essential needs during long on-aircraft delays, Handle "bumped" passengers with fairness and consistency, Disclose travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration, Ensure good customer service from code-share partners, Be more responsive to customer complaints.

which included a promise to **"Meet customers' essential needs during long on-aircraft delays."**

Then, any review of the airline promises was largely shelved after the tragic events of 9/11. As it should have, attention turned to safety and security. Yet, the decline in air travel that occurred may have masked the strains on the system that now is again at the breaking point. Now, six years after 9/11, with air travel volumes again at peak levels, the same customer service problems that were not addressed in 1999 have returned.

In our view, while safety and security must remain the top priorities of our air travel system, passengers still deserve an enforceable bill of rights. The market has failed to adequately provide customers with the minimum standards of civilization when they travel. Neither airlines nor federal regulators are adequately accountable.

The proposed legislation from Representatives Mike Thompson and Barbara Cubin and their co-sponsors, HR 1303, The Airline Passenger Bill of Rights Act of 2007, should be enacted immediately. The bill addresses the worst of these problems in a well-thought-out and appropriate way.

The bill takes a variety of needed steps to provide airline passengers with new rights, including rights to potable food and water and sanitary facilities and a right to de-plane when they are stranded on runways for more than three hours at a time. It would also require airlines to make timely and truthful disclosures of diversions, delays and cancellations to customers at airports and on delayed planes. It would establish requirements that airlines post to the Internet the airline's lowest fares, schedules and itineraries and the status of any chronically delayed flights. In addition, the bill would require timely return of lost baggage, the inclusion of all of these rights in contracts of carriage and additional reports and actions by the Department of Transportation to improve the current situation.

These are all very important improvements to the rights of airline passengers. In addition, we urge the Congress to ensure that any final legislation guarantees that these are enforceable consumer rights, includes legally-enforceable and inflation-adjusted compensation for lost or damaged baggage or bumping and reinstates the rights of states to enforce their consumer protection laws against airlines.

We would urge you to consider extension of appropriate rights to passengers of diverted flights as well.

In the 21st century, nearly one hundred years after scheduled passenger airline service began internationally and nearly forty years since men first walked on the moon, these are reasonable requests.

We also believe that any final legislation should make these rights clearly enforceable. We would also urge the committee to review some of the other effects of the 1978 Airline Deregulation Act. For example, following concerns raised by state Attorneys General in the 1980s that the act had resulted in violations of state unfair practices acts, and a failure by federal

regulators to protect passenger rights, the attorneys general proposed a set of standards, after finding in 1988 that:

> Consumer dissatisfaction with the airline industry has reached crisis proportions. Federal agencies have focused their attention on airline scheduling problems, on time performance, safety, and other related issues, but have not addressed airline advertising and frequent flyer programs. Unchecked, the airlines have engaged in practices in these areas that are unfair and deceptive under state law.

Yet, after the attorneys general attempted to negotiate with the airlines to treat consumers more fairly, the airlines successfully obtained a Supreme Court ruling sweepingly eliminating any state authority over airlines, even against deceptive advertising of their prices.

A 2000 letter[8] to Congress by Iowa Attorney General Tom Miller explains:

> Under a 1992 U.S. Supreme Court decision[9], *Morales v. Trans World Airlines, Inc.,* 504 U.S. 374 (1992), State Attorneys General are blocked from enforcing their state consumer protection laws against airlines. The Court held that states are preempted under the Airline Deregulation Act of 1978 [PL 95-504] from taking action against airlines, even if the airlines have engaged in deceptive and unfair practices. The decision says states are preempted from taking action relating to advertisement of rates, services, and other matters.

Attorney General Miller's 2000 letter went on to support an amendment, which we support today.

> We are asking Congress to eliminate the preemption…The amendment would simply state that the Airline Deregulation Act does not prevent State Attorneys General "from enforcing any state laws prohibiting unfair or deceptive business practices or unfair methods of competition with respect to air transportation or the advertisement and sale of air transportation services."

In addition to the rights enumerated in HR 1303 and the reinstatement of attorney general authority, we urge that any final legislation adopt additional rights for airline passengers:

1) Make involuntary bumping and lost/damaged baggage rules subject to automatic inflationary increases. Require that bumping reimbursement, including for voluntary bumping, always be in cash or cash-equivalent flight coupons, not in what are often

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[8] Letter of 15 September 2000 to U.S. Senator Tom Harkin, available at http://www.state.ia.us/government/ag/consumer/press_releases/airline-preemption-releasefor_web.html Last visited 10 April 2007.

[9] The opinion of the Court, including the Attorney General Revised Guidelines as an appendix, is available here http://www.law.cornell.edu/supct/html/90-1604.ZO.html Last visited 10 April 2007.

currently-provided -- future air travel coupons that are often impossible to redeem due to blackout dates and other limits.[10]

2) Give consumers greater private rights of action in contracts of carriage, which are currently merely contracts of adhesion that largely immunize airlines rather than provide a fair contract.
3) Establish an independent airline consumer protection group with some small increment of currently-collected passenger and airline facility taxes. The group should have party-intervenor status to represent passengers in any administrative proceedings of the Department of Transportation, the right to file comments at the DOT and FAA, the capacity to publish an independent and passenger-friendly analysis of the on-time, complaint and other data now merely data-dumped by the FAA, to advise consumers on airline complaints, etc.
4) Whether or not such a passenger advocacy group is established, the committee should compel the FAA/DOT to more effectively use the power of the Internet to provide passengers with more and enhanced information about the cost of flights, chronically delayed flights and other airline quality indicators. The department's current websites are not helpful to consumers.
5) Airlines themselves should be required to post information about their own lowest-cost flights on their Internet sites, and should be required to inform prospective customers more clearly than in current murky codings about the on-time performance of chronically-delayed and cancelled flights. Airlines should be required to post the Airline Passenger Bill of Rights at gates in terminals as well as on ticket jackets and websites.
6) The Airline Passenger Bill of Rights disclosures should include clearer and better disclosure of other rights, such as the involuntary bumping and lost/damaged baggage compensation rules.
7) We also urge the committee to conduct additional oversight of the DOT's customer satisfaction and complaint handling effectiveness, including adding enforceable provisions to Rep. DeFazio's customer service legislation enacted years ago.

In addition, we would urge the committee to consider some of the larger issues about the U.S. transportation system that have led to some of the pressures that the airlines are under that may contribute to these on-time and runway stranding problems. We call your attention to prescient testimony by Mark Cooper of the Consumer Federation of America before the Senate Commerce Committee[11] immediately following 9/11:

> In the longer term, building a survivable transportation network requires redundancy and diversity of transportation options, as well as air travel decentralization. Here are some ideas that should be considered and debated.

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[10] Even the DOT acknowledges these deficiencies and warns passengers to ask: If the airline offers you a free ticket, ask about restrictions. How long is the ticket good for? Is it "blacked out" during holiday periods when you might want to use it? Can it be used for international flights? Most importantly, can you make a reservation, and if so, how far before departure are you permitted to make it? See http://airconsumer.ost.dot.gov/publications/flyrights.htm Last visited 10 April 2007.

[11] Hearings on the Financial Status of the Airline Industry, U.S. Senate Committee on Commerce, Science and Transportation, 20 September 2001, statement of Dr. Mark Cooper, Consumer Federation of America, available at http://commerce.senate.gov/hearings/092001Cooper.pdf Last visited 10 April 2007.

First, we should improve ground transportation, particularly high-speed rail in high density air corridors. This could relieve a substantial part of the load in the most densely traveled routes without imposing significant indirect costs (increased travel time) on the public. It would also ease runway overcrowding at some airports. It would probably require the airlines to cut back on some of their most densely traveled and profitable routes for the sake of the public interest.

Commercial operations that require plane changes by driving traffic through hub and spoke networks make economic sense for the air carriers, but they are heavy users of very scarce resources – take offs, landings and air traffic control. For consumers, however, the hub and spoke system has led to domination of routes in some regions by a single carrier, resulting in higher ticket prices. These networks also impose a transaction cost on the public that may increase substantially – boarding time. Concentrating traffic is profitable for the airlines and it may even be efficient, but it may not be in the public interest, given the new traveling reality.

We want to thank you for the opportunity to provide our written views to the committee today. We look forward to assisting the committee as you move forward on this important legislation.

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