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AVIATION DELAYS AND CONSUMER ISSUES

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HEARING

BEFORE THE

SUBCOMMITTEE ON AVIATION

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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April 7, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Aviation

FROM: Subcommittee on Aviation Staff

SUBJECT: Hearing on Aviation Delays and Consumer Issues

PURPOSE OF HEARING

The Subcommittee on Aviation will meet on Wednesday, April 9, 2008, at 2 p.m., in room 2167 of the Rayburn House Office Building, to receive testimony regarding aviation delays and consumer issues. During the Subcommittee's hearing on *Airline and Airport Holiday Preparations*, Chairman Costello requested that the Department of Transportation Inspector General ("DOT IG") prepare an "after action" report on airline delays during the summer of 2007, as well as review progress by the Department of Transportation ("DOT"), Federal Aviation Administration ("FAA"), airlines, and airports to implement the consumer service actions outlined in the September 25, 2007, DOT IG report *Actions Needed to Minimize Long, On-Board Flight Delays*. This hearing is the fourth in a series of hearings on airline consumer protection.

Background

Record numbers of people are flying. In 2007, U.S. airlines set an annual record by carrying 769.4 million scheduled domestic and international passengers. The FAA forecasts that, from 2008 through 2021, aviation passenger traffic will increase by 49 percent, to 1.16 billion passengers annually. The FAA predicts that, absent any changes to the aviation system, delays will increase by 62 percent by 2014. Flight arrival delays have increased with the growing traffic. The first eight months of 2007 was the worst for airline delays on record; the FAA's Aviation System Performance Metrics indicates that through August, 29.5 percent of flights were delayed[1] or cancelled. According to the FAA, delays were up 20 percent since last year, and traffic was up at some busy airports by as

[1] A flight is counted as "delayed" if it arrived more than 15 minutes later than the scheduled time shown in the carriers' computerized reservations systems.

much as 50 percent. In 2007, 28.5 percent of operations were delayed or cancelled (approximately 2.4 million flights) and long[2] on-board tarmac delays increased by 69 percent from 2000.

Airlines have responded to passengers' demand to fly and have scheduled flights to accommodate the increase in demand, particularly in the most desirable markets. For 2007, Bureau of Transportation Statistics ("BTS") data show record load factors of 79.9 percent; the month of June had an unprecedented load factor of 86.1 percent. Increased load factors mean more crowded planes and a decreased margin for error in case of cancellations or missed connections. According to the DOT, flight problems (flight delays, cancellations, and misconnections) rank as the number one traveler complaint. Due to several highly publicized on-board delays, coupled with high load factors, passenger complaints increased in 2007 by 70 percent over 2006. In addition, some industry analysts have speculated that the proliferation of smaller, 50- to 90- seat regional jets may also have an impact on delays. The number of regional jets has increased by more than 200 percent since 2000, from 570 in 2000 to 1,746 in 2006.

Over the last several years, as delays have increased, there have been calls for increased airline consumer service oversight following highly publicized events where passengers have been stranded on aircraft for hours.

I. Consumer Issues

In response to a 1999 extended on-board delay in Detroit, and subsequent calls for legislative action, members of 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").[3] The ATA carriers agreed to develop individual Customer Service Plans to demonstrate ongoing dedication to improving air travel.[4]

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 of "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;

[2] The DOT IG defines a "long" on-board tarmac delay as anything over an hour.
[3] 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.
[4] JetBlue, which began service in February 2000 and became an ATA member in 2001, was not a signatory to the 1999 Commitment. However, in response to a February 14, 2007, incident, JetBlue instituted its own "Customer Bill of Rights" to address cancellations, delays and over bookings.

- 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.

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. The DOT IG followed its February 2001 report with a June 20, 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, during a seven-day holiday travel period.

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 Aviation Enforcement and Proceedings (OAEP) office improve its oversight of air traveler consumer protection requirements and that DOT strengthen its oversight and enforcement of air traveler consumer protection rules.

In December 2006, thunderstorms severely impacted American Airlines operations at the Dallas Fort Worth International Airport, diverting many flights and shutting down the airport for nine hours. On February 14, 2007, an ice storm crippled JetBlue's operation at New York City's John F. Kennedy ("JFK") and LaGuardia Airports ("LGA") and led to nine planes being stuck for more than five hours on the tarmac, with one of those planes delayed for ten hours.

Soon after the February 14, 2007, incident, Secretary of Transportation Mary Peters asked the DOT IG to review these two recent cases and examine the airlines' customer service commitments, contracts of carriage, and policies regarding extended ground delays aboard aircraft and to provide an assessment on why the American and JetBlue delays occurred. The Secretary also requested recommendations for what airlines, airports, and the Federal Government can do to prevent such situations in the future. On September 25, 2007, the DOT IG released its report recommending the following:

- Airlines should define what constitutes an "extended period of time" for meeting passengers' essential needs and setting limits for delay durations; establish specific targets for

reducing chronically delayed or cancelled flights; disclose on-time flight performance on websites and orally at the time of ticket purchase; and self-audit customer service plans.

- BTS should make changes to its information collection to adequately capture all events resulting in long, on-board delays, such as flight diversions and cancellations;
- Airports should establish a process for monitoring lengthy, on-board delays;
- DOT should establish a national task force of airlines, airports, and FAA to develop and coordinate contingency plans to deal with lengthy delays; conduct incident investigations involving long, on-board ground delays; and direct the OAEP to ensure that airlines comply with their public policies governing long, on-board delays.

In November of 2007, the DOT issued an Advance Notice of Proposed Rulemaking ("ANPRM") to receive comments regarding enhancing airline passenger protections. The ANPRM asked for comments specifically on requiring: air carriers to adopt contingency plans for lengthy tarmac delays and incorporating them in their contracts of carriage; carriers to respond to consumer problems; carriers to publish delay data; carriers to publish complaint data; on-time performance reporting for international flights, and carriers to audit their compliance with their customer service plans. The ANPRM also requested opinions on when a chronically delayed flight should be deemed an unfair and deceptive practice.

In December 2007, DOT formed a federal advisory task force to look at customer service and lengthy tarmac delays, especially during unexpected weather events. The National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays ("Task Force") met on February 26, 2008, to carry out four tasks: (1) develop model contingency plans to deal with lengthy airline on-board delays; (2) review incidents involving long, on-board ground delays and their causes (including indentifying trends and patterns of such incidents and recommending workable solutions for mitigating the on-board consumer impact of extraordinary flight disruptions); (3) review existing airline and airport contingency plans for extended tarmac delays for best practices; and (4) report to the Secretary the results of its consideration and a description of the model contingency plans developed. The second meeting of the Task Force will be held April 29, 2007, though the Task Force is expected to finish by the end of the summer, it is chartered until January 3, 2009.

II. Delays

As a result of 2007's summer delays, airlines' on-time performance and scheduling practices have come under increased scrutiny. The FAA has indicated its intentions to more closely examine scheduling practices, particularly in the New York metropolitan area.

On September 19, 2007, the FAA issued notice to airlines asking for advance schedule information for JFK and Newark Liberty International Airport ("EWR") for summer 2008, citing increasing operations and deteriorating on-time performance at those airports. The FAA's notice states that "The FAA intends to work with carriers to review operations [at JFK and EWR], particularly during the morning hours of 7 a.m. to 10 a.m. and afternoon and evening hours from 2 p.m. to 10 p.m. local time."

On September 27, 2007, the DOT announced administrative steps to reduce delays and alleviate related consumer problems. The first step created a New York Aviation Rulemaking Committee ("ARC") to explore options for addressing airspace congestion and flight delays in the New York area. The second step sought to increase consumer protection by improving access to DOT's complaint system, stronger oversight of chronically delayed flights, a rulemaking to increase compensation for passengers who are involuntarily bumped due to an oversold flight, effectiveness of contingency plans for tarmac delays, and point of purchase information related to chronically delayed flights. The third proposal required the FAA to convene a schedule reduction meeting at JFK. The final step focused on the implementation of the New York, New Jersey, Philadelphia Metropolitan Area Airspace Redesign ("NY Area Airspace Redesign") to decrease delays.

The ARC was chartered to explore the options for changing current policy and impacts of those changes on airlines, airports, and the traveling public. The goal was to "identify ideas that would reduce congestion, efficiently allocate the scarce capacity of the New York area airports." The ARC's findings were submitted to the Secretary on December 13, 2007, in the following categories: Operational/Infrastructure Improvement – New York Airspace Czar, General Aviation, Voluntary Reductions; Congestion Pricing, Auctions, and Aircraft Gauge; Gate Utilization and Perimeter Rule; Priority Aviation Traffic Preferences; and International Air Transport Association Scheduling Guidelines, Other Administrative Options. The ARC reported seventy-seven items to mitigate delays in the New York area; of these, eighteen are underway and expected to be complete by the summer of 2008. One example is the new take-off patterns at EWR and Philadelphia International Airports, as a part of the NY Area Airspace Redesign project, that allow aircraft to fan out after taking off so that the next aircraft may take off sooner. DOT continues to explore operational and capacity improvements for all three major New York area airports.

During the 2007 Thanksgiving and December holidays, the Bush Administration opened up military airspace in the United States to mitigate delays. On December 19, 2007, in an effort to decrease delays, the Secretary announced voluntary flight caps at JFK. Caps were set at eighty-two to eighty-three flights an hour beginning in March of 2008. On March 10, 2008, the Secretary also set voluntary flight caps at EWR[5] to eighty-three an hour, beginning in May. Under the terms of the hourly caps, airlines may shift their flights to times of the day when the airports have unused capacity rather than the current overloaded peak hours. The voluntary caps, which were agreed to by the carriers, are in place for two years, at which time their effectiveness will be re-evaluated.

At the April 9 hearing, the DOT IG will present its "after action" report on airline delays during the summer 2007. The DOT IG has indicated that a number of causal factors contributed to the delays and cancellations of the summer of 2007, at the fifteen major airports with the largest increases in delays. Some of these factors include: extreme weather; airspace bottlenecks; the National Airspace System; late arriving aircraft; airline scheduling; and spacing of aircraft on final approach. To counter increasing delays the DOT IG maintains that airlines need to fulfill their commitments made to passengers back in 1999. The DOT IG also indicates that airline, airports and the DOT are making progress on passenger care and comfort during extraordinary events but more still needs to be done, especially including airports in the planning.

[5] Similar flight caps already exist at New York's LaGuardia Airport.

III. New York Passenger Bill of Rights

On August 2, 2007, New York became the first state to enact legislation ensuring airline passenger rights on severely delayed flights operating in the state. The legislation requires airlines to provide passengers with food, water, fresh air, power, and working restrooms on any flight that has left the gate and been on the tarmac for more than three hours. The legislation also establishes an Office of the Airline Consumer Advocate within the New York Consumer Protection Board to oversee compliance with airline passenger rights including the ability of the state attorney general to seek civil penalties of up to $1,000 per violation per passenger. It also mandates that air carriers provide complaint contact information in appropriate areas and provides a New York-based consumer advocate to coordinate communication between the airlines, federal agencies and the Port Authority of New York and New Jersey in the event of serious delays.

On March 25, 2007, the U.S. Court of Appeals for the Second Circuit ruled that the Federal Airline Deregulation Act of 1978, which reserves to federal authorities the regulation of matters concerning the "price, route or service" provided by airlines (49 U.S.C. §41713(b)(1)) pre-empted the New York law. The panel determined that regulating airlines to provide certain amenities included in the New York law clearly relate to an air carrier's "service."

Currently, nine states have similar passenger rights legislation pending. These states include: Arizona; California; Florida; Indiana; Michigan; New Jersey; Pennsylvania; Rhode Island; and Washington.

IV. H.R. 2881, the "FAA Reauthorization Act of 2007"

H.R. 2881, the "FAA Reauthorization Act of 2007", which passed the House September 20, 2007, contains several provisions to enhance consumer protection and decrease delays including:

- Mandating that air carriers and airports submit emergency contingency plans and detail in their plans how they will allow passengers to deplane following excessive delays. These plans must be approved by DOT. DOT can assess a civil penalty against an air carrier or airport that fails to adhere to an approved contingency plan.
- Requiring schedule reduction meetings to be held by the FAA if aircraft operations of air carriers exceed hourly maximum arrival and departure rates and are likely to have a significant adverse effect on the national or regional airspace system. If there is no agreement to reduce schedules, then the FAA shall use its administrative power in this area.
- Establishing an Advisory Committee for Aviation Consumer Protection at DOT.
- Reviewing air carrier flight delays, cancellations, and associated causes by the DOT IG.
- Requiring DOT to issue denied boarding compensation final regulations within one year, with such rates appropriately adjusted.

WITNESSES

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

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President
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President and CEO
Air Transport Association

Accompanied by
Mr. Gary Edwards
Director-Flight Control and Chief Dispatcher
Delta Air Lines

Ms. Kate Hanni
Executive Director
Coalition for Airline Passengers' Rights, Health, and Safety

HEARING ON AVIATION DELAYS AND CONSUMER ISSUES

Wednesday, April 9, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON AVIATION,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:00 p.m., in Room 2167, Rayburn House Office Building, the Honorable Jerry F. Costello [Chairman of the Subcommittee] presiding.

Mr. COSTELLO. The Subcommittee will come to order.

The Chair would ask all Members, staff and everyone to turn electronic devices off or on vibrate.

The Subcommittee is meeting today to hear testimony on Aviation Delays and Consumer Issues. I will give a brief opening statement, call on the Ranking Member, Mr. Petri, to give his statement or remarks, introduce our witnesses and then proceed with testimony.

I thank everyone for being here today to our Subcommittee hearing on Aviation Delays and Consumer Issues. This hearing is in response to the record high delays the traveling public endured during the summer of 2007 and is the fourth in a series of hearings on airline consumer protection.

In 2007, the traveling public saw firsthand the serious problems that our current system has with congestion and delays which, at times, has led to a breakdown in customer service. Delayed flights affected 20 percent more passengers during the summer of 2007 compared to the previous summer of 2006. In addition, the number of airports with arrival delay rates greater than 30 percent increased by 189 percent. Further, the average delay lasted about one hour.

On our September 26th, 2007 hearing on delays, I requested that the Department of Transportation Inspector General prepare an after-action report on what happened last summer as well as review progress by the Department of Transportation, the FAA, airlines and airports to implement policies to improve customer service and to minimize delays.

The IG is here this afternoon to report their findings to us. These findings will provide the important information into what the traveling public can expect during the 2008 summer travel season.

H.R. 2881, the FAA Reauthorization Act of 2007, passed the House on September 20th, 2007. It addresses consumer protection and congestion and delay reductions including a mandate that air carriers and airports create emergency contingency plans that are

approved and enforced by the Department of Transportation; schedule reduction meetings if aircraft operations exceed hourly rates and are, at best, adversely affecting national or regional airspace; create an advisory committee for aviation consumer issues; install an 800 consumer protection hot line; and provide a number of other provisions to protect consumers.

In addition, it provides for increased penalties for airlines, airports and those who violate the consumer protections in H.R. 2881.

I am very disappointed, I think as everyone in this room is today, that the Senate has not acted on the FAA reauthorization that is pending before the other body. We continue to urge our friends in the Senate to pass a bill so that we can get into conference and get a final reauthorization bill for the FAA to have consumer protection issues in that final legislation.

In November of 2007, after the House passed H.R. 2881 in the Aviation Subcommittee, this Subcommittee held three hearings on delays and consumer issues.

Finally, President Bush and Secretary Peters decided that it was time to address consumer protection, aviation congestion and delays. Their solution was to basically take a number of provisions out of our House bill and to implement those provisions, including an emergency contingency plan for airlines and airports. I am interested in hearing from the Department of Transportation today on how implementation of these initiatives is going.

Next, I am also interested in hearing the progress made by the Department of Transportation's New York Aviation Rulemaking Committee including which of the 77 recommendations the Secretary will implement in the immediate future and near term for the Summer, 2008 travel season.

In 2007, the New York area airports contributed 36 percent of the tarmac delays of an hour or more. These disruptions, of course, rippled throughout the Country, causing system-wide delays all over the Country.

While the airlines and airports have made some progress in terms of coordinating efforts, much more needs to be done and as customers are still experiencing long onboard delays. In 2007, there was a 41 percent increase on onboard tarmac delays of 5 hours or more.

Let me repeat that again. In 2007, there was a 41 percent increase in onboard tarmac delays of 5 hours or more compared to the previous year of 2006.

With that, I again want to thank our witnesses for being here today. I look forward to hearing their testimony.

Before I recognize the distinguished Ranking Member, Mr. Petri, for his opening statement, 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.

The Chair now recognizes the Ranking Member, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman.

I am pleased to welcome our panel of witnesses here today and particularly Calvin Scovel who has become a regular, having been before the Full Committee last week and here on a number of other occasions.

Passengers, as our Chairman has noted, are angry and frustrated. Airlines are laboring under increasing costs and congestion, both on the ground and in the air, and the costs have reached unprecedented heights so far as fuel is concerned.

Out of the last few weeks, we have seen hundreds of flights canceled, including more today as airlines conduct safety audits on our aging fleet, causing even more delays and inconvenience to the traveling public. Two thousand seven was another rough year for air passengers and airlines, and it continues as we speak.

Last year, air travel was up again. In fact, according to the Bureau of Transportation Statistics, the total number of passengers enplaned in 2007 was 3 percent higher than it was in 2006. With an increase of 20 million passengers in the system, the on-time arrival rate for 2007 was 73 percent. Though this is roughly on a par with the preceding year, it clearly does not make for a pleasant travel experience for anyone involved in the delays.

In November of last year, the Department of Transportation announced it would put in place initiatives to deal with the coming holiday travel season. Despite the best efforts of the Administration, the December, 2007 on-time arrival rate for airlines slipped nearly 7 percentage points from 2006 down to 64 percent on-time arrival.

We all understand that weather is the wildcard factor in aviation, and I believe that reform needs to take place within the aviation system. We are witnessing a system in desperate need of new advanced technologies in the air and increased capacity on the ground. Government and industry have tried to make changes to improve airline performance within the system for years, and it undoubtedly needs refining.

Clearly, the FAA realizes this, and that is why they are undertaking the immense task of transitioning to a new air traffic control system, NextGen. However, that will not become fully operational, if it in fact stays on schedule, for another 15 years or so, and we simply can't wait that long.

New initiatives undertaken by the stakeholders to address this dilemma sooner rather than later are critical to getting out of this problem so that we may prevent aviation travel woes.

I am interested in hearing from both the Government and industry witnesses on the initiatives that they have implemented since our last hearing on this topic, and I am also interested in hearing exactly what impact they predict these efforts will have on the traveling public this summer.

Lack of a long-term FAA bill is only further exacerbating the situation. It becomes increasingly difficult for airports to undertake projects when they are forced to operate on extensions that provide only 75 percent of funding. These are long-term expensive projects that require thorough planning and, when it is unclear whether funding will be available, airports find themselves in an almost untenable situation.

Passenger rights initiatives are also in need of being strengthened. We worked in a bipartisan manner on a number of passenger rights provisions in the House FAA bill. These include provisions that will require airports and airlines to be prepared to care for

passengers who are experiencing long ground delays. The Senate needs to act now and move a comprehensive bill.

I suppose the good news in all of this, if there is any, is that the FAA, airports and airlines are working to address the problem, and we in Congress must do our part in turn.

This hearing keeps attention focused on the issue, and for that I am appreciative.

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

Mr. COSTELLO. I thank the Ranking Member, Mr. Petri, and the Chair now recognizes the gentleman from Wisconsin, Mr. Kagen.

Mr. KAGEN. Thank you, Mr. Chairman, and thank you, Ranking Member Petri, for your opening remarks and for your service to this Nation and to our Committee.

I look forward to hearing some definitive answers to how those of you in the industry who are still in business are going to meet the needs and expectations of the traveling public, not just the traveling Congresspeople but the traveling public.

Earlier today, I had a phone call from one of my constituents who, for the past 36 hours, has been stranded in Columbus, Ohio, bumped and waiting and waiting for a flight as a standby traveler.

I am interested to hear how you are going to offer the lowest rates possible in a competitive marketplace, how you are going to meet your business needs of being profitable where energy costs are soaring, how you are going to deliver one's bags on time and in the right city, how you are going to provide prompt ticket refunds and meet all the customers' essential needs during long air travel as things begin to unwind, also how you are going to ensure customer service from code sharing partners. These are some of the highlights I am looking forward to hearing some definitive answers either today or in writing afterwards.

I am certainly interested, as everyone in the Country is, in seeing a profitable airline industry and in finding ways in which Government can work with your industry to make things possible to be profitable and also to have a customer that is enjoying the experience of traveling in the air once again.

I dare say that all of us are at the age where we remember those half or one-third flights when we could stretch out in the back of the plane and have a three-across seat. It doesn't exist any longer as the capacity has gone down and the demand has soared.

So I yield back my time and look forward to hearing some of these solutions and how we can move forward together.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the Ranking Member of the Full Committee, Mr. Mica.

Mr. MICA. Thank you. I thank you for yielding.

The title of this hearing—I commend the Chairman and Ranking Member—is Airline Delays and Consumer Issues. The bad news, folks, is it isn't going to get any better. It is probably going to get a lot worse. Industry is now wracked by soaring fuel prices.

I have identified part of the problem and part of the problem, well, the biggest problem is Congress.

If we look at, first, the issue of delays, most of the delays—we have had reports before the Committee—deal from the New York airspace area and they, in turn, those delays pyramid across the

system. In the very best of situations, we can only land at JFK, Newark or LaGuardia so many planes per hour in the very optimal weather conditions. When weather goes south and you see that as one of the major reasons for delay, then the system starts to deteriorate.

The irony of all of this is you need somebody in charge to make decisions to move forward. The airspace in New York is basically equivalent to what our highway system was going into New York in the 1960s. For the last 10 years, we have been trying to do an airspace redesign there.

I have been there countless times when I chaired the Aviation Subcommittee, meeting in Members' districts from Connecticut to Philadelphia and all in between, and we just about reached a decision. Now I have two Senators, the New Jersey Senators, Lautenberg and Menendez, have put a hold on an FAA Administrator.

Well, folks, I hate to tell you, but it is hard enough to get anything done when we have an Administrator, let alone when we have no Administrator. We have had no FAA administrator since September.

The reason that they cite, we will put this in the record. I have their letter. Their top reason is airspace redesign. They are holding up Mr. Sturgill, the President's appointee. So what they do, in fact, is revert FAA to a system that we had when we had five administrators in a period of a limited number of years, and we changed the system to a five-year term that transcended a presidential term.

We had a Democrat FAA Administrator. We had a Republican. Now they are holding up appointment because of airspace redesign which we have been debating and working on for 10 years and it hasn't been adjusted for almost, well, for over 3 decades.

So, if anyone thinks that we are going to get any resolution of delays, they are smoking the funny weed. It is just absolutely unbelievable if you think you are going to get other resolution.

Now everybody puts their stock in NextGen. We have had the Next Generation airspace, air traffic control. We have had them in here.

The best estimate I have heard is that is going to improve things 5 to 6 percent as far as dealing with congestion because you can only space the planes so close together in an area.

You can only land so many planes on a runway in New York, LaGuardia, JFK and even if we add in the latest addition upstream, Stewart, yes. Still, just do the math with the numbers of flights, the projected number of flights. It isn't going to work.

Then a lot of Next Generation and the things that we need to get done with FAA are in the FAA bill, and where is the FAA bill? It is wandering around in the Senate. It has passed the House.

So, folks, if you think this is going to get better, hang on. It is going to get a lot worse: Nobody in charge, people obstructing the progress we need to move the system and stop the delays.

Eighteen seconds to conclude.

[Laughter.]

Mr. COSTELLO. The Chair would be happy to give you two additional seconds to round it off.

[Laughter.]

Mr. MICA. Well, I think, Mr. Chairman, you can tell I am not happy, but I want you to know too. All these things that are happening with the airlines as far as inspection, safety, all of that, none of that happened when I was Chairman of this Subcommittee.

[Laughter.]

Mr. COSTELLO. I will keep that in mind the next time I am so generous with your time, Mr. Mica.

Mr. COBLE. Mr. Chairman, do you want to take his words down?

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

Ms. JOHNSON. Thank you very much, Mr. Chairman and Mr. Petri, the Ranking Member, for holding this fourth in a series of hearings on the issue of airline customer protection.

As I have stated before, I am certain that all of us can empathize with today's subject matter. We have a lot of problems that the airlines are not really responsible for, and you just heard a little bit of it from Mr. Mica.

I have been stranded on tarmacs. I have had luggage lost while traveling both domestically and abroad. When I have felt the customer service rendered to me fell below expectations, I made sure I registered those complaints, and that was my satisfaction.

It is no surprise that most of our Nation's air carriers are struggling to remain afloat financially. Now, while that is not a reason for them to have services that people feel are inferior, it does have some to do with some of the delays right now with the planes our for American Airlines. It will cause some inconvenience.

The industry understands consumers have a choice, and the industry also understands the numbers. By 2015, it is projected that 1 billion passengers will board planes domestically each year. So, obviously, a carrier's loyalty base within this enormous market will be largely dependent upon how well customers are treated today.

I would like to emphasize today's subject matter can clearly relate to frustration and consumers who have experienced customer service nightmares on our Nation's airlines.

I can tell you, as a frequent flyer, that I would much rather be sitting somewhere on a plane on a tarmac than to be in the air during the storms that they have in Texas. North Texas has fast-moving thunderstorms that occur throughout the year that bring aviation operations to a halt, and it can be done very quickly. That includes Dallas-Fort Worth International Airport and Littlefield.

In spite of these incidents, our Nation's airlines should continue to strive toward the implementation of sustainability of exemplary service, but I know that often they cannot. Sometimes their surprise is as great as ours when it is according to weather. We are not quite sure when the weather will clear enough to move. We don't know where we are line.

All of that makes a difference, and we have very antiquated air traffic control technology and fewer than what we need, air traffic controllers.

So, as a former business owner, I, of all people, understand that mistakes are made from time when rendering a service are costly. I am also aware that when mistakes do arise, competent and capable customer service really has no rival. Furthermore, when mistakes are made, there is no substitute for a sincere apology and a

demonstrable willingness to show the customer that you intend to correct the wrong as soon as possible, and hopefully it won't happen again.

As I close, I want to align myself with the recommendations that the Department of Transportation Inspector General will elaborate on within his upcoming testimony: The airlines must refocus their efforts to improve customer service. The Department should take a more active role in airline customer service. The airlines must overcome challenges in mitigating extraordinary flight disruptions.

I believe that I can fully support these recommendations, Mr. Chairman. I am not sure that I could give my support to any codification of a passengers' bill of rights.

Thank you.

Mr. COSTELLO. The Chair thanks the gentlelady and now recognizes the gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. I won't take the five minutes.

It is good to have you all with us, especially Mr. May. I mention him because I have known him longer than the rest of you.

Mr. Chairman and Ranking Member Petri, we have broached this subject before. Not unlike many members of the flying public, I wish our air transportation system did not have to confront these challenges. Delays frustrate me as much as the next guy, and I do acknowledge the obstacles that have led us to this current situation.

You may remember, Mr. Chairman, at one of our hearings last year, I shared with you a conversation I had with a constituent who told me that he would rather submit to a dentist performing a root canal rather than set foot in an airport. Well, that doesn't speak well for anybody, and I know it doesn't make you airport folks happy. By the way, he didn't like root canals to begin with.

But let me just say this, Mr. Chairman. At the November hearing, at the time, a variety of measures had been implemented to accommodate the increased demand in air travel over the holidays. They included efforts to board flights earlier that were fully booked to ensure on-time departures, reserving seats to accommodate passengers who encounter problems and providing additional automated machines to secure areas to re-book passengers.

I would be interested to know if those are still being implemented and to what effectiveness they are being realized.

Mr. Chairman, with that, I yield back my 18 seconds.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the gentlelady from Hawaii, Ms. Hirono.

Ms. HIRONO. Thank you, Mr. Chairman. I would like to thank you and Ranking Member Petri for this series of hearings on customer service.

However, with all of the upheavals in the industry, while customer service is very important, I also think that in the airline industry that we really should pay some attention to economic viability issues. Coming from Hawaii, particularly with the ceasing of the passenger service operations very precipitously by Aloha Airlines, leaving literally thousands and thousands of people stranded practically and then with ATA following close of ceasing all their Hawaii operations, it is very clear that the airlines are being buf-

feted by all kinds of external factors that are impinging on their ability to complete effectively.

So I hope that as we look at the customer service issues, which I think are related to the ability of the airlines trying to compete in this environment, perhaps we could spend some time looking at the economic viability issues of this industry, something that is really, really important to Hawaii and I would say all across the Country and indeed throughout the world.

I yield back my time.

Mr. COSTELLO. The Chair thanks the gentlelady and now recognizes the gentleman from Iowa, Mr. Boswell.

Mr. BOSWELL. Just very short, as you know, Mr. Chairman, yourself, all of us on this up here, we travel a lot and our constituents that travel a lot see us because we are usually leaving and departing from the same place. There is a lot of unhappiness out there. So you are fully aware of that, I am sure.

They are starting to put big pressures upon us. So be aware of that.

Secondly, before I yield back, Mr. Chairman, I had a lot of follow-up on those same reasons on the air safety. The last hearing that you had in the Full Committee and so on, which I applaud you for that too, but I am still hearing problems that we didn't get discussed there to include such statements as shortcuts by FAA on training and different things that are going on that are concerns.

So we will talk about that, not today because of this schedule, but it is a concern. We have to address it.

With that, I yield back so we can get to the job at hand. Thank you.

Mr. COSTELLO. I thank the gentleman for his brief remarks, and the Chair recognizes the gentlelady from California, Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman. I would like to also thank you and Ranking Member Petri for holding this important hearing, as has been said by my colleagues.

I represent California's 37th Congressional District which includes both the Long Beach International Airport and the Compton-Woodley Airport that are both there. Aviation is a vital economic engine in my district. It employs thousands of people and delivers a tremendous amount of goods to our region.

While I commend the airline industry for their record-setting pace of 769 million domestic and international passengers, we would be really shortsighted in not acknowledging the alarm feeling that we equally have that another record was set and established in the number of flight cancellations and delays.

Concrete steps must be taken in order to increase on-time flight performance, enhance airline passenger protections and decrease the number of cancellations fueling consumer discontent. In the attempts to respond to the passengers' demands, competitive and innovative approaches should be create and implemented in order to decrease these growing margins of errors.

Assuring the American people that commercial aviation is reliable should not just be a requirement of the individuals that fly but to our Nation's economic livelihood as well.

I am going to share with you a personal story, knowing that we were having this hearing today. This is not rhetoric. This is not Members of Congress showing emotion and being frustrated. This is real life experiences that the American people are facing.

Last Friday, when I left here, I was supposed to be on a flight. That flight was an hour late. I think we are already up to about 85 percent of the time, all of the flights that I have taken have been late this year, since me coming to Congress on September 4th of 2007.

The other thing that was further frustrating is when I was coming back. On Monday morning, I was scheduled to be on a flight at 7:59. The passengers were not advised at what time the flight was going to be rescheduled. It just showed that the flight was delayed.

To me, that is completely unacceptable because passengers should have an opportunity. If that particular carrier is not going to be able to go out, a passenger should be able to make a reservation with someone else.

It wasn't until 30 minutes prior to when that flight was supposed to leave, that finally a notice came out, saying: service delay; see the customer service agent.

At that point, we were told a decision would be made at 1:00 p.m. Now, mind you, this is 7:30 in the morning, and most people got up at 5:00 in the morning to get to the airport, and we were told that the flight would possibly be rescheduled at 4:00 p.m. that afternoon. That cannot be tolerated.

What was particularly frustrating is that many of us missed an opportunity to take another flight at 8:45. Had we properly known, customers could have adjusted. It was only because I was coming here on the East Coast, that I had staff that was already here, that they could reschedule me on the 9:20 flight.

So I am lucky. I feel I got the lucky green ticket, and I am on the 9:20 flight. Lo and behold, that flight leaves over an hour late. So I spent from 6:00 in the morning until finally arriving here at almost 5:00 p.m., making a travel from the East Coast. That cannot be continued to be tolerated.

Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair thanks the gentlelady and now recognizes the gentleman from Illinois, Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman.

I would like to thank Chairman Costello for holding this hearing today and for Chairman Costello's and Full Committee Chairman Oberstar's leadership on including passenger protections in the FAA Reauthorization Bill.

I am a strong supporter of a passenger bill of rights and glad that we are having this hearing today again. It is unfortunate we have to do it but the continued problems that we face right now in the flying public.

As someone who flies weekly, I certainly know the frustration. Ms. Richardson's story, I could repeat probably many stories along those lines. I am not going to start down that road right now, but we all know that there are problems out there.

The Aviation Institute's annual survey that just came out, showing complaints are up 60 percent and 1 in 4 flights are delayed, this is just unacceptable.

Unfortunately, we really do not have a choice. I mean you look at it and you say, well, it is a free market in air travel. Unfortunately, there are limited choices. I think more needs to be done to help to make air travel better for Americans today.

I look forward to hearing from the witnesses. So I will stop right here, and I will wait until the question period, but I think that this is a very important issue today.

I, again, thank the Chairman and Ranking Member for holding this hearing.

Mr. COSTELLO. The Chair thanks the gentleman and now recognized the gentleman from Tennessee, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman and Ranking Member Petri.

I am pleased to be here today to receive testimony from this panel.

Memphis is the home of the hub of Northwest Airlines and, unfortunately, not the home of the National Collegiate Athletic Association's Men's Basketball Champion, but we were close. We are happy to be a hub city, and Northwest has been a good employer and helped put us on the map even though we could have had a better map if we had been the NCAA's Men's Basketball Champions.

We also have Pinnacle Airlines in our city. So we are very airline dependent, not to mention another airline that you might have heard of that doesn't take passengers but takes a few packages which absolutely, positively delivers on time, Federal Express.

I probably get as many calls complaining about delays on airline flights and the way the airlines handle the passengers as any other issue, and it is a serious issue. I know it is difficult with so many people and the flying public increasing.

We did some things in the FAA Reauthorization Act that if the Senate would have responded and passed the bill and worked with the House and passed a bill, maybe we would have some of those recommendations in place.

But there are areas that recently Ms. Richardson mentioned, and I had a similar situation. Congressman Berry and Congressman Taylor and I were all on a plane to come up here, and we missed three votes each, which is more than half the votes I have missed since I have been here, because the plane was delayed.

There were mechanical problems. Nobody wants to get on a plane with mechanical problems, but the problem was they couldn't get attendants for the flight because it had been canceled. I guess with the contract the other people couldn't spend an extra two hours.

It seems like the airlines ought to have some way in that situation to have some labor policy where they pay the attendants more money or have some backup crew to where 90 or 100 passengers don't wait 2 hours, some of whom miss important assignments, because they can't get 4 people to be flight attendants.

Somehow they could get those flight attendants, particularly in a hub city, and accommodate the passengers rather than the pas-

sengers having to wait and the attendants be found from a Florida flight. They found some people in from Florida. They were off a Florida flight.

Sometimes the airlines don't seem to be handling the personnel as well as they could. Maybe if they had some additional monies for them or incentives for them to work extra, then passengers wouldn't be inconvenienced, but that is part of why there needs to be a passenger bill of rights. Maybe there needs to be something better for the employees.

We have had some problems with the pilots in their negotiations in Memphis, and there have been issues. But the flight attendants, I guess, is something that needs to be worked out, so they can have a backup staff or something so that folks wouldn't be inconvenienced.

But, I appreciate your coming.

We are proud to have both airlines in our city as headquartered in our city, and they employ a lot of people, and we are very pleased.

Thank you, Mr. Chairman.

Mr. COSTELLO. I thank the gentleman from Tennessee, and at this time the Chair would recognize the witnesses. Again, we thank you for being here. Let me introduce the entire panel.

We would ask each of you to summarize your testimony. We have your written testimony, of course, in the record. Summarize your testimony in five minutes or under, and we will have an opportunity then to have the Members ask questions.

The first witness is the Honorable Calvin Scovel who is the Inspector General with the U.S. Department of Transportation, who has testified before this Subcommittee many, many times;

Mr. D.J. Gribbin, who is the General Counsel for the Office of the Secretary for the U.S. Department of Transportation;

Mr. Gregory Principato, who is the President of the Airports Council International North America;

Mr. James May, the President and CEO of the Air Transport Association, accompanied by Mr. Gary Edwards, the Director of Flight Control and Chief Dispatcher of Delta Airlines;

And, Ms. Kate Hanni, the Executive Director, Coalition for Airline Passengers' Rights, Health and Safety.

Before I call on our first witness to testify, I would ask the distinguished Chairman of the Full Committee if he has remarks that he would like to make.

Mr. OBERSTAR. Thank you, Mr. Chairman.

I am sorry to be delayed getting here. I am always on other Committee business, but this is an important hearing, airline delays and consumer issues. We have visited it many times over the last 20 years.

We have refrained from making major legislative adjustments but frequently counseled airlines that their contract of carriage is the most important relationship between the air carrier and the air traveler, that the role of the Department of Transportation and of the FAA is to oversee that that contract of carriage is being enforced, carried out, respected by the airlines.

After the experience in Detroit several years ago in the snowstorm, we thought airlines had learned a lesson, and I counseled

against widespread sweeping changes in law. We ought to rely on the airlines to come up with a passenger bill of rights and to carry it out, to enforce it and to show the traveling public they are, in fact, doing that.

Then after that JetBlue didn't learn from the Northwest Airlines experience, we said, well, we will give you another lease on life.

But public patience is running short, and Members of Congress who travel frequently not only experience those delays but also hear from their constituents time and time again.

In fact, I received a letter just last week, in the wake of our FAA hearing on safety, from a retired major airline executive who said, yes, just re-regulate the whole industry.

I hear a voice over here. Were Mr. Lipinski still here, the other, the senior Mr. Lipinski, I think he would be saying the same thing.

It is a cautionary note that I offer, that the leash is a very short one.

We have a bill we have passed through the House. If the Senate acted on it, we would be in conference. I think, in conference, we probably would come up with something substantially more far-reaching than we put in our bill. I think we struck the right balance.

In the aftermath of September 11, one-fifth of the fleet was taken out of service. Older version aircraft were traded in, parked in the desert. Airlines have tried to bring in newer, more fuel-efficient aircraft into the fleet, and we see some consolidation in the industry.

But what we have seen is load factors the highest they have been in decades, yields higher than at any time since September 11 and even before that time and an industry that is now being compared to the pre-1970 rail passenger industry. It has lost its way and lost its touch with its passengers.

It is not my saying. It is what I hear from travelers. It is what my colleagues hear. I can't pass through the House floor without each week one, two or three from both sides of the aisle saying: When are we going to re-regulate the airlines and fix these problems?

I am a firm believer. I sat way down over there during the deregulation legislation in this Committee and voted for it with mixed feelings. It has continued to generate $6.5 billion a year in savings for air travelers compared to pre-deregulation fares, but the margin of satisfaction is diminishing, and I think the airlines have to take that into account.

We will hear testimony today on specifics of it.

Just one final observation, Mr. Chairman and colleagues, in the aftermath of our hearing last week on aviation safety issues and even before we held the hearing when FAA got wind that this hearing was to be held, it was amazing how the agency swung into action, imposed a $10.2 million fine on Southwest Airlines, relocated a principal maintenance inspector, stepped up its inspections and how, and at that witness table last week, we had not only contradictory testimony but testimony that might be perjury.

We have seen the whole 777 fleet of one carrier pulled down for further inspections, 200 MD-80s taken out of service, another section of the airline fleet taken out for further inspections—actions that should be done in the ordinary course of safety inspection.

Deadlines that were missed. Airworthiness directives that weren't followed. As one of the witnesses said so well, those air worthiness directives were written in blood. When 132 people died because of an uncommanded rudder control in Aliquippa, Pennsylvania, an air worthiness directive was issued in the aftermath that said: You fix these and you inspect these aircraft and you take this action.

When a carrier allowed its aircraft to fly beyond the deadlines, they put 200,000 people at risk. That is not acceptable.

Now we are seeing the fallout is coming as the industry realizes they have to correct their course.

I have news: We are going to stay on this course. Safety is the hallmark of the FAA, and we are going to make sure it remains or becomes again the gold standard for the world.

Thank you.

Mr. COSTELLO. I thank the Chairman, and the Chair now recognizes Mr. Scovel.

TESTIMONY OF THE HONORABLE CALVIN L. SCOVEL, III, INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION; D.J. GRIBBIN, GENERAL COUNSEL, OFFICE OF THE SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION; GREGORY PRINCIPATO, PRESIDENT, AIRPORTS COUNCIL INTERNATIONAL NORTH AMERICA; JAMES C. MAY, PRESIDENT AND CEO, AIR TRANSPORT ASSOCIATION, ACCOMPANIED BY GARY EDWARDS, DIRECTOR, FLIGHT CONTROL AND CHIEF DISPATCHER, DELTA AIRLINES; AND KATE HANNI, EXECUTIVE DIRECTOR, COALITION FOR AIRLINE PASSENGERS' RIGHTS, HEALTH AND SAFETY

Mr. SCOVEL. Chairman Oberstar, Chairman Costello, Ranking Member Petri and Members of the Subcommittee, we appreciate the opportunity to discuss efforts underway by the Department, FAA, and various stakeholders to improve customer service and reduce delays. Secretary Peters has made these issues a top priority within the Department.

Our statement will address the three areas the Chairman asked us to report on today.

First, an after-action analysis of the summer of 2007: Our work shows that multiple factors contributed to gridlock and record-breaking delays last summer. DOT ranked late-arriving aircraft as the number one cause of delays with carrier-caused delays and weather ranked number two and three respectively.

However, these categories lack considerable precision. To get a better understanding of the root causes, we focused on 15 airports with the worst delays last summer. In addition to the usual causes such as weather, other factors included:

Airspace bottlenecks in New York; this accounted for more than one-third of delays system-wide.

Airline scheduling; for example, 6 of the 15 airports had flights scheduled either at or over capacity during good weather, including JFK. As a result, even a small increase in operations or weather problems had cascading effects system-wide.

Excessive aircraft spacing on final approach added to the gridlock in the New York area and beyond and made aircraft arrival rates at JFK and Newark unreliable.

Whether this summer will reach the discomfort level of last year depends on a number of factors or wildcards. They include:

First, weather conditions as well as the impacts of a weakening economy and higher fuel prices on the industry. Three carriers stopped flying just last week.

Second, DOT, the airlines, and airports have taken steps to address the action items we outlined at the hearing last fall. However, many of the initiatives will not be in place by this summer. The key will be follow-through, execution, and implementation.

In response to our recommendations, the Department has issued two proposed rulemakings to establish specific targets for airlines to reduce chronically delayed or canceled flights, disclose on-time performance on internet sites and resume self-audits of customer service plans. These rules will not be finalized in time for the summer.

The Department also established a national task force to develop model contingency plans to minimize the impact of long on-board delays. The task force will report its results later this summer.

The airlines have taken some steps, but more needs to be done. Eleven of twelve ATA member airlines have defined an extended period of time for meeting passengers' essential needs during long on-board delays. The trigger thresholds for meeting passengers' essential needs vary from an hour and a half to three hours on departure.

Eleven of twelve ATA airlines have now set a time limit on delay durations before deplaning passengers or elevating the situation to senior managers for resolution. Again, the thresholds for deplaning passengers vary significantly.

Only four of the twelve ATA airlines have completely satisfied our recommendation to establish specific targets to reduce chronically delayed or canceled flights.

Most importantly, in our view, the airlines need to publish to consumers their commitments to improve customer service in their customer service plans and contracts of carriage.

Airports have taken steps to improve air travelers' experience, including a task force to address problems in the New York area and conducting workshops. Further actions are needed.

We reviewed 20 airports and only 3 have established procedures to proactively monitor long on-board delays that involve contacting the airline to request a plan of action. In our view, all airports need to do so.

Finally, actions are needed this year and next to mitigate congestion. Given that NextGen is a long-term effort, several actions are needed.

FAA needs to negotiate plans with the Department of Defense for using special use airspace to open up additional lanes of traffic. FAA needs to continue to address concerns about controller productivity and excess spacing on final approach while simultaneously training large numbers of new controllers. FAA needs to further expand the number of its airspace flow program locations to help reduce delays.

Airlines should attempt to level out the arrival and departure banks at hubs. Airlines have successfully done so in the past, which reduced congestion.

BTS, the Bureau of Transportation Statistics, and the Department need to analyze delay and cancellation data submitted by the airlines. This would provide Congress with a better understanding of the causes of delays and cancellations and solution sets needed.

That concludes my statement, Mr. Chairman. I would be pleased to answer your questions or questions posed by other Members of the Subcommittee.

Mr. COSTELLO. The Chair thanks you, Mr. Scovel, and now recognizes Mr. Gribbin.

Mr. GRIBBIN. Thank you, Mr. Chairman, Members of the Committee. Thank you for this opportunity to update you on initiatives taken by the Department to address airline delays and consumer protection or, as Jim Oberstar phrased it, to increase the margin of satisfaction.

We are all too familiar with the litany of statistics that demonstrate that action is needed on behalf of air travelers. One of the most compelling statistics is that last year almost two million flights did not land on time because they were delayed, canceled or diverted.

Over a year ago, the Administration identified the need to respond to the growing consumer impacts of aviation system delays. We launched a two-pronged attack on the problem: We are working to improve consumer relations and consumer protections and we are working to resolve the systemic failures that result in delayed flights, missed connections and lost baggage.

The Department has undertaken a number of consumer-specific measures. We have three current rulemakings that would help passengers know what to expect when they book a flight, allow us to step up oversight of chronically delayed flights and enhance protections for consumers who are bumped, experience delays or have complaints against the airlines.

Secretary Peters, as the Inspector General mentioned, has also formed a Tarmac Delay Task Force to develop model contingency plans for airlines and airports.

In addition to improving consumer protections, we are also working to address the underlying cause of much of the misery attributed to air travel, and that is congestion and delays. Flight delay problems including cancellations and missed connections are the number one air traveler complaint, as Representative Richardson illustrated.

Along these lines, the Department has done a number of activities, including the following: We have overseen the construction of 13 new runways allowing for 1.6 million additional operations.

We have reduced delays to implementation of New York airspace redesign.

We have capped operations at JFK and proposed capping operations at Newark.

We have appointed a new aviation czar.

We have worked on accelerating the deployment of NextGen technology.

We have established the New York Aviation Rulemaking Committee.

We have proposed amendments to our rates and charges policy to give airports more tools to manage congestion at the local level.

And, by summer's end, we will have completed all 17 of the operational improvements called for by the ATA and the Port Authority to address congestion in New York.

These operations improvements will be helpful, but they will not come close to providing the additional capacity needed to meet demand in New York. It is a bit like using a pillowcase as a parachute. It is helpful, but you still have a bit of a disaster at the end. Really, more needs to be done.

The cause of congestion at our busiest airports is not a mystery. It is a classic case of tragedy of the commons. Free access and significant demand for a finite resource ultimately dooms the resource to over-exploitation.

Our current structure dooms airports. In fact, last summer, some of the airlines recognized the dynamic and asked us to intervene and cap the New York City airports because the airlines understood and understand that their incentives are to over-schedule congested airports.

But to really address congestion, we have a choice between two fundamentally different approaches: administrative remedies or market-based solutions. We believe that moving towards a market-based system will reduce delays and contribute to an improved flying experience for air travelers.

Instituting administrative remedies, like caps, is an effective but not an efficient way to reduce delays. Caps limit capacity, stifle innovation and block competition. As a result, passengers get poorer service and pay higher fares. In addition, imposition of caps in the manner proposed by the airlines would result in a massive wealth transfer from the American public to the airlines.

For the better part of the last century, the world has engaged in an exhaustive debate on whether it is more efficient for governments to manage systems to meet consumer demand or whether management should be left to the markets. I can say that the results are in and that markets have won.

Pricing balances demand with available capacity. It results in less congestion and more reliable schedules. Pricing sends better signals as to where the system needs extra capacity, and it can supply the revenues to add such capacity. Pricing also can increase the number of passengers served in an airport even if the number of airplanes does not increase.

Market forces, however—and I want to make a point to highlight this—market forces do not address every policy problem with aviation congestion. Market forces do an excellent job of allocating resources to those who can realize the most economic value from that resource, but they do not allow for the societal value placed on certain activities such as access to airports by general aviation or the need for small community service. The Department recognizes this and will respond accordingly.

Let me conclude by saying I think we all agree that the American public deserves the safest and most reliable air system possible.

I want to thank you again for this opportunity to testify, and I look forward to your questions.

Mr. COSTELLO. The Chair thanks you, Mr. Gribbin, and recognizes Mr. Principato.

Mr. PRINCIPATO. Chairman Costello, Ranking Member Petri, thank you for allowing Airports Council International North America the opportunity to testify at this important hearing on aviation delays and consumer issues.

Our 366 member airports enplane more than 95 percent of the domestic and nearly all of the international passenger and cargo traffic in North America, and nearly 400 aviation-related businesses are also members of ACI North America.

We applaud the Subcommittee for its work on H.R. 2881 to provide airports the financial tools necessary to build new runways and terminals to meet growing airline passenger needs, the long-term solution to congestion and delays.

Air travel delays and complaints are rising. DOT's most recent air travel consumer report, released on April 3rd, indicates that complaints from consumers increased 13.3 percent in February, 2008, over the same month one year earlier and on-time arrival rates are down.

While these statistics are alarming, airports are working aggressively to enhance air travel by improving the airport customer experience during lengthy airline delays.

In January of this year, ACI North America convened an industry-wide workshop. The goal was to promote an exchange of information on providing excellent passenger care during extended delays and identifying new opportunities to better serve travelers.

To better enhance and strengthen airport contingency plans, the workshop identified immediate and near-term actions to be undertaken on a local and national level.

Immediate actions on a local level include coordinating individual airline and airport irregular operations plans to identify overlaps and gaps, communicate and coordinate to present consistent and accurate messages to both employees and passengers, and establish a network of stakeholder professionals that will develop, in advance, comprehensive guidelines that encompass all stakeholders' needs and ensure they are met.

Near-term actions include creating an irregular ops committee comprised of all airport stakeholders, development of a unified communications plan that considers the needs of all service providers, employees and the traveling public, partnering with local media for effective broadcasting of messages, and enhancing airport and airline web pages as a means of communicating real-time events to employees and the traveling public.

ACI North America is also reaching out to the FAA, TSA, CBP and others to explore opportunities by which Federal entities might enhance their operations during irregular operations, and we are working with ATA in doing that.

These actions, as well as some current best practices, have been provided to DOT's National Contingency Plan Task Force on which ACI North America, as well as representatives from several large and small airports, are actively participating.

Airports are taking a leadership role in identifying trends and patterns and recommending workable solutions for mitigating the impact of flight disruptions for passengers, both on the airplane and in the terminal.

Additionally, ACI North America staff is assembling a list of solutions that have already been effectively implemented by airports around the Country to provide to the Task Force at its next meeting on April 29th.

While airports are being proactive in finding solutions, the best solution to decreasing congestion and delays is to add additional capacity. However, in those limited situations where existing capacity is inadequate to meet demand and significant airfield capacity expansion isn't feasible, congestion management tools should be available to airport operators. That is why ACI North America supports the DOT-proposed rule regarding airport rates and charges.

There is one size fits all solution and, because of the unique circumstance at each airport's facilities, proprietors of congested airports need the ability to develop programs that are custom fit to specific local circumstances. Additionally, it is very important that DOT permit congested airports to build reasonable exceptions in their rates and charges to preserve small community access.

ACI North America also supports DOT's proposals to increase compensation for involuntary denied boardings as well as enhanced consumer protection from chronically delayed flights. However, given the growth of regional or feeder airlines, DOT should ensure that their operations are also covered by any new rules to ensure that passengers in both large and small communities have pertinent information on which to base their travel decisions.

ACI North America also remains concerned that flight delays and cancellation rates at many small airports continue to have a negative effect on abilities to make connections at large hubs and are disruptive to passengers flying to and from smaller communities.

In closing, ACI North America and its member airports thank you for the opportunity to share our views on this important matter. Increasing consumer confidence that the aviation system can work efficiently without extended delays and passenger inconvenience is important for both passengers and airlines. We are in this together.

We look forward to working with you as we continue to address these vital passenger issues.

Thank you.

Mr. COSTELLO. The Chair thanks you and now recognizes Mr. May.

Mr. MAY. Thank you, Mr. Chairman.

I am pleased to be accompanied today by Gary Edwards who is the Director of Flight Control at Delta Airlines. Gary is the person who is on the ground, handling all the day to day operations of a major airline and can answer a number of questions very directly from an airline's perspective. Ms. Richardson, for example, raised an issue that I am sure Gary can address.

I would remind the Committee as we get kicked off that we are really talking about two separate and independent but related

issues. One is the issue of increasing flight delays, and the second is customer service.

I would make two fundamental points to start. Number one, airlines hate delays. It cost us $9 billion last year. Within the last three or four months since Christmas, five carriers have filed for bankruptcy and gone out of business. Frankly, others may well be on the edge.

There are brutal economics in the business today. Oil is trading for airline purposes at about a hundred and thirty five to forty dollars a barrel. That is refining premium plus the basic cost of crude.

No one is more interested in making sure our planes get to their destinations efficiently and quickly than the airlines are, and an airline's delay is our worst enemy.

Secondly, we care deeply about our customers. Our customers are our livelihood. We are not satisfied with the status quo. We need to improve our customer service. We have been working hard to do that, and we need to continue. We cannot allow things to remain static, and we understand that.

So, first part of the equation, increasing flight delays, numbers are up. We have all seen them. They are not where we want them to be. This Committee is frustrated. Passengers are frustrated. Airlines are frustrated.

The real question is why are those delays up, and I think the answer is two-fold: number one, weather and, number two, air traffic control.

It is interesting. Twenty years ago, we had been focusing on the Northeast, both from the older airports like LaGuardia to the newer airports like Stewart in Mr. Hall's district.

Twenty years ago, we could handle, FAA could handle an average of 10 to 12 flights more per hour than they can today. You would think that with new technology the trend would be heading in the other direction, and it is not. It is going south, not north.

At the roundtable that you held, Mr. Chairman, we spent a number of hours sitting around and discussing some of the problems with NextGen, and the biggest problem with NextGen is it is not NowGen, and we need to move aggressively to get that changed.

I spent some time about three weeks ago with the air traffic controllers up in New York, and I spent time in the towers at Kennedy and LaGuardia and Newark. We went up to the TRACON in New York, and there are very serious issues and we need to address them directly. We need to involve the input of the air traffic controllers and others who are hands-on, and we need to, quite frankly, just get off the dime and get this done.

I disagree with my good friend in the Department of Transportation in suggesting that we are going to have pure marketplace solutions or "administrative" solutions. I think there have to be air traffic solutions because at the end of the day it is not just concrete and, in New York, we are not going to lay a whole lot more concrete.

It is the airspace and the congestion in that airspace provided by a minimum of 15 towered airports in that air traffic control system, and it is airspace that is being occupied not just by commercial aviation but by private aviation and business jets. I would like to submit for the record one of Mr. Scovel's best reports, Use of the

National Airspace System, which is an IG report that just came out that I think helps illustrate some of the problems in New York.

So we realize we need to do more to solve the problem. We are working with the FAA, the DOT and others.

Secondly, and a bigger part of the equation, is we need to do a better job with customer service. When we have delays, we have irregular operations, when we have customers sitting on the ground for extraordinary periods of time, we have to treat them properly.

I think we have made great strides in being able to do that. I know the numbers are up on some of the longer delayed flights, but by the same token I think our carriers have done a much better job of handling that.

We continue to work on our customer service commitments. We have them posted on our web site or in our conditions of carriage. We are continuing to revise them.

We are spending time with Mr. Scovel and the IG and working on the many different approaches that our friends at the DOT have engaged in this.

We are doing this internally. We are under constant review by you and ourselves, and we know we need to do a better job of doing that.

Mr. Chairman, I have run over time a little bit. I appreciate your indulgence. I am happy to answer questions that you or the other Members of the Committee might have.

Mr. COSTELLO. We thank you for your testimony, Mr. May.

Mr. Edwards, I assume you do not have testimony.

The Chair now recognizes Ms. Hanni.

Ms. HANNI. Thank you, Chairman Costello, Chairman Oberstar, Members of the Committee.

The active members of our coalition number 22,074 as of yesterday and growing. We are supported by U.S. PIRG, ACAP, Consumers Union, the Consumer Federation of America and Public Citizen. That totals about 52 million ticked off air travelers.

Among many coalition activities, we now operate a state of the art, round the clock hot line to talk with people in real time who are stranded on airline flights that have baggage problems, airplanes decompressing in flight which just happened last week, pilots complaining about a lack of sleep, every conceivable airline issue.

The number of planes stranded on airport tarmacs are far higher than reported by the airlines or DOT. Airline passengers are still being stranded without food, water, working lavatories and the passengers' option to deplane after three to four hours if it can be done safely. As recently as last month, American Airlines kept 17 aircraft on the tarmac at DFW for several hours beyond that airline's own non-binding 4-hour commitment.

I know this because we get the phone calls from the passengers inside those aircraft.

There have been many promises by the airlines about making progress and President Bush even got involved, directing Secretary Peters to address congestion and other consumer issues, but there has been very little permanent action. Even worse, the Federal courts have invalidated State passenger bill of rights laws on commerce and preemption grounds.

I have testified in most of the States bringing bills, and the ATA's argument and the airlines' argument is that they would prefer Federal legislation to State legislation.

The new DOT guidelines are, to put it mildly, adding insult to injury. It would let each airline decide what, if anything, they want to offer stranded passengers with no Federal review, no effective enforcement mechanism, plans for stranded passengers are relegated to one-sided contracts of adhesion. For their part, the airlines oppose even this ineffective DOT proposal.

Congress has the chance to address both the passenger bill of rights and safety scandal by enacting H.R. 2881, the FAA Reauthorization Act, which passed the House last year. There is agreement in the House and bipartisan agreement amongst most of the key players in the Senate.

The passenger bill of rights provisions can be added in conference as can any supplemental safety and inspection oversight measures. The bill already contains more funding for oversight and provisions relating to the dangerous off-shoring of inspections.

Unless the Congress acts on some version of passenger rights legislation this year, the cries of frustration from the tens of thousands of stranded passengers will not be heard.

The cries of thousands of people like me and my family who were held against our will without food, water and working restrooms in Austin or JFK or Philadelphia or Newark or Dallas or Los Angeles or Atlanta or January or a dozen other airports last year, all of those cries of despair will have been in vain.

Mr. Chairman, the FAA has failed us, as have the airlines. It is now incumbent on Congress to act.

Last week, we learned of the latest passenger issue, that planes were not being inspected and that safety inspections had succumbed to the worst kind of revolving door cronyism. News reports showed that the airlines literally thought they could use their cozy relationships with the FAA to silence whistleblowers. It is the kind of Katrina bureaucracy all over again.

Given the frustration of airline passengers and the new safety scandal, I don't think voters—Democratic, Republic or Independent—are in any mood for kicking the can down the road. This has to be the can-do Congress when it comes to passengers' bill of rights and safety.

Mr. Chairman, we are doing our best to urge the Senate to act. I have been to every Member of the Finance Committee's office so far this week.

For your part, we ask that you oppose DOT's advancing its nonregulating regulation, just turning the issue back to the airlines for their voluntary actions. Congress tried that unsuccessfully in 1999. Fool us once, shame on you. Fool us twice, shame on us.

I would be pleased to answer any questions that you might have.

Mr. COSTELLO. The Chair thanks you for your testimony, and we appreciate your organization and everyone else, the efforts they have made attempting to get our colleagues in the Senate to pass an FAA Reauthorization Bill.

I have said many times, publicly and privately, to our colleagues over in the Senate that we don't necessarily believe that they have to just rubberstamp the House bill but pass a bill, just their

version of a reauthorization bill, so we can get it into conference and work out our differences. I think the differences are slight, and they can be worked out.

So we, again, appreciate your efforts and encourage you and everyone to continue to impress upon the Senate the importance of passing this legislation.

Let me just inform our colleagues that we have been told about 3:45 to 4:00 we will have series of votes probably lasting anywhere from, oh, an hour and 15 to an hour and 30 minutes. So I will proceed with questions as quickly as I can and get to you for your questions. I will also submit some questions for the record.

Let me also say that the National Business Aviation Association has submitted a letter that they would like to be inserted in the record. At this time I would, with unanimous consent, insert this letter into the record, without objection.

Mr. Scovel, one, thank you for your testimony. As I said earlier, you have been before us many times. We appreciate your hard work, and I know that we have thrown a lot of work your way and there is a lot more coming.

First, let me ask you, you state in your testimony, that I read last evening and went through it again this morning, that DOT has taken a more active role in airline customer service issues. What additional steps has the DOT taken to improve oversight in this regard.

Mr. SCOVEL. You are referring to customer service in particular, sir?

Mr. COSTELLO. Customer service, yes.

Mr. SCOVEL. I would like to note at the outset that my staff, as you have correctly noted as well, has been active in this area now for almost 10 years. Apart from the immediate aftermath of 9/11, when the airline industry was in a great deal of turmoil, the veterans on my staff have rarely seen the Department, the airports, and the airlines convene together as they have and move as quickly as they have on a number of different fronts. We would like to give them all due credit for that.

The Department, in our view, has moved extraordinarily fast and has accomplished, we think, a great deal within the legal restrictions that rulemaking essentially requires.

We would commend the Department especially for including in its proposed rulemaking a requirement that airlines post on their internet sites their on-time flight performance information. We think that will be a great help to the consumer.

We would also commend the Department for requiring airlines to continue or to resume the audits of their customer services plans. There have been a number of different areas where the Department has moved forward on the customer service front.

We have good news and bad news, I think, when it comes to the airlines and the airports, but for the Department at this point, we are pleased with what they have done.

We have our scorecards out. We want to see some of the results when the proposed rulemaking and the comments have all been returned and evaluated, and we would urge the Department to approach those comments and their final rulemaking progress in a

very hard-nosed manner because the circumstances call for it at this point, Mr. Chairman.

Mr. COSTELLO. The question for the entire panel, and I think I can probably insert Mr. May's answer already before I ask the question, but the question is: Does anyone on the panel believe that if we do not pass, the Congress does not pass a passenger bill of rights or some type of consumer protection, that it should be left up to the airlines to manage on their own, that it will in fact be managed by the airlines?

Anyone on the panel other than Mr. May want to comment?

Mr. GRIBBIN. I would like to go ahead and comment on that.

I think Ms. Hanni's comments were good, but they were slightly inaccurate in saying that there is no enforcement mechanism over what the Department has proposed in our ANPRM.

While it is true that we have said that the airlines ought to decide what plans are available in the case of significant tarmac delays, we have also said that they have to audit those plans and we have the legal authority then to oversee the audits of those plans. So if the airlines put forth a plan and are not abiding by that, we do have the ability to enforce the airlines by that.

That said, we do think it is the best policy that the airlines decide.

Mr. COSTELLO. Several of the issues that you have included in your consumer protections passenger bill of rights, whatever you want to title it, came directly from H.R. 2881. I would like you to tell us what provisions that you have included that are not in the House bill that was passed on September 20th.

Mr. GRIBBIN. I don't have in front of me a side by side.

Mr. COSTELLO. Is there anything that you can name off?

Mr. GRIBBIN. I can quickly run through. We have seven different items. It is true that there is a fair amount of overlap.

Mr. COSTELLO. Without going through all seven because we have limited time, we understand what provisions are in the House bill and we understand that many of the provisions that you have came from the House bill. But is there anything off the top of your head that you can name that is not contained in the legislation that we passed?

Mr. GRIBBIN. Most of the provisions we have are similar to what was in the House bill and similar to what was in the New York passenger bill of rights and reflects a number of the passenger bill of rights that are being considered.

I think the significant difference is the amount of flexibility given to airlines and the airports to develop plans on their own and the number of Federal employees we would have to hire to oversee that.

Mr. COSTELLO. Mr. Scovel, in your testimony, and this has been an issue that we have discussed in this Subcommittee before. You note that, and I will quote, and this is just one example. There are many others with other airlines that I can give.

You have in your testimony: "For example, Northwest Airlines has scheduled 56 departures in 1 15-minute window at Minneapolis-St. Paul, nearly 3 times the airport's departure capacity for that window."

Now when an airline scheduled 56 departures, 3 times the capacity that can be handled in that 15-minute period, what that means is that people will be sitting on the tarmac and that there will be delays, correct?

Mr. SCOVEL. Absolutely correct, Mr. Chairman.

Mr. COSTELLO. And, we have seen that at other airports as well.

I guess the reason that I bring this up is that we know that before we start out. We had examples that we pointed out to another Committee that has jurisdiction over a part of the FAA Reauthorization Bill, that in the New York area, where airlines are scheduling more flights than humanly possible to take off during that period of time.

We had the air traffic controllers come in when we were trying to determine in the passenger bill of rights what should the window be. Should it be two hours? Should it be three hours? Which should it be?

The air traffic controllers, when we showed them figures like you are demonstrating here, 56 departures in a 15-minute window, it is impossible to do.

So my question, Mr. Gribbin and to you, Mr. Scovel as well but Mr. Gribbin in particular: When the Department of Transportation sees that airlines are scheduling three times as many flights as humanly possible to get out in that time frame, a 15-minute time frame, are you taking action? Are you negotiating with the airlines to reduce the number of scheduled flights that we know that will result in delays?

Mr. GRIBBIN. What we do is we have our new rule on chronically delayed flights.

Mr. COSTELLO. Can you move a little closer to the mic?

Mr. GRIBBIN. We have a new rule on chronically delayed flights that, in essence, if a flight is delayed chronically over a period of time of two quarters, then we penalize them. So that is the incentive we have for airlines not to schedule at a time that they know they can't meet.

Mr. COSTELLO. How long has that been in effect? How long have you been using it?

Mr. GRIBBIN. It has been in effect this year. We put it into effect last year. So it has been in effect almost a year now.

Mr. COSTELLO. How often have you sat down and negotiated with airlines and said, look—to Northwest or United or whoever it may be—you have more flights scheduled in this 15-minute period than possible to take off and actually negotiated a reduction in flights in peak times?

Mr. GRIBBIN. Well, what we do is more backward looking. We look at the flight data as it comes in and as flights are delayed, we will sit down with the airlines on a periodic basis and explain what data we have and make sure that it is accurate for what actually happened.

The tool that we have put in place to remedy the problem, you addressed, is our new rates and charges policy.

Right now, airports don't have the ability. When airlines come in and schedule flights all at the same time, they have no ability to move those flights to make it more rational to the public. And so,

with the rates and charges policy, they could actually use pricing to move flights out of peak times to avoid that very scenario.

In addition, we have also, as part of the ANPRM, suggested that, as the Inspector General mentioned, that consumers be told when flights are delayed.

The problem we have right now is exactly what you pointed out. Airlines are scheduling. Consumers want to leave at a certain hour. So airlines know that, and they schedule more flights in that hour than could possibly leave because there is no mechanism to prevent them from doing that and because competitive pressures drive them in that direction.

I think that the problem we have right now is not so much that airlines are scheduling a lot of flights in a certain hour. It is that we have developed a system that incentivizes that type of behavior and we haven't provided the tools to discourage it.

Mr. COSTELLO. But you know the problem exists and has existed for a long time now.

Mr. Scovel, I wonder if you might comment.

Let me mention as well that in our bill that we passed out of this Committee and out of the House, we give the Department of Transportation, the Secretary, the authority to sit down and not just negotiate with airlines as to if they have scheduled too many flights in a period of time that is impossible to achieve. They have the authority to tell the airline that you are going to reduce the number of flights in this peak period or particular time.

Mr. Scovel, I wonder if you might comment on DOT's role in stepping up and taking action when it is very obvious that scheduling like this results in people sitting in airplanes on the tarmac and flights not getting off on time.

Mr. SCOVEL. Mr. Chairman, as we have testified before, we think an informed consumer is more likely to be a satisfied consumer. So, if information is posted on an airline's internet site, that is tremendous.

However, we think that the way the Department has approached chronically delayed flights leaves much to be desired. For years now, we have urged the Department's Office of Aviation Enforcement and Proceedings to proceed legally against airlines that have engaged, in our layman's view, in deceptive practices by advertising flights to take off at a certain time.

We think the way the Department has set the measure of what constitutes a chronically delayed flight is far too narrow. Under the Department's rule, 200 flights per quarter, on average, might be labeled chronically delayed because the measures, according to the Department, should be any flight that is more than 15 minutes late 70 percent of the time. It is a very high bar. Only 200 flights perhaps might qualify.

Our office has urged a lower bar that we think would more correctly reflect the concerns of consumers. We have urged a 30-minute delay, certainly as a concession some to the airlines and airports. However, we have also urged that 40 percent of the time be set as the time limit to mark when a flight is running late. If that were to happen quarter over quarter, then we would hope that the Department would proceed against the airlines.

Mr. COSTELLO. Final question and then there are other Members who have questions, and I have a number of others that hopefully we will get to. If we don't, I will submit them to you in writing.

Mr. Scovel, you just said that you have recommended and this Subcommittee knows that you have recommended to the Department of Transportation that they take action, legal action against airlines that engage in "deceptive" practices which, of course, would mean advertising flights when they know that they are not going to get off on time.

Have you see the Department of Transportation take any action based upon your recommendation?

Mr. SCOVEL. Not yet, Mr. Chairman. We are reassured by the Department's new emphasis on rulemaking and protection for the consumer, and we are hoping to see the statistics reflect this.

Mr. COSTELLO. How many years have you or your office, the Inspector General's Office, made this recommendation to the Department of Transportation?

Mr. SCOVEL. I believe I can state four. It might be longer than that.

Mr. COSTELLO. So, for at least four years, you have been recommending to the Department of Transportation that they take legal action against airlines that engage in deceptive practices and, as of right now, you cannot cite an example where they have taken action?

Mr. SCOVEL. I have been handed a note by a member of my staff, and I will stand corrected. Since February 2001, Mr. Chairman, we have been making that recommendation.

Mr. COSTELLO. Since February, 2001, you cannot cite one example where action has been taken by the Department of Transportation against an airline?

Mr. SCOVEL. Not to my knowledge. However, we will certainly take that question for the record if we may and provide you with a detailed answer.

Mr. COSTELLO. In fairness, I think I should call on Mr. May who is here on behalf of ATA and pose both questions to you.

Number one, Mr. May, you have heard the Inspector General and I have cited the example that he gives, 56 departures in a 15-minute window. Why would an airline schedule 56 departures in 1 15-minute window when they know that it is impossible for all 56 of those flights to depart on time?

Mr. MAY. I appreciate, Mr. Chairman, your turning to me in fairness and, in equal fairness, I cannot give you an answer to that. I saw that in the IG's report, and I don't have a good answer for it.

Mr. COSTELLO. I can tell you in trying to put together the consumer protection provision in the reauthorization bill, we spoke to probably everyone at this table, asking for their opinion on various provisions, and we spoke to a lot of people including the air traffic controllers. We found example after example where that has taken place, where an airline has scheduled, in this case, three times the amount of flights than humanly possible to take off.

It is a major issue that the Department of Transportation and the airlines need to address.

With that, I have taken far too much time.

Mr. MAY. May I?

Mr. COSTELLO. Sure.

Mr. MAY. On a second point that was raised here, Mr. Chairman, staff have helped me out here. In 2008, there have been 5 consent orders by the DOT. In 2007, there were 28 consent orders. There were a series of fines. There is other recent enforcement activity.

So there are active enforcement provisions that are being pursued by DOT, and I would be happy to submit this for the record.

Mr. COSTELLO. I would like that for the record and would like to pursue it a little more, but unfortunately I have others who have questions.

With that, I would recognize the Ranking Member, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman, and again thank you for holding this hearing.

I wonder if I could just ask Mr. Gribbin to expand a little bit on the remedy of, I guess you call it, market-based or congestion-based pricing. You indicate in your written testimony, this was attempted or implemented at LaGuardia Airport for a while, but seemed to be against the rules.

The idea that an airport would know what the capacity would normally be at certain times of the day, and they therefore could vary the price that they would charge airlines for scheduling flights at different times, so that if they attempt to over-schedule or jam in they could price them out and that would tend to even things out. Obviously, they would have to pass some of that on, and people would have to pay more, but that again would influence the demand for those times.

Is that the idea, and this would make money available to the airports to expand if they reaped additional revenue by congestion pricing in that way?

Could you explain why that it is and then I would like to ask other members to comment?

Mr. GRIBBIN. I would be glad to.

As the Chairman mentioned, you have a situation right now where competitive pressures and a number of factors lead airlines to, in essence, over-schedule an airport or schedule more flights than an airport can handle in a given period of time.

The Department released a rates and charges amendment to our rates and charges policy to give the airports the ability to adjust the cost of landing fees during the course of the day, and those need to be revenue neutral. So while those traveling at peak periods may pay slightly more, those traveling in off-peak periods would benefit from a corresponding savings.

So we think that right now the best way to manage congestion in airports, where you can't have expanded capacity—like in the New York area you really are hemmed in the additional amount of capacity you could add—that airports be given the flexibility to adjust prices during the day, similar to what utilities use.

With cell phones, we have free weekends. Why? Because there is extra capacity. So they want to drive usage in that direction. Most utilities charge higher prices during peak times.

So we think that exact same principle applied to airports does two things: One, it helps reduce congestion. But, secondly, it helps

allow for new entrants, it encourages continued competition and allows for the market to work.

Mr. PETRI. That would require a change in the law to accomplish?

Mr. GRIBBIN. That would not require a change in statute. It would require a change in our rates and charges policy.

As the Inspector General mentioned, right now with reauthorization still pending, the Department is somewhat hamstrung in what we can do. And so, what we have done is we have pursued a number of remedies to this problem that we are able to do under existing law.

This is a hearing on delays and consumer issues. All of our data shows that the number one consumer issue is delays. If we can avoid delays, if we can manage congestion, we don't end up in situations where people are trapped on tarmacs for hours.

Mr. PETRI. You could do it, but you have not yet thought, for a variety of reasons, that it made sense to do it to solve this problem?

Mr. GRIBBIN. We have actually proposed an amendment in the policy. The comment period ended on the 3rd of this month. We are reviewing comments and then will come out with a formal change in our policy later this year that will then give that freedom to airports.

Mr. PETRI. So any comments on this proposal, Mr. May? I see you.

Mr. MAY. I would hate to disappoint my colleague from the DOT by not commenting at this time because he well knows my views on this and those of a number of other leading legal scholars, including Ted Olson, who have very serious reservations as to whether or not the DOT enjoys the statutory authority to pursue this kind of congestion pricing.

We don't think it has ever been tried in a network environment other than probably electricity. It certainly has never been tried in a network environment in aviation.

It was used at Logan Airport at one juncture a number of years ago against GA to drive GA out of Logan Airport. It hasn't been applied to commercial scheduled operations.

We think it is nothing short of a tax on passengers. If you are trying to Europe through JFK, and in your situation you would probably do it somewhat differently, using different hubs and carriers.

But if you wanted to go to Europe through JFK, you are going to connect at JFK with a feeder flight that is coming in, a Delta flight or an American or somebody else, and you can't afford to go up to Stewart Air Force Base and take a 60-mile ride down the Hudson from Poughkeepsie to get there. So, effectively, the pricing that is being applied to your flight is going to be a tax, and you are going to still want to have to fly through JFK in New York to get to Europe, but you are going to be taxed to do that.

No guarantees that the money ever goes to improving air traffic control. We don't think it has anywhere near the benefits of real meaningful improvements to Next Generation air traffic control systems, and so we have a very fundamental difference starting with the legality of it, going through the practicality of it and the history of it, just for the record.

Mr. PRINCIPATO. Congressman Petri, if I could from the airport perspective.

As Mr. Gribbin indicated, it does have to be revenue neutral. You had talked before about making more money available for airports. It does not.

I think it is important to know that airports already do have the ability to do a two-tier pricing. The Port Authority of New York and New Jersey, I think San Francisco, have minimum landing fees which essentially is a two-tier system. It is not just a weight base. So there already is a certain amount of authority to do this.

In terms of the two-tier pricing, the DOT's policy is to clarify the current rule, not to really set something new.

You know 56 flights in 15 minutes probably is a rational, short-term economic decision I guess somebody makes. A lot of people want to fly between 8:00 and 8:15 in the morning. So they will sell a lot of seats during that time. But no amount of NextGen or NextGen plus 10 is going to get those 56 flights off in those 15 minutes. It is just not going to happen.

And so, we do need to look at some other issues: more capacity on the ground; obviously NextGen, NowGen, whatever you want to call it; and, as Mr. Gribbin has indicated, giving airports the flexibility through this new rates and charges policy to look at them, using pricing as away to move some of this around.

As I said, airports already have some of this authority to do this. Not a lot of airports do it. Not all airports will do it. Most rates and charges are set in negotiations with the airlines. Airports and airlines work very closely together on this.

So I don't foresee a flood of airports coming in and beating the airlines over the head with this, but it is a tool that can be used while we wait for that new capacity on the ground that you all included in the reauthorization bill. While we wait for NowGen, NextGen, whatever we want to call it, it is another tool for airports to use that address the very issue you are talking about.

Mr. COSTELLO. Thank you.

The Chair now recognizes the gentleman from Oregon, Mr. DeFazio.

Mr. DEFAZIO. Mr. Chairman, there were some others here before me. I do want to ask questions, but I will let you go ahead.

Mr. COSTELLO. The Chair now recognizes the gentlelady from Texas.

The Chair now recognizes the gentleman from Tennessee.

Mr. COHEN. Thank you, Mr. Chairman.

Mr. May, in your testimony, you emphasize the importance of helping passengers caught on the tarmac during periods of excessive delay. How long do you believe an aircraft should have to wait or a passenger in an airline should have to wait before that aircraft is required to return to the tarmac?

Mr. MAY. Required to return to the terminal or passengers given some right to get off?

Mr. COHEN. Yes.

Mr. MAY. Congressman, I think it is a flexible answer. There is no single answer. It is why we have always opposed a hard and fast rule.

I think it depends on the airport. I think it depends on the conditions that are causing the delays. I think it depends on the type of aircraft, the destination. There are a number of different factors.

All of our carriers, every single one of them, have set a time frame for decision based on their best information. I don't think any of those time frames for a decision exceed two hours, two and a half hours and almost all of them, if not all of them, have set hard and fast deadlines that range in the three hours to I think JetBlue is at five hours time frame.

Again, it depends on the circumstances. It could well be that in more extreme circumstances we are actually pre-canceling those flights before they leave the terminal because, quite frankly, we know we are not going to be able to get them out in time.

Mr. COHEN. Mr. May, I would just submit to you that your perspective is that from the airline industry, which I understand, but there is a constant in terms of how much a human being can withstand. I don't care if you are in Tupelo, Mississippi or if you are in New York City, if you are on a little Cessna or if you are on a big Boeing plane. A certain amount of time sitting in a fuselage, not knowing what is going to happen, without food, fresh air, bathroom facilities, there is a constant.

There must be a minimum time that a human being is not put under the indignities that they have been on these terrible delays. Now what is that minimum time from a human perspective?

Mr. MAY. Congressman, I also bring a human perspective as a multimillion mile flyer for Delta before I took this job. So I understand exactly what you are saying.

I think there is a human factor involved that is not only conditioned upon where you are going, what kind of an airplane you are in, what the weather conditions are, but also I think there is a condition that says I would rather get to my destination and suffer some delay in getting there than to have the plane go back to the terminal, get canceled, not be able to get on a connecting flight that day or the next day and lose that opportunity.

Mr. COHEN. Is seven hours too long to be without a bathroom and water?

Mr. MAY. Sure.

Mr. COHEN. What is? There has to be a time. Five hours, is that too long?

Mr. MAY. I think most of our carriers have said four or five hours is a time they need to bring back. If you lay out examples of seven hours, and I know they exist. I have been on one for nine hours in Dallas-Fort Worth, as a matter of fact, on American early in my career.

So it is too long. It is not acceptable, and I think we have to do everything we know how to do to make sure that we reduce and eliminate the number of times that those occur.

Mr. COHEN. You oppose Federal legislation to have a minimum?

Mr. MAY. We have. We have consistently opposed a hard and fast time line, and the very reasons are that we are going to be creating more problems, untended consequences for our customers than not.

I think having a rule that says you have a decision time frame, having a rule that says you have to have folks, based on your own

operations, out of there after a certain decision time frame is an appropriate way to go.

Mr. COHEN. Let me ask you this, and it might have been Mr. Gribbin who referred to it but market conditions. You are an advocate of market conditions, are you not?

Mr. MAY. I am not an advocate of the same market conditions that Mr. Gribbin is.

[Laughter.]

Mr. COHEN. That is some inside baseball, I guess.

If we have a merger of airlines and there is talk of Delta and Northwest merging, and I see Northwest is much better on some of these charts that Ms. Hanni has given us.

If there is a merger, does that not make it more likely that we will need governmental regulation to assure that the public has improvements because the market will be reduced?

Mr. MAY. I don't know that I would agree that one follows the other, Congressman.

I mean you get Northwest in your market. They are your principal carrier in Memphis, and they do a terrific job there. If there were to be a merger, I am sure they would continue to do a terrific job there.

Mr. COHEN. As long as they continue to do a terrific job there and not some other city, yes.

Mr. MAY. I can't ever imagine Northwest not continuing to serve Memphis in a very robust fashion.

Mr. COHEN. Thank you, sir. Those are good words. We still should have won the tournament.

[Laughter.]

Mr. MAY. But can you take solace in the fact that Tennessee won the ladies' tournament?

Mr. COHEN. To be honest, no. I am from Memphis.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Good to have all of you here.

Mr. Scovel, you mentioned aircraft spacing may have had an effect on delays and congestion in New York airspace. I want to put a three-part question to you. In what way was it affected, and were aircraft spaced separately in situations where it was not warranted, i.e., clear weather, and, thirdly, what is the effect on delays in these situations?

Mr. SCOVEL. Good afternoon, Mr. Coble.

I think you are referring to excessive spacing on approach, which is in mentioned in our testimony today.

Mr. COBLE. Yes.

Mr. SCOVEL. What we have learned in talking with authorities at New York most recently is that they have identified a practice among air traffic controllers there in the recent past. This practice spaces out in further distance the aircraft that are on final approach to their airports, a longer distance than is required by FAA regulations.

Typically, on approach it is three miles. There is a little bit of fudge factor there. Sometimes we have been told through FAA and New York authorities that the distances have been stretched an ad-

ditional two to three miles, and we have been told by the airlines that it may even be farther than that.

The result is, of course, a ripple effect throughout the airspace, with fewer aircraft being able to land and delays ensuing.

FAA has not been able to directly quantify the problem in any great depth to our satisfaction. However, it has provided us with at least one factoid, if you will, which was: this past February, had excessive spacing on approach not been in effect, FAA estimates that in one 2-hour period perhaps 22 more aircraft could have been brought down safely. So that is the result.

To some extent, a question that needs to be examined is whether air traffic controllers are properly, in their eyes even, reacting to an emphasis by FAA on getting control over operational errors. On this final approach question, an operational error might be when an air traffic controller brings two airplanes too closely together in final approach, below the three-mile limit. Air traffic controllers then, of course, try to err on the side of caution and stretch out the aircraft under their control.

FAA has attempted to deal with that, but clearly it is an area that needs more study, and in this context it is a practice that may feed delay and, of course, give rise to consumer dissatisfaction.

Mr. COBLE. As you pointed out, the ripple effect is the problem. One plane extending the space would be no problem, but when you have a dozen it is a different ball game.

Mr. May, you heard me mention in my opening statement about the measures that you all implemented to address the increased demand during the holidays. Are those measures still being practiced?

Mr. MAY. One of the measures that was most helpful during the holidays in particular is not, and that is the use of military airspace. I know that FAA and DOT have engaged in discussions with DOD to try and take advantage of the use of military airspace, punch a lane through off the East Coast, and have not yet been successful in achieving accord on that particular issue.

I would hope this Committee could add some particular emphasis added to the need to have that in particular. When we get to the summer months and convective weather, it would be particularly helpful.

Otherwise, I think we had a fairly smooth both Thanksgiving and Christmas holiday season. Easter went reasonably well, and so we are now approaching the summer, and we need to keep our eye on the ball for all of those issues.

I would like to emphasize what Inspector General Scovel said on the controllers. To put a not too fine point on it, there has been a real dispute between FAA management and the controllers, and I don't think it is any great secret. To the extent that FAA management was enforcing operational errors to the letter, the controllers made a determination that they were going to enforce the letter of the law to the letter, and they spaced planes out.

I think there is a far better working relationship with Hank Krakowski today and the controllers than there has been historically. He is a real star in our book. He is the new head of the ATO.

I think the relationship he has with NATCA is particularly positive, and I think that there will be some real serious operational

improvement available to us in New York. By bringing the controllers into the debate and the dialogue, it is very important.

There is a classic example there with one of the operational changes for New York airspace is to add some additional departure points on exiting the airspace. Well, if you don't have enough trained controllers sitting in the TRACON to, if you will, catch those flights—it is a term of art that the controllers use—then you can add as many departure points as you want. It is not going to do you any good because there is nobody there to man that center to be able to handle those flights.

I think it is the little things like that that make a big, big difference in productivity, in moving more and more flights through there. I think a lot of it is not going to yield more noise as a lot of constituents have, but it will just be more positive. Changing some of the boundaries, that sort of thing could make a big, big difference.

Mr. COBLE. Thank you, Mr. May.

Mr. Chairman, I see that infamous red light. Could I ask one more quick question?

Mr. COSTELLO. Yes.

Mr. COBLE. Thank you, Mr. Chairman. I will now be brief.

Mr. May, as you know, in the past few weeks three airlines have ceased operations, and one of those carriers had a prominent presence in my district, which of course is of interest to my constituents. Are your members doing anything or are you able to do anything to help accommodate individuals who had purchased flights on those airlines?

Mr. MAY. We are doing what we can, Congressman Coble, to accommodate those, but it is a problem that runs throughout the industry right now. I had some relatives that were on an Aloha flight that we needed to get reaccommodated, and it was a difficult task to do that. We had to buy additional tickets and eventually wait for a refund to come back from the creditor system at Aloha.

So it is an issue. It is one we are worried about.

We are worried more that somebody do something or try to do something about the one hundred and thirty-five or forty dollar oil that we are paying for because there are five carriers since Christmas that have gone out of business. There will be more if something isn't done about high oil prices.

Mr. COBLE. Thank you, Mr. May.

Thank you, gentlemen.

Thank you, Mr. Chairman.

Mr. COSTELLO. I thank the gentleman and the gentlelady from California, Ms. Richardson, is recognized.

Ms. RICHARDSON. Yes. Thank you, Mr. Chairman.

I just have one question, and I believe it is to Mr. Principato.

My question has to do with in your testimony it states that airports are being proactive in assisting airlines and their passengers when lengthy delays occur. Can you give us more information on what specifically is being done?

Mr. PRINCIPATO. Last summer, when this really came to the fore, DFW convened a meeting of airlines and airports, got together to begin the process of coming up with some plans. We convened a similar meeting soon afterwards.

Things like proactively working together to make sure that the airports and the airlines both have the same information about what the needs are, making sure that concessions are open in cases where you have lengthy delays, so what happened to Ms. Hanni and her family won't happen again, we hope.

I know at one airport, they sort of opened up—maybe it is DFW—an automat kind of situation. Those of us who grew up in the Northeast remember Horn and Hardart. You walked in. You put in the money. You don't need somebody to sell it to you. It is a machine, so you get sandwiches and real food.

Having concessionaires that would carry things like diapers and baby formula because those maybe aren't the normal things you can find in an airport at night.

Working with the Red Cross and local pharmacies to make sure that people have access to prescriptions.

Two quick examples: There was a situation at DFW a couple of weeks ago where there was some weather. I think it was 1,000 people who were there overnight. Because of the great work that DFW has done with its airlines and everybody else and its concessionaires, Kate maybe can correct me on this, but I don't think her hot line received on real complaint about how they were treated that night. Things went very, very well.

In Northern California, in early January, there was some really bad weather. There were hurricane force winds, if you remember, back in that period of time. In Fresno—Fresno, California—they had a plan that they worked out before Thanksgiving, that they put into effect when that happened.

I brought the e-mail from Russ Widmar who is the director up there. They had more than 20 flights diverted to their airport. They are not used to having that many land all at one time.

Ms. RICHARDSON. Excuse me.

Mr. PRINCIPATO. Yes.

Ms. RICHARDSON. I appreciate everything that you just said. Part of my question was related to that. It was also related to what can do to assist passengers prior to even getting to the airport and knowing that there is a delay.

Mr. PRINCIPATO. Right.

Ms. RICHARDSON. Let me give you an example of what I mean, the scenario I just said in my opening comments. I received nothing on a cell phone, nothing on an e-mail, nothing on a text message. These are the types of the things.

I mean you are talking about after the problem has occurred. I am talking about what we can do to assist passengers on the front end which I think is just as important, so why we don't do recorded phone calls.

I remember there was a while ago when you would make a reservation and they would say, well, is there a number to contact you in case there is any issue with your reservation? I don't know if that is still being done, but I can tell you here in my office no one received a phone call, and no one has received a call for the six months that I have been here of any time when my flight has been delayed.

Mr. PRINCIPATO. Well, of course, from their point of view, we don't know, for example, that you are booked on a certain flight.

So we wouldn't be able to let you know that your particular flight was delayed. That is really the airlines, and Jim may have something to add to that.

Certainly, we are trying to work with the airlines to get general information out about delays and so forth, but I know that Jim would like to jump in.

Mr. MAY. Ms. Richardson, Gary Edwards handles those responsibilities in part, among many other things, for Delta Airlines and may have a comment on that.

Mr. EDWARDS. Thank you, Jim.

Congresswoman, what we do at Delta is, well, you do sign up. You either get a text message to your PDA or a phone call. We try to get in front of situations like that. I don't know the instances in this situation.

I would like to share something with the room just for a moment, though. It sounds like you fly once or twice a week and, by the Government's own statistics, you have a favorable experience three out of four times.

I live it every day. Nobody is more frustrated about delays and cancellations than I am. I fly 1,500 times a day, 4,000 times a day if you include my connection partners.

I am sitting in our command center in Atlanta, watching this very instance we talked about, the arrival rates into New York. It is a clear, sunny day. Everyone is at the airport, and everyone is on time. Today, we are at 90 percent on time, and out of the blue I start getting delays. I get a ground delay program. Delays start cascading through the system, and there is no reason for it.

The next day, with a different set of controllers on duty, we fly in and out of New York and there are absolutely no delays. Nothing is going on. It is a 90-92 percent on-time day. So that is the part where we in the industry are extremely frustrated. I am sorry, I am off the point.

We at Delta, we have processes in place, a lot of automation, whether it be a viewer you can touch, if you sign up, if you are a frequent flyer, you get e-mails. You get it on your PDA. You get a text message when we know about the delays.

If we go to the airport and the crew is doing their walk around and find a leak there or something that we didn't know about or we have, like we had Friday in Atlanta, we had two eyescopes go out of service unannounced when we had fog at the airport, one of the best airports, the best airport in the NAS, and we had two-hour delays that we had no idea about until it happened just like that.

Ms. RICHARDSON. Okay. My time has expired. Maybe more appropriately with the Inspector General, I am looking for a more across the board policy.

I do not occasionally fly on your airlines. I can tell you with the airlines I do fly on there is not this policy because, as I said, for the last seven months I don't recall us getting any calls or any notifications of any delays. The only time we find out a delay is if we initiate the call.

In terms of the airport, I am simply throwing out the idea: Have we thought about maybe having some screens kind of when you drive up and you got to the movies and you see what movies are playing and what time it is?

Maybe we can get a little forward thinking as people. Many airports, when you are coming up, it says tune to such and such radio station to get an update. Maybe the radio station can be advising people.

Maybe you can have some screens at the airports so people aren't going through parking, going through security, all of that when you actually know that there is a problem.

But I would like to yield because I have extended my time.

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

Mr. LIPINSKI. Thank you, Mr. Chairman.

I will try keep this relatively brief. I know Mr. DeFazio there is itching to go here.

Mr. DEFAZIO. Why don't you go right ahead? Make me look like a nice guy.

Mr. LIPINSKI. I don't know if I can make you look like a nice guy.

Chairman Oberstar had mentioned in his opening statement and talked about the Mr. Lipinski, who used to be on this Committee, used to talk about re-regulating the airlines. I just wanted to make clear I am not there yet.

I think, though, first of all, we have a problem if we are just talking about two ends of the spectrum saying, well, we either have a free market or we have complete regulation of the airlines. Our system is supposed to work where we are somewhere in the middle.

First of all, I don't think there has been enough of an effort, and I think the passenger bill of rights or whatever you want to call it that we put here in the House FAA Reauthorization Bill is a good place to start, but any kind of rules or regulations that are put in place need to be actually enforced.

Unfortunately, we have seen what has happened with the FAA in terms of the maintenance and the problems going on there. I certainly think that enforcement is really key.

We cannot say that the system is working well now. Ms. Hanni would not have the strong support that she has from so many people if the system were working well now. So we have to figure out where do we go from here.

I know the airlines are hurting, financially hurting. We have seen three airlines go under very recently, and we do not see a situation where it is not viable to run an airline in this Country. However, that should not be an excuse to squeeze everything possible out of the flying public.

The dissatisfaction with flying, it seems to be at a point where we are just supposed to be happy if we get there safely no matter what happens to us in between that time. It did not used to be that way.

I think some of the problems that have been talked about here, but one thing that I certainly see is a lack of information given to people when they are flying. One thing that I have mentioned before in hearings, flights being canceled for I don't see any reason why the flight was canceled.

Ms. Richardson was talking about information. I have a major problem with getting any information even at the airport, even standing there at the counter. I have a hard time, and I am telling them. Standing there at the counter, I am telling them this is what

is showing up on the board, and they don't even know what is going on with that flight.

These are just some of the problems that we are having here, and I think a lot of it comes, yes, from problems that the airlines are having financially, but that should not be an excuse.

Running down on time here, let me get to my question. Something that is being talked about right now to help—it was put out there as a way to solve some of the financial problems right now—is for airlines to merge.

However, I have some concerns over airline mergers, not that they shouldn't be done but we have had experience in the last couple of years with an airline merger that there have been some problems with it. You have employees at the same airport working in the same merged airlines under different work rules, receiving different wages and benefits, a lot of stories about this causing problems and more hassles for passengers that have resulted.

I sent a letter with Mr. LaTourette and 46 of our colleagues to Attorney General Mukasey and Secretary Peters, saying we need to take a look. They need to take a look very closely at these mergers and the impact it will have on the flying public.

I wanted to ask, first of all, Inspector General Scovel and Ms. Hanni if they have any knowledge or opinions or what they believe the impact of airline mergers will have on the flying public. So, first, Mr. Scovel.

Mr. SCOVEL. Mr. Lipinski, I don't have any data on that point, and I won't engage in speculation. My staff would probably kill me. But if you were to refer a question to us, we would certainly give that a stab.

Mr. LIPINSKI. Okay, I will do that.

Ms. Hanni?

Ms. HANNI. I will certainly weigh in. We are not favorable towards the merger being discussed. We are very concerned both for the employees of the airlines which—I don't know if it was Ms. Richardson—someone said something about an employee bill of rights.

Not only our members are just the flying public but also many of the employees of the airlines have become our members because they feel under-represented. They are afraid. They have no one to turn to.

We know that the flying public's service will go downhill if there are mergers. Fares will go up. There won't be as much competition. You probably won't see as many flights to different places. These are just our thoughts.

We have been joined by the International Aviation Machinists Union. They have joined us unequivocally regarding passenger rights. They are on the ground, dealing with us when we come off the planes.

We have deeply discussed the merger issue, and I think that I speak for the whole coalition when I say that 99 percent of us would say that we are not favorable towards it. We really believe it is going to create a problem for passengers.

Mr. GRIBBIN. Congressman Lipinski, from the airport point of view, in terms of the general subject of mergers, we are agnostic basically.

Whenever mergers are discussed, specific ones, the folks who get the most nervous are smaller airports, and I know that happened the last time around when Delta and U.S. Airways were talking about it. Some of the smaller airports were getting nervous, and both airlines are reaching out to them.

Delays and congestion affect smaller airports more than the larger ones. To begin with, you probably pay more to fly out of those cities. Your flight is more likely to be canceled if you fly out of one of those cities. It is harder to re-book because there are fewer seats.

What they really worry about is if you have competitive air service from a smaller community and carriers merge or even with the delays and congestion, flights get canceled, will you have an alternative?

What we are finding is that from a lot of the smaller cities, even now, even without mergers there are delays and congestion. Congressman Petri is not here any longer, but in Madison, Wisconsin you can take a bus from O'Hare to Madison most days quicker than you can fly and there is a bus company that is doing a nice business.

But certainly delays and congestion really hurt small communities more than most. Whenever there is talk of mergers, our smaller airports get concerned about that.

It doesn't mean that we would be opposed or in favor of a merger. We probably wouldn't weigh in on a particular merger, but there is that concern there that needs to be looked at.

Mr. LIPINSKI. Thank you.

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

Mr. DEFAZIO. Thank you, Mr. Chairman.

Mr. Scovel, on your testimony here when you talked about the parameters that are used for targeting chronically delayed or canceled flights, it seems that you make an interesting point: It all depends upon the definition and apparently our current definition is very narrow, 15 minutes late 70 percent of the time. So there is only 200 chronically delayed flights.

If we go to 30 minutes late, 50 percent of the time—which I think most consumers would say that is pretty crappy service—there is 2,789.

Then 30 minutes late, 40 percent of the time, 5,369 regularly scheduled flights were chronically delayed?

Mr. SCOVEL. Those were our findings, yes, sir.

Mr. DEFAZIO. That is out of how many flights that were regularly scheduled?

Mr. SCOVEL. I don't have that number before me.

Mr. DEFAZIO. But it is a pretty significant subsegment here of that number.

So are you aware of any action that is being taken? Is DOT taking action to expand that definition?

Mr. SCOVEL. We have recommended that, sir, but I will defer to Mr. Gribbin. I am not currently aware of a move to expand that definition.

Mr. DEFAZIO. Are you considering expanding that definition, Mr. Gribbin?

Mr. GRIBBIN. Yes. As part of our rulemaking, we have had conversations of how that definition ought to be changed. We ought to clarify that.

Mr. DEFAZIO. Which rulemaking? Is that the proposed rulemaking where you are proposing a rule that you might propose rules that couldn't get done before this Administration leaves office or is it part of a hard rulemaking that is actually in form and being proposed?

Mr. GRIBBIN. It would be the ANPRM, the former.

Mr. DEFAZIO. It is the former. So you are proposing that you might propose a rule, and you are asking people to comment. You don't think this a problem.

I see you have a background in philosophy. That is great. I studied in economics. Did you ever read the Wealth of Nations?

Mr. GRIBBIN. Yes, sir.

Mr. DEFAZIO. Do you remember the discussion about the information that if we are going to have market-based systems, that consumers need, and do you think that this information is adequate for consumers? It clearly isn't, is it not?

It is an opaque system. Where could I go to get the information that my flight is chronically delayed today?

Mr. GRIBBIN. Well, we have proposed under the ANPRM that that information would be posted at point of purchase for the consumer for the very reason that you point out.

Mr. DEFAZIO. But you propose that you might propose it.

Mr. GRIBBIN. It is an ANPRM which means it is a traditional way of rulemaking where we go out and solicit comments.

Mr. DEFAZIO. Right, but you don't see it as a problem now that we could just skip that step and go to the proposed rulemaking?

I mean because you are saying we are going to solve these problems with market-based forces, but if the consumers don't have the information they need for what you have identified as their greatest frustration with aviation, then they can't. Market forces aren't going to work for the consumers.

Now you want to use market forces to deal with the airports. How about consumers?

Mr. GRIBBIN. I think that that is right. You don't want to conflict those two issues.

Mr. DEFAZIO. I don't want to conflict them. I would like consumers to have information they need.

Mr. GRIBBIN. Right. If we have congestion pricing in place, you are likely to get far fewer chronically delayed flights.

I would also like to point out and make sure that everyone understands that the 15 minutes 70 percent of the time, that is a per se chronically delayed flight. What we need to be careful of is that some of these flights are delayed due to no fault of the airlines, such as weather delays.

Mr. DEFAZIO. Well, would you say no fault of the airline?

Let me give you an example. I live in Eugene, Oregon. United uses something called SkyWorst as a vendor who flies down to San Francisco. United is bringing in more regional jets now with the same number of people as before 9/11, but they have sopped up a lot of airport capacity.

So, on a predictable day which happens about half the time in San Francisco, where they have limited operations, the first thing they do is cancel all the regional jets from Eugene, Oregon, and everybody sits there, and they wait, and they wait, and they wait.

The last time I had to make a flight, I had to fly to Portland to fly down there because that was the real United versus the fake United, and they fly those planes. United doesn't cancel the real ones. They cancel the fake ones because they control that.

Now this is not very obvious to consumers, is it?

Mr. GRIBBIN. It is not. That is why if San Francisco had the ability to congestion price, what you would do is you would move, as you deem, the fake United flights out of those key slots.

Mr. DEFAZIO. But why do we fear regulation so much?

You say it is inefficient. I don't think you get a total grasp. Let me quote something from here that I think is inaccurate: "cheapest flights to be are those departing or arriving at the last desirable times."

I spend a lot of time, when I am not flying on official business, shopping, using those various search engines. I would say that is not a true statement.

The true statement is they will segment my day into five arrivals and departures through four different airports, and those are the cheapest flights I could get. It doesn't have anything to do with what time I originate. It is how many places they make me go in order to get the one place I could have gone to in the old days directly.

So I am questioning first off, given your background with roads and not aviation, your understanding of this. I hate to do it, but I have to agree with Mr. May here on this issue.

Mr. GRIBBIN. I am glad I brought you together.

Mr. DEFAZIO. Let's think about I will give you two things to think about.

Hub and spoke and how that is going to work when they are flying RJs in from somewhere to catch the only flight that is departing, which they can get the extra money for because it is going from San Francisco to Dulles or New York, but other people have to get there on the little planes. There are only 60 people on there. We are going to charge, I assume, not by passenger but per slot.

So, therefore, you are going to have a much higher fee per passenger on the 60-person flights. It sounds to me like small communities could be disadvantaged.

You do have sort of a footnote at the end, although you mention general aviation. I think you mean commercial aviation access to these airports.

Then the second one, how about this? The dollar is headed toward a rupee pretty quickly, and so if we are going to allocate the slots at our international airports on a market basis, it sounds to me like the international airlines, they will say: Oh, it doesn't cost us anything to land there. We can pay in rupees.

Suddenly, they are sopping up all our capacity. Then what happens to the domestic carriers that need to use those airports?

I don't think you have thought this all the way through. I never like the hub and spoke system, but we got it. Some airlines are trying to get us away from it.

What you are talking about would be so disruptive of the existing system. I don't think you have through the unintended effects both consumers at mid-size and small airports and hub and spoke or the potential for inordinate penetration by foreign carriers and dominance of the market by foreign carriers, but that would be market-based. So I guess it would be okay.

Mr. GRIBBIN. Actually, we have, and Mr. May participated in this. We spent nine weeks, about five hours a day over the course of nine weeks, talking through all these issues. So we have examined these in great detail. We understand that there are concerns out there.

Mr. DEFAZIO. The people who are in the industry came to a different conclusion than the people who aren't in the industry.

Mr. GRIBBIN. No, because I think you would say the airports are in the industry. The airlines came to a different conclusion than the Department and some of the airports. Now, to be fair, the Port Authority is an airport and also opposes any type of pricing.

But, in essence, what we are saying is that right now the airlines are charging additional for meals. They are charging additional for baggage. They are charging additional for leg room, all of which is because that is what consumers demand.

Mr. DEFAZIO. No. They are doing that because they are desperate to not reflect in their published fare how much they are going to charge you to go some place. They figure: I got you on the phone. I won't tell you about these extra addeds, and you will find out when you check in. Actually, your $200 ticket is now $400.

Oh, you want to check a bag? Well, that will be $500.

Oh, you actually want a seat? Oh, well, that is going to be another $150.

I mean we did have that proposal that the new Airbus could have standing room although they quickly back away from that.

Mr. GRIBBIN. That was probably wise. But all we are saying is I think consumers will pay additional for flights that arrive on time.

Mr. DEFAZIO. Think of the problem of the 60 people on the RJ from Eugene, trying to go San Francisco, and they are competing with a 747 coming in from Asia. Now you are going to say those 60 people are going to have to carry as much of an additional fee as 500 Asians who are rolling in RMBs or yen, which are worth so much more than the dollar. How is that going to work out for those 60 people?

They are going to have to pay about 50 bucks each where those other people are going to pay a buck each.

Mr. GRIBBIN. Actually, what would happen is you would probably have the 60 people be combined with another 60 people, and they would fly in as 120 people, but at least this time——

Mr. DEFAZIO. No. It is one little plane coming from a town that can only support 60 people.

Mr. GRIBBIN. Well, no. But going with your point, they are going to get canceled now anyway, right?

Mr. DEFAZIO. That is only because of the very lame way United Airlines runs things. In fact, real United has come back because we had the Olympic trials, and I am trying to convince them since they have reduced the load on San Francisco Airport to continue

to provide regular service through the next winter. So it will be more dependable

And I did point out, and I did get the on-time, and it was totally unacceptable for SkyWorst. But that is also discriminating for their own profits versus their vendor's profits. So that is a very complicated market.

Mr. GRIBBIN. But what you pointed out as a market failure is exactly what we are trying to address.

Mr. DEFAZIO. More market? I have to say your faith in markets, given what has gone on Wall Street in the last couple of months, is just sort of endearing to me, but I have to tell you I am ready for some really smart regulation.

Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair thanks the gentleman.

Mr. Gribbin, the DOT's Passenger Rights Task Force, when did DOT convene the Passenger Rights Task Force?

Mr. GRIBBIN. That kicked off this year. Well, the next meeting is the 29th of this month, and then they will wrap up their work by the end of this year.

Mr. COSTELLO. Okay. When was their first meeting? What was the date of their first meeting?

Mr. GRIBBIN. February 26th.

Mr. COSTELLO. February 26th.

Ms. Hanni, you are a member of the DOT's Passenger Rights Task Force, correct?

Ms. HANNI. I am.

Mr. COSTELLO. You attended that first meeting?

Ms. HANNI. Yes, I did. I spoke at that first meeting.

Mr. COSTELLO. How do you see your role on that task force and the role of the task force in general?

Ms. HANNI. Mostly information gathering so far, we have had. I am co-chairing a committee with Jim Crites from Dallas-Fort Worth, and we have had one conference call. There are a lot of people on the call that simply don't say anything. They don't speak, and so I am assuming that they are consenting to everything that Jim and I are proposing, but that is a big presumption.

The way I am looking at it is that it is very good to keep the conversation alive. It is good that we are all talking about. I have spoken directly with D.J., had this same conversation, where there is no guarantee that out of this task force that there is going to be any enforceable deplanement that goes into the Advanced Notice of the Proposed Rulemaking, as Mr. DeFazio so effectively pointed out, or essential needs. I think those are the two things that are critically missing.

Then if you also look at the parameters for chronically delayed flights, I believe it had to be a commercial flight that had 45 flights in a 3-month period. That narrows the scope so much that so many flights are excluded.

We turned in our comments, and most of the comments came from our coalition as well as Senators Boxer and Snowe and other people that chimed in. Very few people disagreed regarding comments. The overwhelming response was the same.

Mr. COSTELLO. I understand there are regional forums being held. Are you participating in those?

Ms. HANNI. I am.

Mr. COSTELLO. Can you tell us, have you participated in a regional forum up to this point?

Ms. HANNI. The first one is next week. So I will go home to Napa, and then I will fly to Miami.

As far as I know, we have had one conference call. So my awareness of it is that there will be three panels. I am on the third panel.

It is more of an operational issue. It is not really a forum for consumers to come complain. It is more of the airlines, mostly,—I am the only consumer advocate—and airports and other experts in the field, answering as to why operationally these delays happen and why it is that it is so difficult for them to return you to a gate.

That is my perception so far.

Mr. COSTELLO. Your organization has a hot line, an 800 phone number for passengers, people who have complaints to call.

Ms. HANNI. Yes.

Mr. COSTELLO. How many calls do you get in a given period? You must have statistics.

Ms. HANNI. Our average is 70 calls a day.

Mr. COSTELLO. Seventy calls a day?

Ms. HANNI. Yes. Now that goes up at holiday times and down during slower travel periods, but the average is 70 a day. The first day that we started our hot line, I got 900 calls in 3 hours.

Mr. COSTELLO. Do you forward those calls to the Department of Transportation, every one of them?

Ms. HANNI. No, but I could. They don't have a hot line where people answer it.

Mr. COSTELLO. Well, I would suggest that you forward any complaints you receive both to the airline and the Department of Transportation. But as of right now, you do not report each complaint to DOT?

Ms. HANNI. We encourage each person that calls in. We have the DOT complaint line and their address on our web site.

First, we take care of whatever their immediate need is. So, if they are stuck on a plane or if they are in trouble or if their eight year old daughter has been told to get off a plane without accompaniment or a four year old is stuck out on the tarmac and his parents are not with him, we try to deal with those types of situations immediately.

Then we say, what you must do is contact the Department of Transportation, CC that you contacted the coalition and ACAP also, the Aviation Consumer Action Project, and then also your Congressmen and your Senators to let them know, especially right now the Senate because we are working our tail feathers off to get them to forward the FAA Reauthorization Bill.

D.J. is aware of the number of calls that we have received. I actually took sort of a bold step in a room full of people that probably don't like me all that much on this task force, and I played seven or eight of our hot line calls for them to hear, so that they could get what I get when I pick up the phone and I hear somebody say, an 11 year old just passed out. We have medical emergencies going on. We have only been out here four hours with no air conditioning.

Whatever it is that we are hearing, so they could kind of get the impact. It is not the same for me to share it as it is for them to hear someone's frantic call.

Mr. COSTELLO. The Chair would ask Members if they have additional questions.

Mr. DeFazio.

Mr. DEFAZIO. Thanks, Mr. Chairman.

I would like to go back to something Mr. Scovel said that I found a bit shocking when he talked about the advertising abuse and he said that apparently you were handed a note by staff that.

Over seven years, you are not aware of any prosecutions in that category?

Mr. SCOVEL. That is true.

Mr. Gribbin has updated numbers on that. I wasn't aware of specific numbers. However, apparently, within his office, he does.

Mr. DEFAZIO. Okay. Mr. Gribbin, could you repeat what you said?

It wasn't clear to me when Mr. Gribbin spoke that he was talking specifically about prosecutions or whatever we call these, violations, that specifically related to that category. I thought you were talking more generally about actions that have been taken.

Mr. GRIBBIN. The category of advertising?

Mr. DEFAZIO. Yes.

Mr. GRIBBIN. We have had a number of enforcement actions against unfair trade practices and deceptive advertising.

Mr. DEFAZIO. But relating to scheduling chronically delayed flights or more relating to deceptive practices that relate to pricing because I know there has always been concerns about pricing?

Mr. GRIBBIN. Usually it is advertisement of fares that don't include taxes.

Mr. DEFAZIO. Right.

Mr. GRIBBIN. There was an incident where an airline was charging for smaller children that could have been on a lap and there was a separate fee for that, but that was not advertised.

So usually the enforcement actions are against an airline that is advertising a price and—going back to the example that you used—you get to the airport, and the price really is something different. That is clearly an unfair practice. It is deceptive, and we are very aggressive on that front.

Mr. DEFAZIO. But if they have an asterisk saying additional fees and charges may apply, see our web site, how is that, like for your extra bag?

Mr. COSTELLO. Mr. DeFazio, I wonder if you would yield.

Mr. DEFAZIO. Yes, certainly, Mr. Chairman.

Mr. COSTELLO. The line of questioning when I asked that specific question of Mr. Scovel, I asked him specifically about recommendations that he made to the Department of Transportation concerning "deceptive" practices.

We were talking about 56 departures within a 15-minute window, and I asked the question, trying to find out if we can get an answer if, in fact, the Inspector General has recommended to the Department of Transportation that they take legal action for deceptive practice.

I would say that that is a deceptive practice. If you have more flights scheduled to take off that are impossible to get off the ground when they are advertising to depart. So my question was: Have you taken any action in that specific category, not on pricing and other issues but on advertising flights that are to depart when we know that it is impossible for that flight to depart on its scheduled advertised time?

Mr. GRIBBIN. We have actually done three things along those lines in the worst and most congested airports, for example.

Mr. COSTELLO. But my question specifically is: Have you penalized or taken action against an airline like you have for pricing for deceptive practices for over-scheduling?

Mr. GRIBBIN. What we have done is we have tried to change the system under which airlines operate to discourage that kind of behavior.

Mr. COSTELLO. So the answer is no.

Mr. GRIBBIN. No.

Mr. DEFAZIO. Okay. Thank you.

Mr. Chairman, thank you. I was maybe going around, but I was getting there because I thought when I heard those categories proffered that it probably did not specifically relate to the deceptive advertising.

This again, unfortunately, brings me back to my first point. We don't really necessarily have to deal with a wacky economist who has been dead for well more than 200 years, who used to be found walking around Edinburgh in his nightshirt with a candle and then they would take him back home and say, sit down and write some more, and he is the one on which we are basing our regulation of passenger rights in the 21st Century.

But, again, he did say some good things, and one of the things he would say is that in order to have free markets and market-based systems, consumers have to have perfect information.

I think in this case, we are making it really clear. They aren't getting perfect information. They are getting deceptive information, and you are trying to correct the underlying problem, but you haven't used your regulatory role to take action against these deceptive practices.

That is correct, right?

Mr. GRIBBIN. Actually, we are doing both. We are trying to correct. First of all, there is more than Adam Smith that supports pricing as a way to alleviate congestion. You would be hard pressed to find an economist that does not.

Mr. DEFAZIO. Sure, but a lot of people like to depend upon the Wealth of Nations and things he said, and I think they all pretty much agree that consumers need perfect information or near perfect information or at least some good information. In this case, they are getting nothing. They are being treated like mushrooms.

Mr. GRIBBIN. That is exactly why we have proposed, again, having the information available. The other problem is there is information available to consumers, but it is difficult to find.

Mr. DEFAZIO. It is very difficult to find. I have cruised those web sites, and they don't have all the flights on there reliably.

I mean you can find some flights on some of those web sites that analyze departures, but they don't analyze all sites. It is not very,

very accessible, and I think I am fairly skilled at finding information. So it is not.

Mr. GRIBBIN. It should be easy for the consumer.

Mr. DEFAZIO. But the question would be if they have been making recommendations for seven years, you take action in this category in this Administration. I know you haven't been there seven years. You have been in and out a couple of times, the revolving door, but you are there now.

The question is why haven't you taken action on any one of those seven years worth of recommendations on an enforcement action on deceptive advertising?

That is another way of changing behavior, right, and that is a market signal to the airline. This is not acceptable. You can't schedule 56 flights in a 15-minute segment, and you can't tell people they are going to take off then.

If you do that and they can't and they miss their connecting flight, we are going to start whacking you. That is another way of changing behavior because we are talking about airlines here. Right?

Mr. GRIBBIN. Right. Again, we have proposed in our ANPRM, which I know you are not particularly fond of, we have proposed a whole series of changes.

Mr. DEFAZIO. But you are proposing to propose changes which you know can't happen before you leave office. Anything you get penned, we are going to throw out, I will tell you, because it is not going to be any good.

Mr. GRIBBIN. You may want to keep this one.

Mr. DEFAZIO. I am just saying there are actions that need to be taken now, that you could take with your delegated authority to change market behavior, deceptive behavior, but you are choosing not to use that authority.

Mr. GRIBBIN. Well, let's use the example of multiple airlines taking off at the same time. We have 35 airlines or 30 and only 10 can take off. So it is three to one. Which 20 would we penalize?

Mr. DEFAZIO. I would say since you want to go with a market-based system, all of them, and see which one will take the fines and which ones won't, and then some of them will move their flights around. I don't know.

You are a regulator. I have a better solution here. In terms of regulating, you want to want to use the market.

But back to the Chairman, when you are talking about that, how many flights were involved in the 56 flights in the 15-minute window?

Mr. COSTELLO. One airline.

Mr. DEFAZIO. Oh, one. Well, in that case, it might work, huh?

[Laughter.]

Mr. DEFAZIO. You are telling me multiple, but in this case there is one. So couldn't we then use the club on them, change their behavior?

Why are you so loathe to use your lawful powers as a regulator?

We are not going to agree here, and I am not going to get anywhere, but let me try this. Should we regulate safety on a market basis?

Certainly, no one would fly a plane that was unsafe because if it crashes, it is bad publicity, and then you lose passengers and all that stuff. You have to pay higher insurance premiums. Who knows? You might even get sued and all this stuff.

So should we delegate safety to the same trash bin that we have delegated passenger rights?

Mr. GRIBBIN. We haven't delegated passenger rights to a trash bin.

Mr. DEFAZIO. Well, effectively. Shall we say the black hole? All right, trash bin was bad. The black hole.

Mr. GRIBBIN. I prefer to disagree with either analogy.

Again, what we are trying to do on the passenger rights side is not applicable to safety. Safety clearly is our number one priority. We are not going to allow the market to differentiate between planes that are safe and planes that may not be safe.

Mr. DEFAZIO. Even with the customer service initiative that we held a 10-hour hearing on last week where apparently airlines became clients or customers to the regulators, and—unlike passengers who aren't given a web site and 10 options when they have a problem with an airline—the airlines were given, hand-carried by management personnel, packets that outlined the appeals procedure of anything your regulator might tell you, you have to do to all sorts of different offices including oh, my God, you can always go to the Secretary if you need to because we are really concerned if our people are trying to regulate you here?

Mr. GRIBBIN. I will go back to my point.

Mr. DEFAZIO. It is a failure.

Mr. GRIBBIN. We are not going to allow the market to distinguish between safe and unsafe aircraft. All aircraft will be safe.

Mr. DEFAZIO. I am glad to hear you say that.

Mr. GRIBBIN. There are instances, and Kate and I have talked about this. Do you want a Federal regulation that says a plane has to turn around after two or three hours?

Okay, well, what if that plane is second in line?

What if that plane is an international flight?

There are circumstances where actually the customers would choose not to do that. So if this was a clear black and white, easy regulatory matter, that would be one thing. But you have dozens of airline and hundreds of airports and millions of passengers.

Mr. DEFAZIO. If I could, but what you have chosen to do is say, airlines voluntarily might adopt procedures to deal with passengers who are unduly delayed according to their own operations capabilities. Okay, that is better than nothing.

If they do adopt it, they must audit it.

If they do adopt it optionally, they have to audit and you can oversee the audits.

But if they don't adopt it, then there is nothing. They don't have to, do they?

Mr. GRIBBIN. They have to adopt it. They all have to have plans.

Mr. DEFAZIO. But a plan with no parameters.

Ms. HANNI. But with no oversight out.

Mr. GRIBBIN. No. There would be oversight.

Ms. HANNI. By the DOT.

Mr. GRIBBIN. They would all have to propose plans. They would all have to audit the plans.

Mr. DEFAZIO. They would propose a plan that you would review for adequacy or they would just have to have a plan?

Mr. GRIBBIN. They have to have a plan and they have to disclose to the public what that plan is.

Ms. HANNI. But the ANPRM explicitly said there would be no DOT approval of those plans.

Mr. GRIBBIN. Correct.

Ms. HANNI. No oversight by the DOT of those plans.

Mr. GRIBBIN. Right.

Ms. HANNI. It would be whatever plan they present with no consequences.

Mr. GRIBBIN. It is their plan.

Mr. DEFAZIO. But it would be market-based because you wouldn't choose to fly on that airline because you would go to their web site and find buried somewhere what their policy is when you are stuck on the plane for five hours.

Then you would say, I have to go check out the other airline. Oh, only four. Maybe I will go with them.

Ms. HANNI. If you are lucky enough to have a computer.

Mr. DEFAZIO. Then you would go to the other web site to find out how chronically delayed they are, but that doesn't exist, so you wouldn't know.

Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair hates to disturb this discussion going on here, but we have votes on the floor.

Let me comment, Mr. Gribbin, that the difference between what DOT is doing regarding a plan and so on is much different than the legislation that we passed.

Mr. GRIBBIN. That is correct.

Mr. COSTELLO. It, in fact, would be in law that the Secretary would have to approve the emergency contingency plans and would have to enforce those plans and to take action, assess penalties when there are violations. There is a huge difference between what you are proposing to do and what the legislation, in fact, does if, in fact, we can get it passed out of the Senate.

We will have some additional questions for you that we will be submitting that we would expect you to respond to.

We appreciate your testimony here today, and that concludes this Subcommittee's hearing today.

[Whereupon, at 4:34 p.m., the Subcommittee was adjourned.]

OPENING STATEMENT OF
THE HONORABLE RUSS CARNAHAN (MO-3)
AVIATION SUBCOMMITTEE
HOUSE TRANSPORTATION AND INFRASTRUCUTRE COMMITTEE

Hearing on
Aviation Delays and Consumer Issues
Wednesday, April 9, 2008

#####

Chairman Costello and Ranking member Petri, thank you for holding today's hearing to learn more about the Department of Transportation Inspector General's work on implementing the consumer service actions outlined in their report *Actions Needed to Minimize Long, On-Board Flight Delays*.

The good news for the airline industry is that according to the Federal Aviation Administration from 2008 through 2021, aviation traffic will increase by forty-nine percent. However, accompanying this increase will be the growing number of delayed and cancelled flights. I fully understand and share the frustration of the traveling public who have arrived at the airport only to find out their flight is delayed and the airline has no clear indication when the flight will actually take off. Clearly the airlines, airports, and the Federal government must work together to ensure passengers get to their destination efficiently.

The House took an important first step to address many of the customer concerns by passing the FAA Reauthorization Act last year. It was my hope that the Senate would follow suit and pass this legislation that will take steps to improve consumer protection and decrease delays. As the *Actions Needed to Minimize Long, On-Board Flight Delays* points out it is critical that the contingency plans be developed to deal with lengthy delays. The FAA Reauthorization Act passed by the House mandates that an airports and airlines work together to develop these plans.

Again, I want to thank both Chairman Costello for holding this hearing and our witnesses for joining us today.

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STATEMENT OF
THE HONORABLE JERRY F. COSTELLO
SUBCOMMITTEE ON AVIATION
HEARING ON
AVIATION DELAYS AND CONSUMER ISSUES
APRIL 9, 2008

- I want to welcome everyone to our Subcommittee hearing on aviation delays and consumer issues. This hearing is in response to the significant delays the traveling public endured during the summer of 2007 and is the fourth in a series of hearings on airline consumer protection.

- In 2007, the traveling public saw firsthand the serious problems our current system has with congestion and delays, which at times led to a breakdown in customer service. Delayed flights affected 20 percent more passengers during the summer of 2007 compared to 2006. In addition, the number of airports with arrival delay rates greater than 30 percent increased 189 percent, from 9 in the summer of 2006

to 26 in summer 2007. Further, the average delay lasted 60 minutes, an increase of seven percent.

- At our September 26, 2007 hearing on delays, I requested that the Department of Transportation Inspector General (DOT IG) prepare an "after action" report on what happened last summer as well as review progress by the Department of Transportation, FAA, airlines and airports to implement policies to improve customer service and minimize on-board delays.

- The DOT IG is here to report to us on its findings. These findings will provide important information into what the traveling public can expect during the 2008 summer travel season.

- H.R. 2881, the FAA Reauthorization Act of 2007, passed by the House on September 20, 2007, addresses consumer protections and congestion and delay reduction, including: a mandate that air carriers and airports create emergency contingency plans that are approved and enforced by DOT; schedule reduction meetings if aircraft operations exceed hourly rates and are adversely affecting national or regional airspace; and an Advisory Committee for Aviation Consumer Protection at DOT. I am disappointed that we do not yet have an FAA reauthorization bill enacted into law and continue to urge the Senate to pass its bill so we can get a final bill.

- In November 2007, after the House of Representatives passed H.R. 2881 and the Aviation Subcommittee held three hearings on delays and consumer issues, President Bush and

Secretary Peters decided it was time to address consumer protection, aviation congestion and delays. Their solution was to implement numerous provisions contained in H.R. 2881, including contingency plans for airlines and airports. I am interested in hearing from the DOT on how implementation of these initiatives is going.

- I am also interested in hearing the progress made by the DOT's New York Aviation Rulemaking Committee, including which of the 77 recommendations the Secretary will implement in the immediate and near-term for the summer 2008 travel season. In 2007, the New York area airports contributed 36 percent of the tarmac delays of an hour or more; these disruptions in turn rippled across the United States causing system wide delays.

- While the airlines and airports have made some progress in terms of coordinating efforts, more needs to be done, as customers are still experiencing long on-board delays. In 2007, there was a 41 percent increase in on-board tarmac delays of five hours or more, compared with 2006.

- I have said time and again communication is key to improving an airline's customer service system. And airlines must make customer service a top priority or dissatisfaction with performance will continue to rise.

- With that, I want to again welcome the witnesses today and I look forward to their testimony.

- 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.

Congress of the United States
Washington, DC 20515

Opening Statement for the Honorable Eddie Bernice Johnson
House Subcommittee on Aviation
Hearing on Aviation Delays and Consumer Issues
Friday, April 9, 2008 – 2167 RHOB

Thank you Mr. Chairman.

I want to thank you and Ranking Member Petri for holding a fourth in a series of hearings on the issue of airline consumer protection.

As I have stated before, 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.

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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, as a frequent flyer I also understand there are some elements of delay that are simply beyond air traffic controller and carrier control.

For example, in North Texas, fast-moving thunderstorms that occur throughout the year can bring aviation operations to halt at D/FW International and Love Field Airports.

In spite of incidents like this, our nation's airlines should continue to strive towards the implementation and sustainability of exemplary customer service philosophies throughout their respective business models.

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.

Again Mr. Chairman, I want to thank you for holding this hearing and commend you for your continued oversight of 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.

U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
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Washington, DC 20515

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

February 27, 2008

The Honorable Frank R. Lautenberg
324 Hart Senate Office Building
Washington DC 20510

The Honorable Robert Menendez
317 Hart Senate Office Building
Washington DC 20510

Gentlemen:

I was greatly disappointed by your decision to block the confirmation of Federal Aviation Administration (FAA) Acting Administrator Robert Sturgell. The impact of leaving this vital position unfilled will be detrimental to our national aviation system and damage the progress of a number of critical, pending FAA programs. I would therefore ask that you reconsider your decision and that you allow the full Senate the opportunity to consider this important nomination.

Your actions will also be a severe setback to a very wise bipartisan agreement and law to allow for both consistency and stability in the appointment of this absolutely key administrative position. As you know, in the 1990's, after the agency saw five different administrators within ten years, Congress recognized that the FAA needed stable and consistent leadership and established a five-year term for the position. Former Administrator Jane Garvey, nominated by President Clinton, served the first five-year term during the remainder of the Clinton Administration, as well as during the Bush Administration. Your blocking consideration of this essential and key FAA post casts aside the spirit of the bipartisan recognition to put national interest over political parochial interests.

According to your press announcement issued earlier this month, you cite four issues as the reasons for the hold on Mr. Sturgell's nomination. I would like to respectfully respond to your concerns.

Airspace redesign of the New York/New Jersey/Philadelphia region

Your hold will even further set back work to better utilize this airspace that now clogs our nation's airspace. The New York Airspace Redesign is a 10-year long effort that began in 1998 under the Clinton Administration and then-FAA Administrator Jane Garvey. With estimates that New York/New Jersey air traffic causes as much as 75% of flight delays nationwide, the importance of this long-term project is critical to relieving congestion throughout the National Airspace System. Your action could penalize our entire air network. No redesign will ever satisfy everyone. It is in the national interest that this work proceeds.

Late last year, the House of Representatives overwhelmingly voted (360 to 65) in favor of the FAA proceeding with its announced redesign plan and reducing congestion throughout the system. The FAA's Record of Decision has been challenged in court and will be further reviewed through the judicial process. This is the normal and appropriate forum to challenge and express disagreement with an agency decision. Additionally, this action undermines any and all effort to resolve the primary cause for delays and congestion, not only in the region but across the nation.

Air traffic controllers staffing levels

You also expressed concern that there are not enough experienced air traffic controllers to manage the nation's busiest airspace. I believe that your decision to block Senate consideration of the FAA Administrator's nomination is at odds with this concern. The long anticipated wave of air traffic controller retirements has begun, bringing with it a challenging transition period. While the FAA is actively recruiting and hiring highly qualified controllers, training new hires and ensuring that experienced controllers are located where needed is an agency challenge that requires consistent and knowledgeable leadership. Blocking this nomination leaves the FAA rudderless at exactly the wrong time. Furthermore, you will damage several pending FAA initiatives to bring on board and relocate more experienced air traffic controllers.

Near misses on runways

How can you express concern with the number of near misses on runways and in the air and not act to have a Congressionally approved FAA Administrator in place? Your inaction, in fact, will further delay pending efforts to address the near-miss and runway incursion problems. Although serious near misses on runways continue to decline (24 serious runway incursions out of 61 million aircraft operations in FY 2007, compared to 31 in FY 2006 and 53 in FY 2001), overall runway incursions spiked last year to 371, up from the average of 237 for FY 2001 to FY 2006.

Congress, the Inspector General, the Government Accountability Office, and the National Transportation Safety Board (NTSB) will continue to scrutinize the FAA's efforts to address, reduce and hopefully eliminate runway incursions. But, allowing the Administrator's position to go unfilled only puts at risk this important FAA safety initiative and hinders our efforts to deal with this problem.

Minimum fuel landings

Finally, you question the FAA about reports of a dramatic increase in flights coming in to Newark with only a minimum amount of fuel left in the tank and stated that the agency has not been able to produce statistics or an adequate answer. The FAA states that its review of the available data for Newark has not demonstrated violations of the federal requirements for all flights to carry enough fuel to fly to and beyond a planned alternate airport.

As I understand it, as the result of your inquiry at the end of last year, the FAA has initiated a three step plan that addresses your concerns. The FAA will further clarify its fuel requirements, require aircraft to file fuel reports, and closely monitor the implementation of these requirements. The FAA is also working with airlines nationwide to gather fuel management information from many sources for a thorough review.

I think it is import to note that if the agency continues to operate without a permanent Administrator, the FAA's response to your concerns is more likely to slow rather than quicken. In addition, please remember that FAA has a new Chief Operations Officer and other key administration officials are and will be leaving. Your inaction endangers the progress of all current and pending FAA programs including the critical Next Generation Air Transportation System (NextGen).

I strongly urge you to lift your hold on Acting Administrator Sturgell's nomination and to allow the full Senate the opportunity to consider his nomination. Given the concerns you raised in your press announcement, I believe that now more than ever the FAA needs the leadership and stability of a confirmed Administrator. The longer we delay, the more we risk disaster and a national aviation system meltdown.

Sincerely,

John L. Mica
Ranking Republican Member
Committee on Transportation and Infrastructure

1 Harry E. Mitchell

Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Subcommittee on Aviation
4/9/08

--Thank you Mr. Chairman.

--And thank you again for taking the time to visit our airports in Phoenix last month.

--As you saw, demand for aviation in the Phoenix metropolitan area is growing rapidly -- at more than twice the national rate.

--The FAA has already warned Phoenix that it is one of 8 metropolitan areas that will need significantly more capacity by 2025.

--This isn't just a problem for Phoenix, it's a problem for the national aviation system, which is already struggling to reduce delays.

--Last year passengers witnessed some of the worst flight delays on record.

--Not surprisingly, complaints increased by 70 percent.

--But even more alarmingly, absent any changes to our system, the FAA is predicting the situation is going to get worse. According to the FAA, delays will increase by 62 percent by 2014.

--If we are serious about reducing delays, we have to address capacity, and ensure that we have enough to meet our future demand.

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--It has been estimated that just 7 airports are accounting for 72 percent of all air travel delays.

--Phoenix Sky Harbor Airport is already the 8th busiest in the nation. At the rate demand in our area is growing, we are facing a serious risk of becoming the next national bottleneck.

--Fortunately, we are already taking steps to prevent that.

--We're building a new Light Rail system, which will soon offer more efficient access to Sky Harbor and ease traffic congestion around the terminals.

--Moreover, we're developing Phoenix-Mesa Gateway Airport as a compliment to Sky Harbor. With close access to area freeways, a key east valley location next to Pinal County, the fastest growing county in Arizona, Gateway has earned widespread support across the Valley.

--And make no mistake, our efforts to reduce congestion aren't just about improving convenience, they are about growing our economy.

--Our airports are powerful economic engines, with tremendous potential for growth.

--Sky Harbor, for example, is already generating an estimated $20 billion impact on Arizona's economy.

--Gateway's impact is smaller, but it is still very significant. For example, in 2002, when the airport saw less than 1,000 passenger departures, it generated an estimated $251.4 million in local impact.

3

--To put that number in perspective, this year's Super Bowl in Arizona generated an estimated $300 million.

--I look forward to today's hearing on aviation delays and consumer issues and at this time, I yield back.

OPENING STATEMENT OF
HONORABLE JAMES L. OBERSTAR
BEFORE THE HOUSE AVIATION SUBCOMMITTEE
AVIATION DELAYS AND CONSUMER ISSUES
APRIL 9, 2008

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

- Mr. Chairman, the first eight months of 2007 accounted for the worst delays on record with 29.5 percent – a total of 1.7 million flights – were delayed or cancelled. Long on-board delays of an hour or more increased by 69 percent from 2000 and air travel complaints at the DOT Office for Aviation Enforcement and Proceedings increased by 70 percent compared with 2006.

- There is a palpable sense of "outrage" in the public about airline delays and the treatment of consumers during those delays. The public needs to know what happed last summer and what the DOT is doing to make sure it does not happen again. To that end, I look forward to hearing from the DOT IG on its "after action" report on airline delays during the summer of 2007.

- This Subcommittee held hearings on delays and consumer issues in April, September and November of 2007. As a result of these hearings, the DOT and aviation community have taken actions to increase consumer protections and decrease delays. For example, voluntary hourly flight caps will be implemented at JFK and Newark and the DOT New York Aviation Rulemaking Committee recommended 77 airport operations improvements, 9 of which may be completed by the summer of 2008. I applaud these developments, but they should have taken place far sooner.

- In 1999, this Committee considered implementing a passengers' bill of rights. Instead, we received a commitment from the airlines that they would implement internal quality assurance and performance measurement systems for consumer protection.

- The airlines' failure to adequately implement the DOT IG's recommendations forced the House to step in last year and legislate specific customer service

provisions. H.R. 2881, the FAA Reauthorization Act of 2007, passed by the House on September 20, 2007, includes many requirements, such as:

- Mandating that air carriers and airports submit emergency contingency plans detailing how they will deplane passengers following excessive delays, requiring DOT to approve the plans, and giving DOT the authority to assess a civil penalty against an air carrier or airport that fails to adhere to an approved contingency plan;
- Requiring FAA to convene schedule reduction meetings if aircraft operations exceed hourly rates and are likely to significantly adversely affect national or regional airspace;
- Establishing an Advisory Committee for Aviation Consumer Protection at DOT; and
- Several studies providing oversight of customer protections.

➢ So far, the Other Body has not passed its version of the FAA bill and the agency is operating under an extension that runs through June 20. However, I am hopeful that the Senate will recognize how important this legislation is to America and to the future of the aviation community.

➢ Thank you again Chairman Costello for your leadership on this issue. I want to thank the witnesses for sharing their testimony with us today.

Opening Statement
Congressman John T. Salazar
T&I Aviation Subcommittee Hearing
Aviation Delays and Consumer Issues
April 9, 2008

Thank you, Mr. Chairman, for calling this hearing.

The 4th we've had on airline consumer protection.

Based on what we see in the papers, not much has improved.

Our press clips are full of headlines like 'airline passenger complaints soaring' and 'expect more flight delays'

A year ago, in a similar hearing, I applauded the Chairman for focusing on consumer satisfaction with air travel.

It's the best indication of how well our nation's aviation system is working.

Everyone here has experience as a passenger and 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 scheduling computer system or general staffing shortages, can be—and has been—disastrous.

More needs to be done to address these continuing problems.

We must hold our aviation industry to the highest 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.

Thank you, Mr. Chairman.

Statement of the Honorable D.J. Gribbin
General Counsel, U.S. Department of Transportation
Before the
U.S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Aviation
Concerning
Airline Delays and Consumer Issues
April 9, 2008

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify today. Allow me to use this time to update you on the initiatives taken by the Office of the Secretary and the Federal Aviation Administration (FAA) to address the issues of airline delays and consumer protection.

The Administration identified the need to respond to the growing consumer impacts of aviation system delays over a year ago. Since then, we have taken a series of important steps, including the President's announcements related to holiday travel. At the direction of Secretary Peters, our Department has developed a comprehensive list of initiatives designed to improve air travel and reduce the impacts of lengthy delays on consumers. While we have maintained a strong focus on short term actions, it is imperative that we not lose sight of the ultimate objective: establishing a sustainable and economically efficient aviation policy that actually reduces delays, not simply treats the symptoms. In order to accomplish this objective, it is important that we reform our economic model for air traffic control services and airport pricing similar to what the Administration proposed last year. Without changes of this magnitude and regardless of regulatory actions pursued, it is inevitable that millions of Americans will experience unreliable air travel options and growing dissatisfaction with the performance of the U.S aviation system.

I. The Problem

We are all too familiar with the litany of statistics that demonstrate without question that action is needed on behalf of air travelers and the aviation sector of the national economy. One of the most compelling statistics is that last year almost 2 million flights operated by large air carriers did not land on time because they were delayed, cancelled, or diverted. That is almost 27 percent of the operations reported by these carriers. Imagine any other business telling its customers that 27 percent of the time the service they paid for is not available as advertised. The Administration has made commitments at the highest levels to address this problem. When Secretary Peters met with President Bush last September, he said, "We've got a problem, we understand there's a problem, and we're going to address the problem."

I think we all agree that the air traveler deserves a better approach. Last year, according to the American Customer Satisfaction Index, the satisfaction level with the airline industry overall fell to its lowest level in 7 years. The statistics we gather monthly at DOT confirm deteriorating service levels. In 2007, there was a sharp rise in the number

of complaints received by the Department – 13,168 complaints, which is over 58% more than the 8,325 complaints received in 2006. Complaints are continuing at a high rate in 2008 – the Department received 3,152 complaints during the first quarter of this year. For us, the objective is not to parcel out the blame, but to get to the root of the problem – congestion. Consumer satisfaction would be vastly improved if flights simply arrived on schedule. The growing lack of reliability in air travel these days is one of the most significant impacts of congestion.

II. DOT Actions

The Department began to address flight delays and related consumer issues over a year ago. In February 2007, the Administration sent Congress a comprehensive plan for transforming our aviation system to meet our present and future needs. A central reform of the Administration's proposal was the overhaul of the FAA's financing structure to replace the decades old system of collecting ticket taxes with a stable, cost-based funding stream and to facilitate equipping our aviation system with modern Next Generation Air Transportation System (NextGen) technology. The proposal creates a stronger correlation between what users pay and what it costs the FAA to provide them with air traffic control services; thus, providing price incentives for systems users to reduce delays.

Flight delay problems – including cancellations and missed connections – are the number one air traveler complaint. That is why addressing aviation congestion is a critical component to improving consumer satisfaction with the aviation industry. The year 2007 was the second worst year for delays since 1995, and the first two months of 2008, while slightly better, are the third worst for flight delays during that time of year. Since one-third of the air traffic moves through New York airspace, the three airports in the New York City metropolitan area had the highest percentage of delayed flights last summer, and delays in New York cascade throughout the system, the Department chose to focus its initial efforts in the New York area.

Given the record delays last summer, in July 2007, Secretary Peters formed an internal New York Air Congestion Working Group and tasked them with developing an action plan to reduce congestion and delays at airports in the New York City region and improve customer satisfaction. The working group developed a plan, which included establishing a New York Aviation Rulemaking Committee (ARC), holding scheduling reduction meetings, implementing operational improvements, and enhancing customer satisfaction. Since the hearing before this Subcommittee last September, the Department has taken a number of actions to implement the working group's recommendations.

A. Aviation Congestion Mitigation Efforts

Last September, Secretary Peters formed a New York Aviation Rulemaking Committee (ARC), which was composed of representatives from passenger and cargo airlines operating out LaGuardia, John F. Kennedy International (JFK), Newark Liberty International (Newark), and Teterboro Airports, airline and airport trade associations, the

Port Authority of New York and New Jersey (Port Authority), passenger rights advocates, and representatives from FAA and DOT. The ARC had the monumental task of researching and vetting the options for reducing congestion in New York's major airports over the course of merely three months. The Administration wanted to have a robust discussion and input from all interested parties before moving forward with a policy action.

Incorporating the information received from the ARC, the Department is undertaking several actions to address aviation congestion in New York.[1] These actions include:

- Caps on hourly operations at JFK;
- Proposed caps on hourly operations at Newark;
- Completion of 8 of the 17 airport and airspace recommended operational improvements identified by the Air Transport Association (ATA) and the Port Authority of New York and New Jersey. We expect to complete the remaining 9 recommended improvements by summer 2008;
- Establishing an executive-level Director position at the FAA to head the New York Area Program Integration Office;
- Further implementation of airspace redesign; and
- Proposed amendments to the Airport Rates and Charges Policy.

During the holiday season, the Department also instituted other measures to mitigate flight delays, such as negotiating an agreement with the Department of Defense to open military airspace for commercial use. We are also continuing our outreach efforts with various stakeholders, including consumer groups, airports, and airline CEOs.

Straight caps without some mechanism to ensure an efficient allocation of scarce slot resources is not economically efficient and, therefore, not our preferred option. Given the urgent need for action, however, it was necessary at the New York City area airports. The Port Authority elected not to pursue various delay reduction approaches, and the President and Secretary Peters would not tolerate delays like those that occurred last summer. The caps at JFK took effect on March 30, and we expect to issue a final order for Newark soon (the comment period on the notice proposing caps at Newark closed on April 1). The caps at JFK (and Newark, if imposed,) are scheduled to expire on October 24, 2009.

We still believe that there is a need for market-based measures to allocate capacity, and the Department continues to explore such measures. For example, there are options available to airports in lieu of caps. Our preference is to see airports address their challenges locally; however, the Federal Government will be involved once a congested

[1] The New York Aviation Rulemaking Committee Report can be accessed at: http://www.faa.gov/library/reports/media/NY%20ARC%20Final%20Report.pdf

airport impacts the rest of the national airspace. New York air congestion causes delays throughout the U.S.

In January, we issued a notice that proposed providing airports with a new and useful tool to price access to their facilities better. The FAA proposal would make three changes to the airports rates and charges policy. The first change would clarify that airports may use a two-part fee structure with an operation-based and weight-based element. The second change would permit an operator of a congested airport to charge for work under construction. Finally, the third change would expand the authority of an operator of an airport system to charge users of the congested airport in the system for the airfield costs of other airports in its system. If adopted, the amendments would allow a congested airport to charge prices commensurate with the true costs of using its runways. In return, this will provide users better incentives to consider alternatives, such as scheduling flights outside of peak demand times, increasing aircraft size to use the congested runways more efficiently or meeting regional air service needs through alternative, less congested facilities. The comment period ended on April 3, and we hope to act on the proposal soon.

Per landing charges are a much better proxy for costs than weight-based charges. Since 2002, the amount of small aircraft (planes with fewer than 100 seats) flying into New York area airport increased substantially. Small aircraft flights at JFK increased 393%; Newark increased 53%; and LaGuardia increased 48%. The way we charge for airport use is an important contributor to this trend. Economists on both sides of the political aisle have acknowledged this relationship.

We share the view that expanded capacity is a critical component of the long-term solution to relieve congestion and get travelers to their destinations on time and in a humane fashion. We are intensely focused on such solutions, both at the FAA with NextGen and at the Department level. The FAA is hard at work bringing new technology and techniques on-line to unsnarl air traffic delays, and we appreciate the funding Congress has appropriated for these purposes. In recognition of these critical enhancements, the President's FY 2009 Budget Request would more than double the investment in NextGen technology – providing $688 million for key research and technology to help meet the nation's rapidly growing demand for air travel, including the transformation from radar-based to satellite-based air traffic systems .

The FAA will begin rolling out several elements of the NextGen system this summer. This rollout will include the national debut of Automatic Dependent Surveillance-Broadcast (ADS-B) technology in Florida. The ADS-B program will change the nation's air traffic control system from one that relies on radar technology to a system that uses precise location data from a global satellite network. The FAA has chosen Miami as the key site for installation and testing of two broadcast services of the ADS-B program - Traffic Information Services – Broadcast (TIS-B) and Flight Information Services – Broadcast (FIS-B). These broadcast services transmit weather and traffic information to the cockpit of properly equipped aircraft. The FAA plans to commission these broadcast services in November 2008 and can then begin nationwide deployment.

Over the next few years, the FAA will also install and test ADS-B for use in Air Traffic Control Separation Services. The key sites for this initiative are Louisville, Philadelphia, the Gulf of Mexico, and Juneau. The FAA plans to commission the ADS-B services in September 2010 and a nationwide rollout by 2013.

B. Consumer Protection Initiatives

While relieving congestion will go a long way in addressing consumer issues, the Department also is undertaking a number of consumer-specific measures. Our consumer protection initiatives have advanced a great deal since your September 2007 hearing. This is due in part to the appropriation by Congress of $2.5 million targeted to improving consumer protections, and I can assure you we are putting it to good use. The funding is being used for additional staff to pursue investigations and enforcement actions, improvements to our aviation consumer protection Web site and consumer complaint system, brochures for air travelers to help them understand their rights and responsibilities, and a series of public forums to listen to air travelers and the problems they have experienced.

The Department has initiated three rulemakings to enhance passenger rights and protections. In November 2007, the Department issued a proposal to double the limits on the compensation required to be paid to "bumped" passengers and extend the compensation requirement to smaller aircraft (i.e., aircraft with as few as 30 seats, versus 60 seats in the existing rule). The Department is currently considering the comments received and expects to take final action on this proposal soon.

The Department also published a proposal to enhance the on-time performance data that carriers currently report to the Department so that the Department, the industry, and the public have access to more complete information on flights that are cancelled, diverted, or experience gate returns. We hope to take final action soon.

The third rulemaking, an Advance Notice of Proposed Rulemaking, requested comments on various proposals designed to provide consumers information or enhance consumer protections, including proposed requirements that airlines: create legally binding contingency plans for extended tarmac delays, respond to all consumer complaints within 30 days, publish complaint data online, and provide on-time performance information for international flights. The Department is currently considering the comments received. The next step would be issuance of a Notice of Proposed Rulemaking seeking comments on any proposals the Department decides to advance after reviewing the public comments.

In addition to these rulemakings, the Secretary formed a "Tarmac Delay Task Force" in December. The purpose of the task force is to study past delays, review existing and other promising practices, and develop model contingency plans that airlines and airports can tailor to their unique operating environments to mitigate the impact of lengthy ground delays on consumers. The task force also will consider possible unintended consequences

that solutions to tarmac delays may pose for travelers. The task force is composed of 35 individuals representing a broad cross-section of airlines, airports, consumer groups, and other stakeholders. The first meeting of the task force was held February 26, and the next meeting is scheduled for April 29. The Department expects that the task force will meet at least three more times in 2008 and will complete its work by the end of the year. In my opinion, the Task Force is working well and will be the source of best practices that will improve the travel experience when things do go wrong.

Three other important initiatives of our Aviation Enforcement Office deserve mention. The office has plans to conduct on-site enforcement investigations of five large airlines this fiscal year to evaluate their compliance with consumer protection requirements. In addition, the office will be holding three Aviation Consumer Protection Forums across the country to educate consumers regarding their rights as air travelers and to hear first-hand their concerns about air travel. The office is also continuing its investigation of unrealistic scheduling by large airlines, targeting chronically delayed flights. During the fourth quarter of 2007, the number of such flights decreased dramatically, and in 2008, the Aviation Enforcement Office will be applying a somewhat more rigorous set of criteria during its review.

We are well aware that tarmac and flight delays are making air travel an unpleasant experience for passengers. The Department will continue to take action to ease uncertainty and reduce inconvenience for passengers.

III. Addressing the Problem and Not the Symptom

While we are working to improve consumer protections, we do not want to lose sight of the fact that the underlying cause of much of the occasional misery attributed to air travel is congestion and delays. For this reason, the Department has been engaged in a discussion over the last several months with a wide variety of stakeholders on the efficacy of using a better economic model to balance supply and demand in a sustainable way.

Some have incorrectly suggested that expanding capacity should be the only government response to congestion in New York City and around the country. This view largely ignores the tremendous short-term opportunities to utilize existing capacity efficiently. It also ignores the physical, economic, and political constraints on capacity expansion in many parts of the U.S. aviation system.

The Department looks to increase capacity whenever and wherever possible. Our support for expansion of O'Hare International Airport is one concrete example. Capacity increases must be part of the solution, particularly considering that we expect more than 1 billion air passengers by 2016. However, capacity increases, both physical and operational, often take a long time to implement and may be limited in scope. Sometimes physical capacity cannot be expanded; such as is the case with LaGuardia Airport. Operational improvements can help to address congestion, but sometimes they cannot provide enough capacity to meet demand. For example, in New York, even with the

implementation of all the operational improvements initially suggested by the Air Transport Association (ATA) and the Port Authority, congestion was expected to double this year, assuming the FAA took no further action and the airlines moved forward with planned increases in their schedules.

There are additional solutions. Basically, we have a choice between two fundamentally different approaches – administrative remedies and market-based solutions. We believe that outdated government policies relying on administrative remedies have led to an inefficient allocation of the airspace, and that moving towards a market-based system will reduce these inefficiencies and contribute to an improved flying experience for air travelers.

A. Administrative Remedies

Instituting administrative remedies, such as caps, is an effective, but not efficient way to reduce delays. Limiting the number of flights into an airport will reduce congestion at that airport. The Department decided to institute a short-term cap at JFK and Newark airports because something needed to be done to avoid a repeat of the flight delays that we experienced last summer. However, caps are not the best solution for improving travel options for passengers.

Airlines are often enthusiastic in their support of caps at an airport they already serve. When a cap is established, incumbents are protected because they typically maintain their market share and the potential for new competition is diminished. The legacy airlines' support for such a policy makes sense, because limited competition makes them more profitable and protects them from new entrants that might want to compete by offering lower fares.

Although caps protect existing airline business, they also prevent airlines from adding capacity at an airport unless they are able to obtain a slot from a competitor. As a result, one of the best-known problems with slots is that they encourage airlines to "babysit" slots; i.e., underutilize the slot by flying multiple small aircraft into an airport to maximize the number of slots an airline can occupy at the lowest possible cost.[2] As a result, slots do not always go to those who value them the most and who will use the capacity in the most efficient manner.

This limitation on capacity and competition naturally leads to fare increases at an airport, because it creates a scarce commodity, and passengers pay a premium for that commodity.

[2] GAO report GAO/RCED-99-234 notes on p. 16 that "For example, because the regulations allow a slot to go unused for up to 20 percent of the time, a carrier with five slots in 1 hour must operate only four flights in that hour on any day to obtain 80-percent use for each of its five slots. The carrier is allowed to "rotate" its four flights across the five slots over the 2-month period to prevent FAA from withdrawing the slot. The practice of a carrier's rotating actual flights among its allocated slots is commonly referred to as 'babysitting.' FAA officials emphasized that babysitting is not prohibited by existing regulation, provided that a slot meets the minimum-use requirements." See http://www.gao.gov/archive/1999/rc99234.pdf

A less apparent problem is the perverse incentive that appears when caps are being contemplated at an airport for the first time. In such a situation, incumbents are encouraged to build up flight operations in advance of a capping action, simply to generate a better base for the future allocation of slots. Thus, the talk of a heavy handed and artificial solution to a problem actually exacerbates the congestion problems at the airport. For example, when the FAA began to intervene at Newark Liberty and JFK airports by designating both airports Level 2, Schedule Facilitated, airports under International Air Transport Association guidelines, the schedules that the air carriers proposed for the summer of 2008 reflected growth that appeared to be enhanced by the signals that the FAA intended to address the congestion problem with a cap.

If caps are not the answer, then the question arises – what is the solution?

B. Market-Based Remedies

Alfred Kahn, an airline economist and former Chairman of the Civil Aeronautics Board said, "Whenever competition is feasible, it is, for all its imperfections, superior to regulation as a means of serving the public interest." Secretary Peters echoed that sentiment when she said, "Our preference is to find a way to let market incentives do the job, and not to return to the days of government-regulated flights and limited competition." Although the Department instituted caps as a short-term measure, we continue to explore market-based remedies as a longer-term solution to congestion.

It is clear that the current system does not allocate airspace capacity efficiently. Solving that problem, however, should not entail government picking "winners and losers," particularly when, as currently structured, everyone involved in air travel feels like they are the loser—both those getting terrible service and those getting blamed for providing terrible service.

Market-based pricing has been demonstrated time and again as the most effective way to allocate a scarce resource that is in high demand. Space in a movie theater, use of cell phone infrastructure, or flights during certain times to certain destinations are all examples that illustrate that such pricing works. Pricing can balance demand with available capacity, resulting in less congestion and more reliable schedules. Also, pricing sends better signals as to where the system needs extra capacity, and it can supply the revenues to add such needed capacity. Increases in fares under a pricing regime would be an indicator that more capacity is needed. In terms of efficiency, the current system focuses on airplane throughput. Instead, the objective of airspace and airport management policies should be passenger throughput. Proper pricing can increase the number of passengers served at an airport, even if the number of planes does not increase. And a framework to establish proper price signals need not be disruptive to the operations of airports.

Changing from the traditional, increasingly inefficient administrative controls to a market-based system has generated a fair amount of concern, primarily from the airlines.

The following discussion outlines the issues related to pricing that were considered by the ARC. It details concerns expressed about pricing and how those concerns can be addressed.

Track Record in Aviation – Some opponents to market-based pricing believe it does not have a proven track record in aviation, and that implementation of such pricing for airspace will devastate the industry. Further, they do not believe that experience with such pricing in other industries provides a meaningful parallel for application in the airline industry.

We live in a market economy which allocates scarce resources through pricing. This model has been adopted because history has demonstrated repeatedly that markets are the most efficient means of allocating a scarce commodity. While the aviation industry is unique in a number of respects, there is no reason to believe that market-based methods will fail if applied to this industry.

In fact, market-based pricing has been used effectively in the United States for aviation. Boston's Logan International Airport applied a pricing plan in 1988 that dramatically reduced congestion at that airport. While the plan was later found to be out of compliance with the then-existing Federal rules, market-based pricing at Logan Airport did reduce congestion. In addition, the Port Authority of New York and New Jersey applied pricing in 1968 to control congestion. The pricing worked initially; however, the fee was not increased with time and eventually became ineffective.

Those questioning the efficacy of market-based pricing in aviation need look no further than airline pricing policies. Airlines already apply a market-based pricing model to airline travel. When searching for low fare flights to your destination, inevitably the cheapest flights to be found are those departing or arriving at the least desirable times. By pricing flights at less attractive times at a lower level than flights at popular travel times, airlines are incentivizing consumers to move to a less congested flight. However, this congestion fee does not reduce overall congestion in the system, because it does not impact the way the airlines themselves are charged for air traffic control and airport services.

Cost to Consumers – Arguments have been made that market-based pricing could increase the monetary cost to travelers, if airlines pass congestion fees on to consumers. The relevant question is not what are the costs of instituting market mechanisms, but rather, what are the costs of instituting market mechanisms compared to the costs of various alternatives (including capping access to an airport or allowing substantial increases in delays).

In fact, congestion is expensive. According to the ATA, congestion costs the economy over $12.5 billion a year. The New York City Comptroller has estimated that congestion costs travelers to New York City an additional $187 million. Reducing congestion will produce increased system reliability and dramatic savings for consumers. Market-based

pricing would decrease congestion and thereby decrease the costs that flow from congestion.

Market-based pricing makes the costs consumers already pay for flying into a congested market transparent and gives them the ability to avoid the higher costs by traveling during less congested periods. When scarcity exists, consumers pay higher costs. In the case of aviation, those costs are paid in terms of wait times or higher fares due to slot controls or pricing. Only with market-based pricing do consumers have the choice of avoiding higher prices. Some airlines now charge more for additional leg room. If passengers will pay for additional leg room, they almost certainly will pay to arrive on time.

Government Tax – One of the principal points argued by those opposed to market-based mechanisms is that the organizations that control airport and airspace access are both monopolies and, therefore, are themselves not market-based. For this reason, pricing of airport or airspace access would operate as a government tax, rather than a market price between two private entities.

The details of how the proceeds of a pricing mechanism might be spent are important and if the proceeds are dedicated to expanding capacity and funding specific projects at the airports, then the revenue would be directly used to alleviate the congestion that generated the proceeds and would not be a tax.

International Considerations – Carriers have expressed concerns that market-based pricing will not work at international airports for two reasons: (1) international flights have to leave at certain times to meet connecting flights overseas; and (2) our bilateral and multilateral aviation agreements limit the types of charges that may be collected from foreign carriers.

Carriers have opined that market-based pricing will not work for international flights, because the European airports' slots rules and the North Atlantic Air Traffic Control track system require them to leave within narrow windows. Thus, they cannot just reschedule these flights to other times. They argue that market-based pricing may not affect decisions for some international destinations, because there is no flexibility in those schedules. This is also true for important domestic spokes like New York, where even a slight shift in schedules can cause misconnection in hundreds of city pairs to/from New York, both domestically and internationally. However, the need for reliable departure times argues for market-based pricing. Currently, flights are delayed from departing because there is no disincentive for non-international flights to depart during this critical period. An appropriate pricing program would provide international carriers with increased assurance that their flights would be allowed to depart on time.

Some have expressed concern that market-based pricing would likely violate U.S. bilateral and multilateral aviation agreements, because such charges may not be considered to be cost-based. Any pricing plan pursued by the Department will comply with our international obligations and will not competitively disadvantage domestic carriers.

Relationship Between Physical Assets and Investments – Many airlines have invested hundreds of millions, and even billions, of dollars in terminals, gates, hangars, and other facilities at airports. Those airlines using special revenue facility bond financing gain tax preferences due to the public nature of the facilities whose financings they underwrite. They give up the facility to the airport proprietor at a predetermined date. The airlines also realize that the airport proprietor ultimately controls the use of the facilities for the benefit of the public. Nonetheless, those airlines are concerned that they would lose the ability to realize a return on those investments, if a pricing program resulted in the airlines not being able to fly their traditional schedule. Conversely, if reallocation of slots is achieved through imposition of a market-based pricing mechanism that does not recognize historic rights, some are concerned that the new owners of slots would not be able to gain access to the gates and ticket counters controlled by the former owners of the slots.

Any pricing mechanism pursued by the Department will recognize these concerns. Since the advent of the competition plan requirement in AIR-21, the Department has been educating airport proprietors about their responsibilities to accommodate all requesting carriers on a reasonable basis. Airlines are aware that their unused gate leaseholds may be accessed by other carriers, due to the unavailability of common-use gates and if the need arises. In addition, the Department would manage any market-based system in such a way as to recognize the legitimate interests of those airlines, which have made significant investments in existing infrastructure, to realize an adequate return on those investments. The Department does not want to create a disincentive for future airline investment in aviation infrastructure.

Reduced Demand for Air Travel – Some civic leaders were particularly concerned about the impact market-based pricing might have on the affordability of traveling to the New York City. As noted above, however, consumers are paying a heavy price in terms of congestion. It is unlikely that slightly higher prices during peak periods would serve as a greater deterrent than the chronic delays New York City currently experiences. In fact, a *USA Today* article published last year noted that savvy travelers avoid New York City whenever possible. That can change if market-pricing can play an appropriate role.

Economic Disruption – Given the sharp increase in fuel prices, airlines are understandably concerned about any additional financial burden generated by pricing. In addition, the airports have billions of dollars of debt and other financing tied to the financial health of the airlines. The Department understands the financial environment in which airlines and airports are operating. Any market-based solution will need to be implemented in a manner that does not unduly disrupt the current system.

Impact on Small Communities and General Aviation – There are concerns that market-based pricing would limit general aviation access to airports and would make it difficult for carriers to continue adequately serving small communities. While market-based pricing does an excellent job of allocating resources to those who can realize the most economic value from that resource, such pricing does not allow for the societal value

placed on certain activities. The Department will monitor whether modifications to market-based mechanisms are necessary to provide for continued service to small communities and continued access.

IV. Conclusion

Our objective is to address the fundamentals of the problem of aviation congestion and achieve solutions that are long-term and that provide maximum benefits to the traveling public and the vital industry that serves them. The basic question for us is whether to continue to apply temporary band-aids to the problem, or whether to seek solutions that will do a better job of allocating our scarce airspace. We believe that we must take positive, immediate steps to deal with a dynamic air transportation system that has far outpaced earlier efforts at improvement. Air travelers deserve to fly the safest and most reliable air system possible. The time has come to bring aviation into the 21st century and more fully allow market forces to work.

Change is difficult, and the airlines' concerns are understandable. In fact, very similar arguments were made by the airlines in opposition to deregulation. Concerns were raised about disruption to the industry, lack of a track record, and disruption to business models. However, the ATA Airline Handbook includes a long list of benefits that resulted from deregulation. The Handbook notes that deregulation stimulated competition, led to rapid growth in air travel, and reduced fares by more than 50% in real terms. We believe that market-based remedies directed at congestion will improve airline service like deregulation did.

Thank you again for this opportunity to testify. I will be pleased to answer any questions you may have.

Coalition for an Airline Passengers Bill of Rights
Fighting for Passengers' Health, Safety and Other Rights

Testimony of Kate Hanni
159 Silverado Springs Drive
Napa, CA 94558
(707) 337-0328
Executive Director and Spokesperson
COALITION FOR AN AIRLINE PASSENGERS BILL OF RIGHTS

on

PASSENGER RIGHTS UNENFORCEABLE WITHOUT FEDERAL LEGISLATION

Before the
Subcommittee on Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C.

April 9, 2008

Mr. Chairman, Members of the Subcommittee:

Thank you for inviting me to speak today on behalf of the 22,000 members of the Coalition for an Airline Passenger's Bill of Rights.

When we met in September, it was on the heels of a historic vote for consumers and airline passengers with the passage of H.R. 2881. That was six long months ago. Since then progress for consumers can best be described as *mixed.*

On the plus side, and due in large part to the leadership of this committee, the Department of Transportation has taken several steps to address airline delays and consumer issues:

- Took steps during the holidays to reduce delays in the Northeast corridor. During this period, airlines also did a good job of making sure adequate customer service personnel were available. I personally spent the entire day before Thanksgiving at JFK, and there were no visible delays either inside the terminals or outside on the tarmac.

- Instituted a capping program at JFK and Newark and some airlines voluntarily began rescheduling flights, providing much anticipated relief for passengers flying through New York/New Jersey airports this summer. We note that despite the voluntary rescheduling, the capping initiative was opposed by all of the airlines except JetBlue who acknowledged that congestion at JFK caused flight operations to be unreliable.

- Created a Task Force to examine long tarmac delays and to develop a set of "best practices" and recommendations. I am honored to have been appointed to that task force by Secretary Peters.

- Scheduled regional consumer forums for this spring and summer to hear directly from airline passengers. This is a great opportunity for members of the public to learn more about the air travel environment and to share their air travel experiences with government officials.

- Began administrative rulemaking procedures intended to address long tarmac delays and other important airline consumer issues including resolving gaps in airline performance statistics.

We greatly appreciate the focus that the Administration and Secretary Peters are giving to these very important issues. And, notwithstanding several isolated events, the airlines themselves seem to be acting more responsibly in regard to providing more timely information to their customers and in avoiding long tarmac delays.

1. **Stranded Passengers Won't Have Any Protections Again This Summer Unless H.R. 2881 is Considered by the Senate or its Effective Passenger Protections Included in Other Legislation That the President Will Sign**

We remain greatly concerned that, despite the current good intentions of everyone involved, passengers will have no real, enforceable protections again this summer and next year unless your H.R. 2881, with its passenger bill of rights provisions, gets considered this year by the U.S. Senate and a final bill sent to the White House. Unless the provisions in your legislation are included in *some bill* that becomes law this year, passengers across the country will be stuck again this summer and fall on airport tarmacs – totally powerless.

Here are a couple of recent examples of long tarmac delays; On January 16, our hotline rang off the hook from passengers on Delta flights at Atlanta-Hartsfield International airport, many of them stuck on jets for up to 10 hours. On March 6, in a weather event that resulted in a total accumulation of one inch of snow at DFW, American Airlines kept 17 aircraft on the tarmac for several hours beyond their own (non-binding) four-hour limit.

Without a statutory mandate from Congress, instead of food, water, working lavatories, and accurate information, passengers will again have only a stack of voluntary airline commitments that aren't enforceable, monitored by a U.S. Department of Transportation that refuses to propose any minimum health and safety standards for stranded passengers.

In response to pressures from President Bush, DOT has proposed a weak, toothless non-regulation, called the **Enhancing Airline Passenger Protections ANPRM**, that would allow airlines to create their own contingency plans for long tarmac delays -- with no DOT review for adequacy, no minimum standards, and no practical way for passengers to enforce whatever the carriers propose to offer.

Mister Chairman, and members of the Subcommittee, here's where we are now. On one hand, DOT opposes letting individual states fill the gap with their own Passengers Bill of Rights, maintaining that only the Federal Government can act in this area. Then DOT proposes to turn this preempted authority over to each of the airlines, with no Federal minimum requirements.

This DOT believes that the airlines should compete on basic health and safety matters for passengers like they do on frequent flyer miles, or seat pitch, or peanuts. In contrast, passengers believe that DOT should set the same kind of minimum standards that it does for aircraft safety.

An analysis performed last year by the DOT and OIG showed that neither the airlines' Contracts of Carriage nor the Customer Service Plans they offered in 1999 to avoid legislation are enforceable by passengers. In fact, and not to pick on American Airlines, the last paragraph in their lengthy and detailed Customer Service Plan says "We take the customer service goals in this plan very seriously. We know that you expect nothing less. **However, the Customer Service Plan does not create contractual or legal rights."**

So without DOT's setting minimum standards for airline treatment of passengers, and without enforceable Contracts and Plans, where is the cunsumer to turn?

In the absence of Federal legislation, several states have recognized the need for action and have passed or are in the process of enacting passengers' rights legislation in one form or another. Yes, the New York law was overturned by a Federal appeals court last month, but states are not giving up. California and other states are moving forward, trying to find new ways to fill the gap caused by DOT's refusal to regulate the airlines' standard of care for passengers. The court decision invalidating the New York statute has reinvigorated and expanded the membership of our coalition, and we hope it will help spur the Senate to act. We have attached a few of the many newspaper editorials that have been written since the New York Law was overturned, all in support of prompt Federal legislation.

2. DOT Avoids Effective Regulating for Passengers in Other Areas

Even though Congress last year increased DOT's funding for aviation consumer enforcement activities, DOT still declines to set reasonable minimum standards in other areas of air consumer protection. For example, we believe that airlines whose flights are habitually delayed or cancelled ought to alert passengers to their chances of problems with the flights they're considering. In that ANPRM, DOT believes that airlines need not volunteer that kind of information to callers and that there should be no DOT role unless an individual flight is delayed **70%** or more of the days it's scheduled to operate during a two-month period. What other (regulated) industry could survive with a 30% performance record? Regularly cancelled flights aren't subject to any DOT requirements.

In sum, Mr. Chairman, passengers need the provisions in your H.R. 2881 to force DOT and the airlines to offer minimum protections to passengers stranded for hours on tarmacs and, among many examples, to obtain accurate information about the scheduled flights they're reserving. Our members are meeting this week with many Senate offices and Senators to urge their support for enacting effective legislation this year.

Again, we appreciate the opportunity to testify and would be pleased to answer your questions.

www.flyersrights.org

CAPBOR AIRLINE STRANDING REPORT CARD

February 14, 2008

Kate Hanni, Executive Director

Coalition for an Airline Passengers Bill of Rights

159 Silverado Springs Drive, Napa, CA 94558

(707) 337-0328

NOTE: This is an abbreviated version of the full report card. The full version is available on our website.

www.flyersrights.org

2007 CAPBOR Airline Stranding REPORT CARD

Grade	1. Tarmac Delays of Four Hours or More	#	Worst
F	**ExpressJet** – 9 flights over 5 hours.	46	6hr 32min
F	**Continental** – 7 flights over 5 hours.	29	6hr 23min
F	**Delta** – 6 flights over 5 hours.	25	6hr 43min
F	**US Airways** – 3 flights over 5 hours.	22	5hr 17min
D	**JetBlue** – 11 flights over 5 hours.	20	7hr 15min
D	**American** – 1 flight over 5 hours.	18	5hr 25min
D	**United** – 3 flights over 5 hours.	17	6hr 22min
B	**Southwest** – 2 flights over 5 hours.	9	5hr 16min
B	**American Eagle** – 0 flights over 5 hrs	8	4hr 57min
B	**Skywest** – 1 flights over 5 hours.	6	6hr 8min
B	**Comair** – 1 flights over 5 hours.	6	5hr 22min
A	**Northwest** – 0 flights over 5 hours.	3	4hr 25min
A	**AirTran** – 1 flights over 5 hours.	3	5hr 27min
A	**Mesa** – 0 flights over 5 hours.	3	4hr 49min
A	**Alaska** – 0 flights over 5 hours.	1	4hr 11min
A	**Aloha, Atlantic Southeast, Frontier, Hawaiian, Pinnacle** – 0 flights over 4 hours.	0	N/A

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Grade	2b. Most Tarmac Delays of Two Hours or More	Flights 2006 – 2007
F	American Airlines (.20% of total flights)	1206 – 1275
F	Express Jet (.24% of total flights) slight decrease	1135 - 1055
F	Continental (.27% of total flights)	795 – 875
D	Delta (.16% of total flights)	**410 – 778**
D	United (.16% of total flights) – slight decrease	884 – 778
C	American Eagle (.14% of total flights)	678 – 733
F	Jet Blue (.35% of total flights)	**294 – 671**
C	US Airways (.14% of total flights)	**545 – 702**
D	Comair (.17% of total flights)	**222 – 415**

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Jan - Nov 2007 CAPBOR AIRLINE STRANDING REPORT CARD

Grade	3. Diversions and Cancellations 4+ Hours on Tarmac (thanks to press and passenger accounts)	Flights
D	American Airlines and American Eagle 4/24/07 Austin, Midland and San Antonio 13 flights + 5/8/07 – 1 flight – Palm Beach, 6/26/07,St. Louis # 2352, 9/25/07,Seattle #1172, 6/26/07,San Antonio #740, 12/1/2007, ?, # 3975, 8/6/07, Miami #869	19
C	United Airlines O'Hare, Newark, Milwaukee, O'Hare 12/01/07 #644, Kona 11/25/07 #54, Denver 11/28/06 #1494, Florida 11/25/2007 #1466, Dulles 06/27/07 #7495	8
F	Delta Airlines: 12 individual accounts + 20 Accounts October 9th & March 17th JFK and Philly 8 accounts 02/14/07 Delta 142 Philly 10 06/01/07 Delta 1901 JFK 4+ 06/10/07 Delta PM JFK 4 06/12/07 Delta 151 JFK 5 06/21/07 Delta 5557 JFK 5 06/25/07 Delta 6499 JFK 7 07/29/07 Delta 279 JFK 4+ 12/2/2007 Delta 132 Delta 4 01/16/08 Delta 1201 Atlanta 10 01/18/08 Delta 1975 Atlanta 7.5	49

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Jan - Nov 2007 CAPBOR AIRLINE STRANDING REPORT CARD

Grade	3. Diversions and Cancellations 4+ Hours on Tarmac (thanks to press and passenger accounts)	Flights
F	US Airways: October 9 -20 Jets on tarmac per passenger accounts: Philly November 20 Jets PHL + 7 March 17th 8 08/09/07 US Air 1276 PHL 4 11/01/07 US Air 846 Charlotte 6 12/8/2007 US Air 1584 JFK 4 10/09/07 US Air 3351 PHL 7.5 08/17/07 US Air 272 JFK 4 11/09/07 US Air 346 PHL 7.5 11/09/08 US Air 17 JFK 7	55
D	Alaska - August 9th, LAX, no food, no water, no blankets Estimate conservatively 10 06/27/07 Alaska Newark 5+ 08/11/07[1] Alaska LAX 6-10	12
B	Continental Airlines Houston and JFK (flight 82 12/29/06)	2
B	Spirit Air - 4/9/2007, Detroit	3
D	JetBlue February 14th 10 reported jets on the tarmac 06/27/07 Jet Blue 29 JFK 6+	11
B	Northwest - Flight #1192, March 24, 2007 Flight #3405, 12/21/07	3

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Jan - Nov 2007 CAPBOR AIRLINE STRANDING REPORT CARD

Grade	4. Longest Time on the Tarmac / Stranding (thanks to press and passenger accounts)	Hours
F	United Airlines Dec. 1st Chicago 644	7.5+
F	American Airlines August 9th, LAX JFK: Flight 955	6-10+ 12+
F	Alaska August 9, LAX 4 flights up to 10 hours	6-10+
F	Delta Airlines October #1201, #1975	10+
F	Continental Airlines Dec. 29th # 82	9+
F	US Airways October...9 #17 JFK to Phoenix Philadelphia March 17th 2007	8+ 8+
F	Northwest Airlines 12/21/07 #3405 Flight #1192, March 24, 2007	8+ 8+
F	JetBlue February 14th June 27, 2007 Jet Blue 29 JFK 6+	10+ 6+

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Jan - Nov 2007 CAPBOR AIRLINE STRANDING REPORT CARD

"How much are people willing to tolerate award"

Events	5. Crisis Management	Grade
1	Continental Airlines: Flight #1669 July 2007 Passengers' Protested, Homeland Security brings Attack dogs. Passengers have been stranded for 5 hours, but in the plane for 13 hours without food or water. Diabetics, 3 disabled persons left on board aircraft, passengers went back to retrieve them.	F
1	Delta Comair Flight #5637: July 2007 11 year old removed from plane after vomiting and passing out. Passengers still not allowed to deplane, captain gave lame excuse as to why not.	F
1	United Airlines Flight #644: Dec. 1st Gonzales Family 5 year old vomiting incessantly, given a blanket to cover up vomit after each exhale, layers of vometous material, flight attendants didn't want to give water, family had 2 premature twins that needed formula. 7.5 hours on tarmac. Begged for medical attention for 5 year old who was nearly passed out. Finally allowed to deplane.	F
1	LAX : Aug. 9th 2007 Alaska Airlines, American Airlines[2] Up to 10 hours on the tarmac, some planes got some snacks, some didn't, some got water, some didn't, when folks were deplaned one man had a heart attack, ambulances were called to rescue diabetics, elderly, children and the frail.	F

Jan - Nov 2007 CAPBOR Airline REPORT CARD

Grade	8. Customer Service Plans / Contracts of Carriage
D	AirTran[3]
F	Alaska[4]
F	American[5]
F	Continental[6]
D	Delta[7]
F	ExpressJet
F	Frontier[8]
B	JetBlue[9]
F	Northwest[10]
F	Southwest [11]
F	United[12]
D	US Airways[13]

Contract of Carriage Details

AIRLINE	1	2	3	4	5	6		Score*
AirTran	Y	N	N	N	Y	N		4
Alaska	N	N	N	N	N	N		0
American	Y	N	N	N	N	N		1
Continental	Y	N	N	N	N	N		1
Delta	Y	N	N	Y	N	N		4
ExpressJet	N	N	N	N	N	N		0
Frontier	N	N	N	N	N	N		0
Jet Blue	Y	Y	N	Y	Y	N		10
Northwest	Y	N	N	N	N	N		1
Southwest	N	N	N	N	N	N		0
United	Y	N	N	N	N	N		1
US Airways	Y	N	N	N	N	Y		3
Weighting	1	3	3	3	3	2		-

***Final Scores out of 15 possible points** *See legend and notes below*

NOTES:

Scoring/Grading:

12.0-15.0 = A
9.0-11.9 = B
6.0-8.9 = C
3.0-5.9 = D
0.0-2.9 = F

Legend:

1) Does the Contract of Carriage ("COC") specifically address long tarmac confinements, and diversions?
2) Does the COC guarantee a passenger the right to deplane after a specific period of time he or she is confined to the tarmac?
3) Does the COC guarantee that passengers subjected to prolonged tarmac confinements receive appropriate temperature controls?
4) Does the COC guarantee that passengers confined to prolonged tarmac confinement be provided food and beverages?
5) Does the COC provide that passengers confined to prolonged tarmac confinement be afforded the use to restrooms?
6) Does the COC provide information to the passengers on how to make a formal complaint to the Federal Aviation Administration or the U.S. Department of Transportation about the performance of the Airline?

Endnotes

[1] LAX Computer Glitch Strands 20,000 for 14 Hours, August 12, 2007, http://laist.com/2007/08/12/lax_computer_gl.php

[2] At LAX, computer glitch delays 20,000 passengers, LA Times, August 11, 2007, http://travel.latimes.com/articles/la-trw-lax12aug12

[3] **contract of carriage - Customer Service Commitment** http://www.airtranairways.com/about-us/customer_service_commitment.aspx

[4] Domestic Contract of Carriage; http://www.alaskaair.com/as/www2/company/tariff/domestic/tariff_domestic_toc.asp

[5] http://www.aa.com/aa/i18nForward.do?p=/customerService/customerCommitment/conditionsOfCarriage.jsp

[6] http://www.continental.com/web/en-US/content/co_contract_of_carriage.2008012901.pdf

[7] http://images.delta.com.edgesuite.net/delta/pdfs/contract_of_carriage_dom.pdf

[8] http://www.frontierairlines.com/frontier/pdf/Contract_of_Carriage.pdf

[9] http://www.jetblue.com/p/jetblue_coc.pdf

http://www.jetblue.com/about/ourcompany/promise/index.html

[10] http://www.nwa.com/plan/contract2.pdf

http://www.nwa.com/plan/

[11] http://www.southwest.com/travel_center/coc.pdf

http://www.southwest.com/about_swa/customer_service_commitment/customer_service_commitment.pdf

[12] http://www.united.com/ual/asset/COC04feb08final.pdf

http://www.united.com/page/article/0,1360,2981,00.html

[13] http://usairways.com/common/resources/_downloads/aboutus/US_contract_of_carriage.pdf

Customer Service Plan

http://www.usairways.com/awa/content/aboutus/customersfirst/customerserviceplan.aspx

USA TODAY

Court ruling grounds passenger bill of rights

It now looks as if an act of Congress â€" or more likely, an act of God, given Congress' record â€" will be needed to keep passengers comfortable while trapped for hours on planes delayed on tarmacs.

On Tuesday, a federal appeals court rejected an attempt by New York state to bypass Congress and force airlines to provide food, water and working restrooms for fliers stuck at New York airports. Unless the state appeals successfully to the U.S. Supreme Court, its plan will die, as will any similar attempts in other states.

It is, of course, infuriating that airlines haven't fixed the problem on their own. And it's intolerable that Congress hasn't stepped in to require decent treatment. But that's where things stand as travelers head toward another busy summer after a year that set records for congestion and delays.

Anyone who flies certainly recalls why a federal law is needed.

In 2007, 1,603 flights were delayed on tarmacs for more than three hours after leaving their gates, more than twice as many as in 2001. Among the delays were some that stretched into ordeals, including the nearly 10 hours passengers were held on a JetBlue Airways flight in an ice storm at New York's Kennedy International Airport and an eight-hour delay on an American Airlines jet diverted to Midland, Texas. In many cases, fliers were stranded on planes with smelly toilets and little food, water or information.

With each new story of trapped passengers, the airline industry has insisted that such delays are rare and that it can handle the situations. Congress has promised passenger protections but never delivered, and federal transportation officials have dawdled.

New York's Legislature admirably tried to fill the void, but the airline industry sued to overturn the law, and a federal appeals court agreed, in essence, that it is up to the federal government â€" not the states â€" to set rules for airline services.

The Air Transport Association (ATA), an industry trade group, cheered the ruling as vindication of its argument "that airline services are regulated by the federal government."

Perhaps so. But the airlines lobbied successfully to kill a federal measure to regulate consumer services in 1999. The industry also opposes a Transportation Department move to force airlines to put "contingency plans" for long delays in their legal contracts with consumers. That, the ATA argues, is "exclusively a commercial decision for carriers."

All of which leaves the outlook for fliers bumpy. The airlines have yet to act on their own, which would be the best solution. Congress has basically punted. So 15 months after the first passengers were trapped on a tarmac for eight hours, fliers can't be sure they'll get a glass of water if the same happens to them.

There ought to be a law, as the saying goes, but passing one might require an election-year epiphany.

Posted at 12:22 AM/ET, March 27, 2008 in Air travel - Editorial, Politics, Government - Editorial, USA TODAY

The New York Times

March 27, 2008, 2:34 pm

Bad News for Airline Passengers

By THE EDITORIAL BOARD

There is one place Americans can be assured of having almost no rights — not to freedom of movement, fresh air, food or water, or even to working toilets. It's on the runways and tarmacs of the nation's airports.

Airlines generally provide those things, of course — but not always. Increasingly, when passengers board a plane that becomes delayed, they are being held, sometimes for hours on end, without basic comforts and necessities.

New York State tried to do the right thing, passing a first-of-its-kind passenger bill of rights, enacted within a year of an especially bad Valentine's Day of air travel, in which passengers on multiple Jet Blue flights were stuck on planes for as long as 10 hours under woeful conditions.

This week, though, a federal appellate court knocked the law down. In its ruling, it sided with an airline industry group, saying that New York's law clashed with federal law, and might encourage other states to rachet up demands for passenger comfort, perhaps even requiring "allergen-free food options on its outbound flights, unraveling the centralized federal framework for air travel."

There's a federal framework?

As flights have become increasingly delayed or canceled for reasons from the mechanical, to weather, to economics, the federal government has done pitifully little to protect the air travelers.

It certainly hasn't addressed the trauma of marathon delays, exacerbated by security concerns that discourage passengers from carrying their own drinking water onto a flight.

With the void in leadership from Washington, New York stepped in with its law, which called for fining airlines up to $1,000 per passenger. Several states, including California, Arizona, and New Jersey have been weighing their own bills. The court decision is likely, however, to slow down the momentum.

As it sought to recover its image after last year's disastrous delays, JetBlue instituted its own bill of rights for customers, and other airlines are considering doing the same.

There's nothing wrong with airlines doing this voluntarily, but it is not a solution. Passengers' basic rights should have the force of law. Since it looks like the states will not be allowed to act, Congress needs to step in.

washingtonpost.com

Holding Pattern

The demise of New York's passenger bill of rights puts the spotlight on Congress.

Tuesday, April 1, 2008; A16

WELL, IT WAS a good try. The New York state law that sought to bring a little dignity to flying by requiring air carriers to provide fresh air, lights, functioning restrooms and "adequate food and drinking water" during a delay of three hours or more at John F. Kennedy or La Guardia airports was struck down by the U.S. Court of Appeals for the 2nd Circuit. The rationale: Regulation of the airlines is a federal, not a state, function. As much as we want air carriers not to treat passengers like cattle, we're not unhappy with this outcome. State micromanagement of their operations is not the way to bring carriers in line.

The New York statute was a reaction to the Valentine's Day horror of 2007, when a freak ice storm in the New York area canceled hundreds of flights and trapped thousands of travelers in airport terminals and on tarmacs -- some of the latter for up to 10 hours without food, water or working bathrooms. The pain at the gate continued for the rest of the year as aggrieved passengers endured the worst flight delays since record-keeping began in 1995. And don't get us started on lost, delayed or damaged luggage or on the explosion in customer complaints.

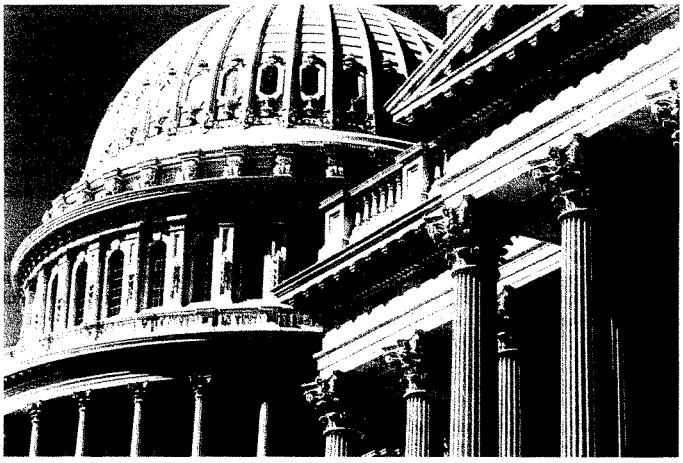
Ideally, rules on how many hours one could be trapped on an airplane and what kind of amenities must be on hand when delays become excessive should come from the airlines themselves. But only JetBlue Airways and Delta Air Lines have voluntarily instituted a passenger bill of rights since February 2007. Thus, and given that regulating the airlines is a federal duty, it's not surprising that Congress would think about stepping in.

Rep. Mike Thompson (D-Calif.) piggy-backed many elements of his passenger bill of rights legislation onto the reauthorization of the Federal Aviation Administration. Rather than micromanaging airline operations down to the number of bottles of water each plane must have on board, the bill calls on air carriers and airport operators to submit contingency plans to the secretary of transportation for approval. The plans must describe how an airline would provide food, water and restroom facilities and how the airport operator would make gates available during an emergency.

This is preferable to having rules imposed by the Transportation Department. But here's the problem: Though the reauthorization has passed the House, it is stuck in the Senate. Until the Senate moves on the bill, passengers can expect more of the same.

ATA TESTIMONY

AVIATION DELAYS AND CONSUMER ISSUES



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

April 9, 2008

AIR TRANSPORT ASSOCIATION

Good morning, Mr. Chairman and members of the subcommittee.

Much has been said about lengthy flight delays. Some of it correct, much of it not. I'd like to spend a few moments this morning describing what has been done to better care for passengers caught up in these situations – not just by the airlines but also by airport operators, the Department of Transportation, the DOT Inspector General and the FAA. We have not been idle since the subcommittee's hearing last September.

PERFORMANCE DATA

We've all seen the recent performance data and the increase in passenger complaints, and we're not where we want to be. For that, we apologize to our customers. But we also want to assure them and members of this committee that we will keep doing everything we can to reduce the number of lengthy delays, and to make them as comfortable as possible during those delays. As you'll see from my remarks, all of the airlines have taken significant steps to ensure passengers' needs are addressed during lengthy flight delays – detailed contingency plans, improved cooperation and communication with airports, and improved, quicker responses when planes are sitting on the tarmac.

But the reality is that airlines can only do so much to reduce lengthy delays. Our efforts are met by a brick wall: the outdated ATC system that cannot handle today's traffic and cannot recover from severe weather that often effectively shuts down the system. That is why we fully support ATC modernization as quickly as possible – that's the real answer to the problem.

OVERVIEW

We've spent a lot of time and effort during the last year working on how the aviation community can better serve passengers during long delays. Because of that, we've come to understand that any useful discussion about this issue must recognize several basic considerations.

While this effort has been very helpful, we keep coming back to the indisputable conclusion that the nation's aging air traffic control system can't keep up with demand. Last summer's delays vividly – and unpleasantly – demonstrated that reality. One important implication of that ever-present reality is that the constrained ATC system impedes airline efforts to recover from flight delays. That's bad for us and for our customers.

The bedrock principle in the aviation business is safety first. It is that simple, no exceptions. Airlines will not put at risk their customers and employees. This means that an airline will not operate a flight if there is a concern that weather would jeopardize its safe operation.

Second, airlines have every incentive to operate their flights on time. Delays are disruptive and costly. Sitting on a taxiway burning Jet-A, which costs $3.25 a gallon, is not a winning business proposition.

Third, weather is the cause of the vast majority of lengthy flight delays. There is only so much that can be done about the weather. We can avoid flying into bad weather but we can't make it go away. This means that we will continue to experience weather-related situations where the FAA restricts or prohibits flying. We also need to acknowledge that, despite the remarkable improvements in weather forecasting, there are times when we are surprised by the extent and duration of severe weather.

Fourth, airline operations and the air traffic control system that airlines depend on are very complex. They are complicated, interdependent networks. Recovering from interruptions in such an intricate, high-volume operating environment – which is what flight delay management is all about – can be very difficult and can take time.

Fifth, airlines understand what they need to do and – as I will discuss in a moment – have implemented measures to respond more effectively to lengthy delays. What they need is the flexibility to do so. Each airline's operations differ – reflecting the varying needs and expectations of the customers they serve – as do the circumstances surrounding each delay. Consequently, rigid edicts from Washington – or worse yet, a slew of divergent laws from state capitals – will not produce the responsiveness that customers want and deserve. What they will produce are unintended and undesirable consequences for the customer.

WHAT WE HAVE DONE

- ATA members have reviewed and revised their extended-ground-delay contingency plans. As a result, they have:
  - Implemented procedures for closer airline operations center monitoring of delayed flights
  - Established time-based decision points for delayed flights
  - Involved more senior management in decision making about delayed flights
  - Reemphasized to their employees the importance of informing passengers of flight status
    - And in doing so, have continued the expansion of electronic and voice text messaging to customers, to inform them about their flight's status
  - Reviewed their systemwide flight delay mitigation programs
  - Reviewed their flight cancellation policies, which can involve "pre-cancelling" – the early cancellation – of flights to enable airlines to have their aircraft and crews better positioned to resume normal operations the next day
  - Reviewed resources at likely diversion airports to enable those airports to better accommodate diverted flights
- Coordinated with airport operators to improve delay response programs
  - Identified gate, mobile air stairs and bus resources to facilitate deplaning of passengers
  - Reviewed terminal resources to accommodate affected passengers

- Coordinated with the FAA about air traffic control procedures for extended delays
  - With the FAA and airport operators, we've reviewed the use of taxiways and ramps during extended ground delays
  - We've also reviewed airspace procedures with the FAA to better accommodate flight operations during period of adverse weather
- Participated in DOT's New York Aviation Rulemaking Committee
  - Urged accelerated implementation of the FAA's New Jersey-Newark-Philadelphia airspace redesign plan
- Provided contingency plans to DOT Inspector General for his review
  - ATA requested the IG's involvement after the early 2007 delay incidents
- Participated in DOT rulemaking proceedings aimed at enhancing passenger protections during long ground delays, and improving the reporting of such delays
  - ATA recommended specific changes to DOT proposal, to fill in gaps so that delay and cancellation data are captured.
- Briefed members of Congress on the airlines' revised delay-mitigation measures
- Enhanced their Web sites to describe extended ground-delay measures

WHAT WE'VE LEARNED

We've learned some important lessons in the last year, particularly as a result of recent delay experiences.

Our revised plans are not static. We realize that we must adopt a lessons learned approach. Even with the most detailed plans, effectively responding to lengthy delays is an iterative process. Equally important, recent experience confirms the importance of flexibility. An example of this is American Airline's decision last month to use buses to return passengers to DFW from a nearby Texas airport rather than waiting for rescheduled flights.

We've also learned that there is an unavoidable trade-off between trying to work through delayed flights and cancelling flights to avoid those delays. This is important to recognize because one very clear message from our customers is that most would prefer a delayed flight to a cancelled flight. That's not surprising. But the message sometimes is forgotten when we discuss the issue of delayed flights. To be crystal clear about this point: If Congress and the public conclude that avoiding lengthy delays is the most important objective, we must all accept the fact that more flights will be cancelled and more passengers, at the end of the day, will be inconvenienced.

WHAT NEEDS TO BE DONE

As I mentioned a few moments ago, we cannot control the weather. But we can use technology to improve our ability to operate during inclement weather and, equally important, to recover from interrupted operations. That means leveraging existing ATC resources as best we can. It also means, however, aggressively pursuing NextGen, the satellite-based air navigation and communications system that all in the aviation community recognize is indispensable to meeting the future needs of the flying and shipping public.

Working together, we have made real progress in meeting the needs of passengers during extended delays. We realize that we need to continue to improve our response in such situations. We, along with our colleagues in the airport community and at the FAA and DOT, are committed to that.

Thank you.

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

June 6, 2008

Mr. James C. May
President and CEO
Air Transport Association
1301 Pennsylvania Avenue, NW
Suite 1100
Washington, D.C. 20004

Dear Mr. May:

On April 9, 2008, the Subcommittee on Aviation held a hearing on the "**Aviation Delays and Consumer Issues.**"

Attached are questions to answer for the record. 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

JFC:pk
Attachment

APRIL 9, 2008
SUBCOMMITTEE ON AVIATION
HEARING ON

AVIATION DELAYS AND CONSUMER ISSUES

QUESTIONS FOR THE RECORD
TO:

MR. JAMES C. MAY
PRESIDENT AND CEO
AIR TRANSPORT ASSOCIATION

Mr. May, thank you for your participation in the House Subcommittee on Aviation's Hearing on Aviation Delays and Consumer Issues. I appreciate you taking the time to respond to the following questions:

1. Why would an airline schedule 56 departures (as described in the Department of Transportation Inspector General's testimony) in a 15-minute window when they know that it is impossible for all 56 of those flights to depart on time?

2. During the question section of the hearing, you describe enforcement provisions that are being pursued by the Department of Transportation (DOT) regarding similar problems to the one in the question above and you stated, "[t]here are active enforcement provisions that are being pursued by DOT, and I would be happy to submit this for the record." Would you provide those examples for the record?

3. In your testimony at the hearing you emphasized the importance of helping passengers who are caught on the tarmac during a period of excessive delay. How long do you believe an aircraft should have to wait before it returns to the terminal?

RESPONSES OF THE
AIR TRANSPORT ASSOCIATION OF AMIERCA, INC.
TO QUESTIONS FOR THE RECORD

APRIL 9, 2008
SUBCOMMITTEE ON AVIATION
HOUSE OF REPRESENTATIVES
HEARING ON
AVIATION DELAYS AND CONSUMER ISSUES

QUESTION 1: Why would an airline schedule 56 departures (as described in the Department of Transportation Inspector General's testimony) in a 15-minute window when they know it is impossible for all 56 of those flights to depart on time?

ANSWER: Individual carriers can best explain scheduling decisions at specific airports. Common to all of these decisions, however, is the goal of most efficiently moving aircraft, and the passengers and cargo that they carry. A number of factors go into making scheduling decisions. These decisions are made in a very complex, interdependent operating environment, where problems that develop can have serious, systemwide effects. For that reason, one important consideration is assuring not only the timeliness of a specific flight but also of subsequent flights that the aircraft performs that day. Commercial aircraft, especially those operated domestically, fly a number of flight segments each day. This means that a key objective is to maintain the smooth operation of each aircraft throughout the day. Compromised schedules, which occur most often because of weather or air traffic control delays, have cascading effects that damage an airline's operations. That is wasteful, particularly today when the cost of jet fuel is approaching $4.00 per gallon. The incentive for the airline is to schedule in a way that maintains the integrity of its operations.

QUESTION 2: During the question section of the hearing, you describe enforcement provisions that are being pursued by the Department of Transportation (DOT) regarding similar problems to the one in the question above and you stated, "[t]here are active enforcement provisions that are being pursued by DOT, and I would be happy to submit this for the record." Would you provide those examples for the record?

ANSWER: The Department of Transportation is in the best position to describe the status of its ongoing oversight efforts in this area. That having been said,

the Department has informed us that for some time it has been giving special attention to the flight delay data that DOT's Bureau of Transportation Statistics generates each month. DOT's purpose is to determine if there are instances where chronically delayed flights could be regarded as unrealistic scheduling. Were the Department to conclude that unrealistic scheduling had occurred, it presumably would evaluate its enforcement alternatives.

QUESTION 3: In your testimony at the hearing you emphasized the importance of helping passengers who are caught on the tarmac during a period of excessive delay. How long do you believe that an aircraft should have to wait before it returns to the terminal?

ANSWER: Airlines have spent much time and effort over the last year in reviewing and improving their irregular operations plans. Their twin objectives in doing so are to ensure the safety and comfort of their passengers on flights that experience long ground delays. One of the lessons learned in these reviews has been the importance of airline management periodically assessing the status of a delayed flight. Our members do this. Because of that, they can make timely and informed judgments about how to handle such flights. This is the best way to determine if and when an aircraft should return to the terminal. A hard-and-fast rule about returns to the terminal, while perhaps attractive in the abstract, would deny passengers the benefit of a decision that is based on current local conditions. We recognize that lengthy delays are very frustrating but we firmly believe that the welfare of the passenger is best served by real-time decisions not inflexible rules that do not permit decision makers to act based on emerging, on-scene circumstances.

USE OF THE NATIONAL AIRSPACE SYSTEM

Federal Aviation Administration

Report Number: CR-2008-028
Date Issued: March 3, 2008

Memorandum

U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Inspector General

Subject: INFORMATION: Use of the National Airspace System
Federal Aviation Administration
Report Number CR-2008-028

Date: March 3, 2008

From: David Tornquist
Assistant Inspector General
for Rail and Maritime Program Audits and Economic Analysis

Reply to Attn. of: JA-50

To: Acting Federal Aviation Administrator

This report presents the results of our audit of the use of the National Airspace System (NAS). The House Committee on Transportation and Infrastructure requested this audit to provide policymakers with a common understanding of who uses the NAS as they consider how to finance the aviation system into the future. Disagreement among stakeholders regarding their use of the NAS makes it difficult to evaluate Federal Aviation Administration (FAA) financing alternatives.

Our specific objectives were to determine: (1) how different groups use NAS elements, (2) how that usage contributes to aviation congestion, (3) whether NAS users can be grouped in a meaningful manner based on their usage of the system, and (4) how good a proxy is jet fuel for use of FAA air traffic services.

We examined FAA fiscal year (FY) 2005 flight activity data[1] and other data regarding the use of FAA tower, terminal, and en route services by different aircraft types and user groups. We also assessed the relationship between jet fuel consumption and use of FAA's air traffic control services in several representative markets. A detailed discussion of our scope and methodology is included in Exhibit A. We conducted this audit in accordance with generally accepted Government Auditing Standards prescribed by the Comptroller General of the United States. We did not systematically audit or validate the data in any of the

[1] FY 2005 is the latest flight activity data available from FAA that contains the corrected identification of aircraft engine type and operator classification necessary to undertake this analysis.

databases. However, we conducted trend analyses and checks of the data to assess reasonableness and comprehensiveness. We also spoke with managers responsible for maintaining the databases to understand any noted inconsistencies and attempt to resolve them. Based on our understanding of the data through discussions with knowledgeable agency officials, as well as checks for obvious errors in accuracy and completeness, we determined that the data was sufficiently reliable for our purposes.

BACKGROUND

Currently, NAS users pay the vast majority of FAA's costs through ten aviation-related excise taxes, including taxes on airfares, fuel and cargo. Almost 68 percent of the revenue from these taxes in FY 2006 derived from the 7.5 percent ticket tax and the then $3.30 segment tax in calendar year (CY) 2006.[2] All of the aviation excise taxes supporting FAA's programs will expire on June 30, 2008.[3] Congress is currently deliberating on whether to continue, replace, or modify these excise taxes as part of its ongoing effort to reauthorize the FAA.

Aviation stakeholder groups strongly disagree on their relative use of the aviation system and contribution to aviation congestion. Air carrier representatives argue that non-air carriers are significant NAS users and as such contribute to aviation congestion and the resultant system delays. Non-air carrier representatives, particularly general aviation and "business jet" groups, claim that they do not make significant use of the NAS, are marginal users to the system, and do not contribute to aviation congestion because they avoid congested airports and airspace.

This disagreement on NAS usage leads to similar disagreements as to the relative share of FAA's costs that each stakeholder group should pay.[4] Air carriers claim that they are being unfairly required to pay more than their use of the NAS and FAA services would justify. As a result, they claim that they are subsidizing non-air carriers', in particular business jet operators', NAS usage. Conversely, general aviation and business jet operators contend they are paying their fair share for their relative use of the system.

> ***Air Carriers*** *are scheduled and charter airlines, usually operating jet or turboprop aircraft with more than 30 seats.*
>
> ***Non-Air Carriers*** *are general aviation, fractional (shared) ownership, and on-demand air-taxi operators using aircraft with less than 30 seats.*

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[2] The segment tax rose to $3.40 in calendar year 2007.

[3] These taxes were scheduled to expire on September 30, 2007. Congress extended them through a series of Continuing Resolutions, the most recent of which expires on June 30, 2008.

[4] Another factor relevant to the policy decision on the amounts that user groups should pay for FAA services is the cost of providing individual FAA services at different locations using different staff and equipment. This report does not address the cost of providing individual services.

On March 21, 2007, we testified[5] on the use of the NAS before the House Transportation and Infrastructure Committee's Aviation Subcommittee; our testimony also included our observations on the Administration's FAA financing proposal.[6] In lieu of the Administration's FAA financing proposal, the Senate Commerce Committee passed the Aviation Investment and Modernization Act of 2007 (S. 1300). In addition, the Senate Finance Committee, which has jurisdiction over the aviation excise taxes, passed its title of the FAA financing legislation. However, the Senate as a whole has not passed a long-term FAA program reauthorization and financing bill at this time. The House passed the FAA Reauthorization Act of 2007 (H.R. 2881), which incorporates both program authorization and tax provisions.

The Administration's proposal would alter the structure of fees and taxes paid by air carriers and non-air carriers, reflecting FAA's conclusion that the revenues recovered from users should be more closely linked with the cost of providing air traffic services. The Senate Commerce and Finance Committee proposals would change the structure of fees and taxes of non-air carriers to a lesser degree. The House proposal fundamentally maintains the current structure of taxes among the user groups.

RESULTS IN BRIEF

We found that air carriers and non-air carriers, including general aviation and business jet operators, all make sufficient use of the NAS so as to materially contribute to FAA's costs and congestion in general. We also found alternative NAS user groupings that are more homogeneous in terms of their use of FAA services than the groupings reflected in the current aviation excise tax structure. Finally, we found that jet fuel consumption is a better proxy for the use of the NAS than the current aviation excise taxes, but it does not measure whether air traffic control services are used, nor does it distinguish between the types and complexities of services used.

All Aircraft Groupings by Engine or Operator Type Make Significant Use of the NAS

We examined use of the NAS in two ways: by aircraft powered by different engine type and by aircraft flown by different operator types. We found that all of the groups examined made significant use of FAA air traffic control services.

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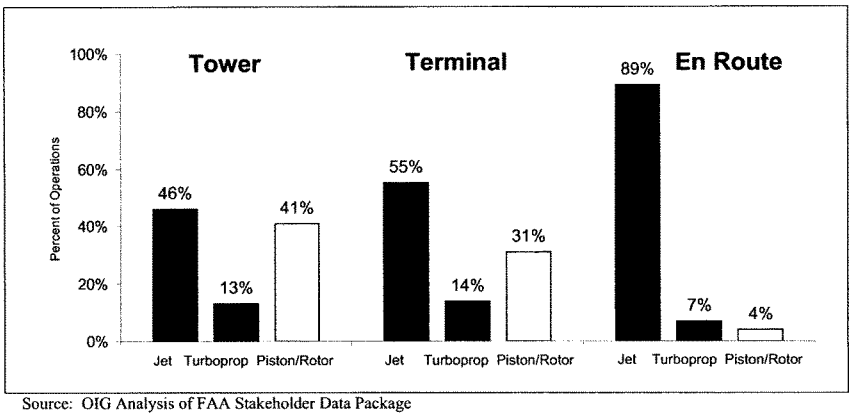
[5] OIG Testimony Number CC-2007-034, "FAA's Financing Proposal," March 21, 2007. OIG reports and testimonies are available on our website: www.oig.dot.gov.

[6] The Next Generation Air Transportation Financing Reform Act of 2007 (S. 1076).

Piston Engine Airplanes and Rotorcraft Make Significant Use of the NAS. While jets and turboprops were the major users of the NAS, piston engine airplanes and rotorcraft accounted for 41 percent of FAA tower services[7] and 31 percent of FAA terminal area control services in FY 2005 (see figure 1). However, since piston engine airplanes and rotorcraft typically operate at lower altitudes, they only utilized 4 percent of en route services.

Figure 1. Use of Air Traffic Control Services by Aircraft Type - FY 2005

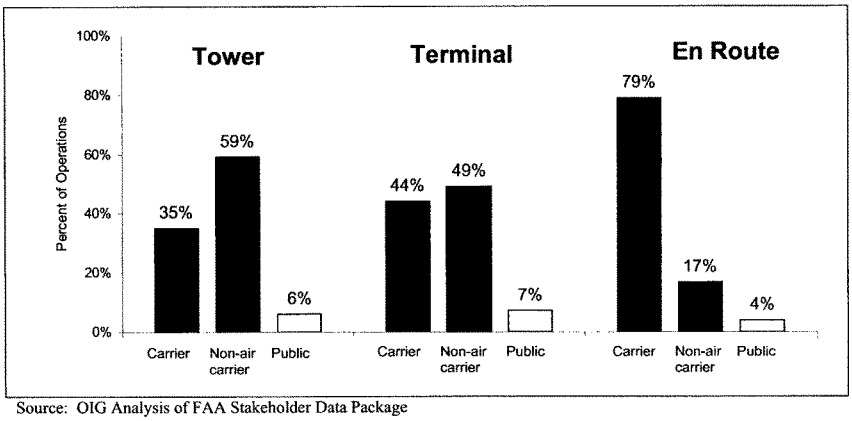


Source: OIG Analysis of FAA Stakeholder Data Package

Non-Air Carriers Make Significant Use of the NAS. Non-air carriers were the major users of FAA tower and terminal area control services in FY 2005, accounting for 59 percent and 49 percent respectively of these services. However, air carriers were the major users of FAA en route services, accounting for 79 percent of the total (see figure 2 on the following page).

[7] FAA services were measured in terms of operations, i.e., an aircraft handled by an air traffic control facility. For a tower, this was a landing or take-off. For terminal area radar, this was an instrument approach, departure or other control within the terminal airspace. For en route, this was a mile flown under positive en route control.

Figure 2. Use of Air Traffic Control Services by Operator Group - FY 2005



Source: OIG Analysis of FAA Stakeholder Data Package

We found that non-air carriers tend to avoid large primary metropolitan airports. Overall, at the 26[8] large primary airports we examined, air carriers accounted for 93 percent of all operations. Operations by non-air carriers at these airports ranged from as little as 1 percent to as high as 20 percent. However, we also found that non-air carriers have significant operations at the most active towers in the country (as determined by number of operations). More than half (53 percent) of non-air carrier operations occurred at the top third (162) most active towered airports (see table 4 on page 10). Finally, 77 percent of all operations at the two-thirds of towers with the lowest activity were attributable to non-air carriers.

Business Jets' NAS Usage Is Considerable. FAA does not track business jets as a separate NAS user group. However, we disaggregated FAA's data in two different ways that shed light on the current debate among stakeholder groups representing air carriers and business jet operators about business jets' NAS usage. A broader categorization that approximates business jets is non-air carrier jets (jets operated by corporations, individuals, and air taxis and under fractional or shared ownership arrangements). These jets accounted for 12 percent of tower and 13 percent of terminal area control services in 2005. In comparative terms, non-air carrier jets use of tower and terminal area control services is about one-third of air carrier jets and turboprops. A narrower categorization of business jets is general aviation jets, which excludes air taxis and fractionals. These accounted for

[8] Four of the 30 large primary airports were not included in this analysis. Washington Reagan is general aviation restricted. The data for Minneapolis-St. Paul was incomplete. The data for San Diego was not provided, and Honolulu is geographically unique.

9 percent of tower and 7 percent of terminal area control services in 2005 (see tables 1 and 2 on pages 8 and 9).

Both Air Carriers and Non-Air Carriers Contribute to Aviation Congestion

We examined congestion[9] at several of the most active towers, terminal radar approach control (TRACON) facilities, and en route centers. We found that air carriers accounted for the majority of activity and congestion at the 26 large primary metropolitan airports, with non-air carriers contributing, but to a far lesser degree. Air carriers and non-air carriers contributed to congestion at the terminal control areas we examined. For example, non-air carriers accounted for 20 to 30 percent of the peak level of instrument approach operations at the New York TRACON (see figure 5 on page 14). Both commercial and general aviation operators contributed to congestion at the heavily used en route centers we examined. For example, general aviation operations accounted for 18 percent to 23 percent of operations at the Cleveland en route center during peak times of the day (see figure 6 on page 15).

NAS Users Can Be Grouped More Homogeneously Than Reflected in the Current Aviation Excise Tax Structure

The current aviation excise taxes do not group NAS users homogeneously in terms of their use of the NAS. For example, the current tax structure groups jets used for non-commercial purposes with general aviation piston engine airplanes, although they are taxed at different rates. However, those jets are likely to have more in common (in terms of NAS usage) with commercial jets, which are taxed differently. Certain aircraft and operator types have distinct operating characteristics that could form the basis of more homogeneous groupings. Jet and turboprop aircraft have different operating characteristics than piston engine airplanes and rotorcraft. Similarly, air carrier operators have different operating characteristics than non-air carriers. Grouping users by aircraft or operator type would be more indicative of NAS usage than the distinctions inherent in the current excise tax structure.

A Tax Based on Fuel Consumption Would Approximate NAS Usage, but it Does Not Measure Use of Air Traffic Control Services

We found that a tax based on fuel consumption is a better barometer of NAS activity than the current excise taxes because it would recover costs from users

[9] We measured congestion by examining the demand for specific air traffic services at the busiest times of day. For towers, we examined arriving flight operations. For TRACONs, we examined instrument approach operations. For en route centers, we examined operations.

more in proportion to their system activity than excise taxes. For example, our examination of the Las Vegas to Los Angeles flight market found that commercial aircraft accounted for 90 percent of all aircraft activity. However, commercial aircraft paid 99 percent of the excise taxes currently collected. This share would decline to 94 percent under a fuel-only tax. However, a fuel tax is not a perfect proxy for NAS activity since fuel consumption can vary in proportion to factors unrelated to that activity, such as aircraft weight. In addition, a tax based on fuel consumption neither measures whether ATC services are used nor distinguishes among the types and complexities of the services used. Similarly, the current ticket, segment, and freight waybill taxes do not vary according to the complexity or amount of ATC services consumed.

FINDINGS

All Aircraft Groupings By Engine or Operator Type Significantly Use the NAS.

We examined use of the NAS in two ways: by aircraft powered by different engine types (jet, turboprop, and piston/rotor) and by aircraft flown by different operator types (air carrier, non-air carrier, and public use). We found that none of the groups examined were marginal users of FAA air traffic control services.

Piston Engine Airplanes and Rotorcraft Significantly Use the NAS

We examined NAS usage by aircraft type and found that piston engine airplanes and rotorcraft were significant NAS users, accounting for 41 percent of tower, 31 percent of terminal, and 4 percent of en route services in FY 2005. Turboprop aircraft accounted for 13 percent of tower, 14 percent of terminal, and 7 percent of en route services. Jet aircraft were the largest users of FAA services, accounting for 46 percent of tower, 55 percent of terminal, and 89 percent of en route services (see figure 1 on page 4).

Tower *services manage ground operations on airport taxiways and runways as well as departure and landing activity in airspace within about 5 miles of the airport. The sophistication of services ranges from visual-only control, at the majority of airports, to radar and instrument landing aids at the larger air carrier airports.*

Terminal Area Control *services are provided to aircraft in an area that rises up to 10,000 feet and expands to a 30 to 50 mile radius of major airports. Aircraft are provided instrument approaches to and departures from the primary and secondary airports within the terminal control area or managed while transiting the terminal area airspace.*

En Route Control *services provide positive control for all aircraft flying above 18,000 feet and those flying below that level, but operating under Instrument Flight Rules (IFR) conditions and oceanic air traffic control for the 80 percent of controlled international airspace under FAA management.*

Non-Air Carriers Significantly Use the NAS

We also examined NAS usage by operator type and found that in FY 2005 non-air carriers exceeded air carriers in their use of FAA tower and terminal area control services, but not en route services. Non-air carriers accounted for 59 percent of tower, 49 percent of terminal, and 17 percent of en route services. Air carriers accounted for 35 percent of tower services, 44 percent of terminal, and 79 percent of en route services. Public users[10] accounted for 6 percent of tower services, 7 percent of terminal area control services, and 4 percent of en route services.

We also found that non-air carriers accounted for 93 percent of the aircraft contacts made by flight service stations in FY 2005. While general aviation operators accounted for 75 percent of the total contacts, fractionals and air taxis accounted for 18 percent of the total contacts.[11] Users of these services are mostly light aircraft operators, not airlines or corporate aircraft operators that contract for weather and flight dispatch services or employ their own staff to handle these functions.

Non-air carrier piston engine airplanes and rotorcraft were the largest users of FAA tower services in FY 2005, accounting for 40 percent of all services. Their usage of tower services was 33 percent higher than the next highest user group, air carrier jets, which accounted for 30 percent of tower service usage. Non-air carrier jets also accounted for considerable tower service usage at 12 percent (see table 1).

Table 1. Tower Services Usage – FY 2005
Percent of Tower Operations by User Category and Aircraft Type

User	Jet	Turboprop	Piston/Rotor	User Total
Air Carrier	30%	4%	1%	35%
Non-Air Carrier (General Aviation)	12% (9%)	7% (5%)	40% (38%)	59% (51%)
Public Use	4%	1%	1%	6%
Aircraft Total	**46%**	**13%**	**41%**	**100%**

Source: OIG Analysis of FAA Stakeholder Data Package
Percentages may not add due to rounding.

[10] Public users are military, governmental, and medical flight operators.
[11] Fractional operators are shared ownership arrangements, and air taxis are on-demand charter operators.

Air carrier jets were the largest users of terminal area control services in FY 2005, accounting for 38 percent of those services. Their usage was 31 percent greater than the next highest user, non-air carrier piston engine airplanes and rotorcraft, at 29 percent (see table 2). Non-air carrier jet usage of terminal area control services was 13 percent.

Table 2. Terminal Area Control Services Usage – FY 2005
Percent of Approach Control Operations by User Category and Aircraft Type

User	Jet	Turboprop	Piston/Rotor	User Total
Air Carrier	38%	5%	1%	44%
Non-Air Carrier (General Aviation)	13% (7%)	7% (3%)	29% (22%)	49% (33%)
Public Use	4%	2%	1%	7%
Aircraft Total	**55%**	**14%**	**31%**	**100%**

Source: OIG Analysis of FAA Stakeholder Data Package
Percentages may not add due to rounding.

Air carrier jets dominated the use of en route services in FY 2005, accounting for 75 percent of those services. Their usage was almost seven times that of the next largest user, non-air carrier jets, at 11 percent (see table 3).

Table 3. En Route Control Services Usage – FY 2005
Percent of Aircraft Miles Controlled by User Category and Aircraft Type

User	Jet	Turboprop	Piston/Rotor	User Total
Air Carrier	75%	3%	0%	79%
Non-Air Carrier (General Aviation)	11% (5%)	3% (2%)	4% (3%)	17% (10%)
Public Use	3%	1%	0%	4%
Aircraft Total	**89%**	**7%**	**4%**	**100%**

Source: OIG Analysis of FAA Stakeholder Data Package
Percentages may not add due to rounding.

We found that non-air carriers tend to avoid certain large primary metropolitan airports. Overall, at the 26 large primary airports we examined, air carriers accounted for 93 percent of all operations. Operations by non-air carriers at these airports ranged from as little as 1 percent to as high as 20 percent. However, we also found that non-air carriers have significant operations at the most active

towers in the country (as determined by number of operations), many of which surround large primary airports.

While 87 percent of air carrier operations were at the top third most active towers (162 airports), more than half (53 percent) of non-air carrier operations also occurred at these airports. Total activity at the top third most active towers was split almost evenly between air carrier and non-air carrier operations. Finally, 77 percent of all operations at the two-thirds of airports with the lowest activity were attributable to non-air carriers (see table 4).

Some towered airports exclusively used by non-air carrier operators are among the busiest towers in the country in terms of flight operations. Of the 40 most active towers in the country, nine are nearly exclusive non-air carrier facilities. For example, in FY 2005, Denver Centennial Airport, a reliever to Denver International Airport, had more operations than New York John F. Kennedy Airport, and Deer Valley Airport, in Phoenix, had more tower operations than either Orlando International or San Francisco International Airports.

Table 4. Operations at Towered Airports - FY 2005

% of Tower Operations / % of Carrier Operations	Air Carrier	Non-Carrier	Public
1/3 Most Active Towers	48% / 87%	50% / 53%	3% / 33%
2/3 Least Active Towers	13% / 13%	77% / 47%	10% / 67%

Source: OIG Analysis of FAA Stakeholder Data Package
Percentages may not add due to rounding.

Business Jets' NAS Usage Is Considerable

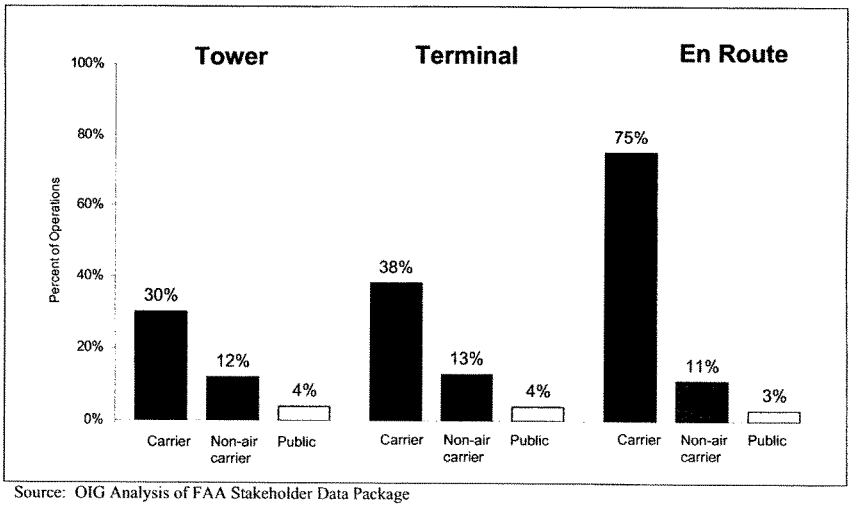
The structure of taxes on "business" or "corporate" jets has become a lightening rod in the debate regarding how to finance the FAA. Under the current system of aviation excise taxes, the same flight can be charged a significantly different amount depending upon the purpose for which the flight is made. An aircraft flown by a scheduled air carrier will be charged the 7.5 percent ticket tax and the $3.30 (CY 2006) per passenger flight segment fee. The same aircraft, privately owned, would likely impose similar costs on FAA, but would pay less than the scheduled airlines for those same services through the general aviation fuel tax.

Air carrier representatives argue that it is unfair for their passengers and themselves to subsidize these business jets. However, the National Business Aviation Association contends that only 3 percent of general aviation aircraft that are used for business purposes actually belong to Fortune 500 companies (i.e. are "corporate jets") and business aircraft tend to avoid congested primary airports in favor of reliever or business airports. As a result, these stakeholders contend that the current scheme by which business aircraft are charged for air traffic services is both fair and appropriate.

FAA does not track business jets as a separate NAS user group. This would be difficult as it requires determining whether or not a particular flight was taken for business purposes. However, we disaggregated FAA's data in two different ways that shed light on the current debate regarding business or corporate jets' NAS usage.

The first, broader categorization that approximates business jets is non-air carrier jets (jets operated by corporations, individuals, and air taxis and under fractional or shared ownership arrangements). This categorization will necessarily include a small number of jet aircraft that are owned by individuals or corporations, but used for recreational or non-business purposes. This categorization is significantly smaller than the category of "business *aircraft*" used by some stakeholder groups, which includes a significant number of piston engine airplane and rotorcraft operations. Non-air carrier jets accounted for 12 percent of tower and 13 percent of terminal area control services in 2005 (see figure 3).

Figure 3. Jet Use of Air Traffic Control Services - FY 2005



Source: OIG Analysis of FAA Stakeholder Data Package

The second, narrower categorization of business jets is general aviation jets. This narrower categorization more closely approximates "corporate jets" used by some stakeholder groups as opposed to our definition of business jets. Under this narrower definition, non-air carrier general aviation jets accounted for 9 percent of tower and 7 percent of terminal area control services in 2005. To put this in perspective, under both categorizations, these proxies for business jets' tower and terminal area control services in FY 2005 was about one-third of air carrier jets.

We did find support for the argument by representatives of business jet operators that business jets do not generally use large primary airports. As stated previously, the majority of tower operations at these primary airports are air carrier. However, business jets' use of the NAS in total is not insignificant. As we stated in our March 21, 2007 testimony, based on our analysis of NAS usage, the use of FAA air traffic services by commercial operators, general aviation operators, and public users is sufficient to warrant separate cost allocation categories. None of these groups had activity levels low enough to support a conclusion that they did not materially contribute to FAA's costs.

Air Carriers and Non-Air Carriers Contributed to Congestion

We measured congestion by examining the demand for specific air traffic services at the busiest times of day. For towers, we examined arriving flight operations. For TRACONs, we examined instrument approach operations. For en route centers, we examined operations. We found that air carriers dominate tower activity at most of the large primary metropolitan airports and were responsible for most of the congestion. Non-air carriers contributed to congestion at the busy terminal control and en route facilities we examined, and less significantly at large primary metropolitan airports.

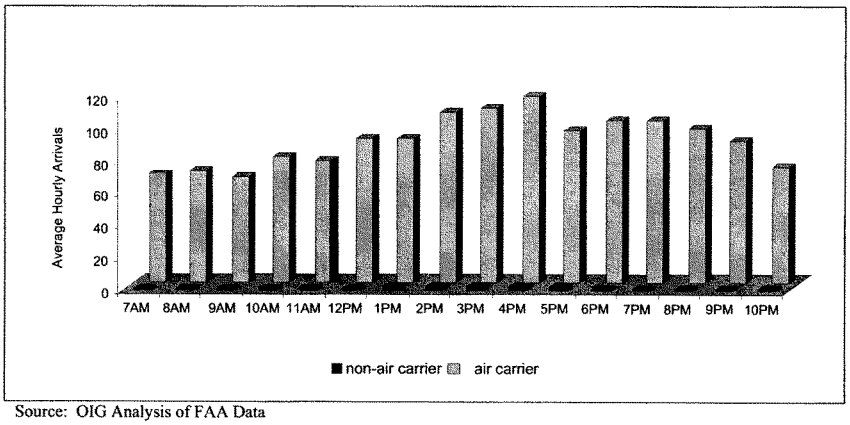
Demand for Tower Services at Large Airports

Air carriers account for the majority of tower operations at the large, primary metropolitan airports. Non-air carrier operators tend to use other airports in the metropolitan area surrounding the large primary airports. At 26 large hub (primary) airport towers, air carriers accounted for an overall average of 93 percent of operations, ranging from 78 percent to 99 percent. While non-air carriers accounted for less than 4 percent of tower operations at 11 of the 26 airports we reviewed, at other large primary airports the percent of non-air carrier operations ranged from 6 percent to as high as 20 percent of operations.

In terms of time of day operations, we found that at the three primary airports in the New York metropolitan area, hourly demand for terminal area control services increased, starting at 7:00 a.m., and peaked between 2:00 p.m. and 6:00 p.m.

These are popular arrival times for travelers returning to New York or connecting to departing international flights at Kennedy. Air carriers account for the bulk of operations during these peak time periods, and therefore account for the majority of congestion. Non-air carriers account for a small amount of this activity (see figure 4), but do exhibit similar time of day peaking, and as such, do contribute to congestion. We found similar results for the other large primary airports we examined.

Figure 4. New York Terminal Control Area - FY 2005 Arriving Flight Operations by Hour of Day (LaGuardia, Newark, and John F. Kennedy)



Source: OIG Analysis of FAA Data

Demand for Terminal Area Services

We found that both air carriers and non-air carriers contributed to congestion at the terminal area radar facilities we examined.[12] These facilities provide terminal area radar services for both the primary and secondary airports within their areas of coverage. Therefore, even though air carriers and non-air carriers may tend to use different airports in a metropolitan area, they use the same TRACON facility. For example, the New York TRACON facility handles three large primary airports,[13] primarily serving air carriers, and 12 outlying towered airports, primarily serving non-air carriers. Non-air carriers accounted for 20 percent to 30 percent of the peak level of instrument approach operations at the New York TRACON.

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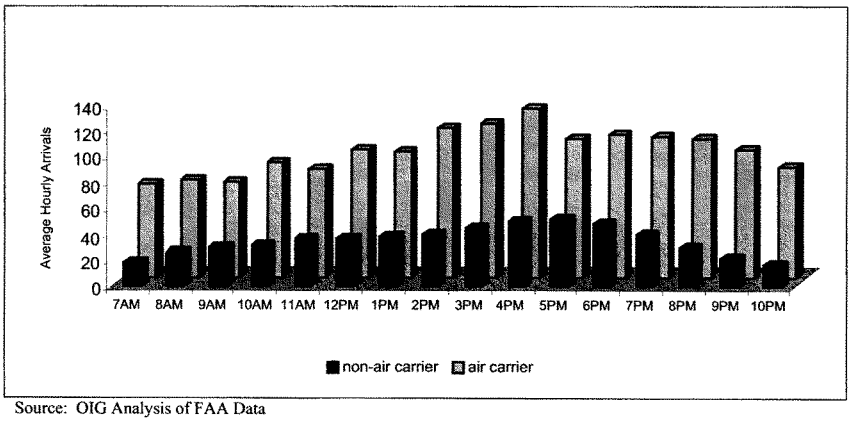
[12] Terminal area radar control services are provided by terminal radar approach control (TRACON) facilities located within the primary airport's control tower or in a separate facility.

[13] La Guardia, Kennedy, and Newark.

Air carrier and non-air carrier demand for terminal area radar services exhibited the same peaking during the prime travel times of the day at the metropolitan areas we examined. In other words, both air carriers and non-air carriers were competing for terminal area control services during the same busy, congested time periods. For example, at the New York TRACON, non-air carriers exhibited the same time of day peaking in demand for terminal services as did air carriers (see figure 5). We found the same patterns of terminal service use by non-air carriers, including time of day peaking, in our examination of activity at the Chicago TRACON.

Figure 5. New York Terminal Control Area – FY 2005 Instrument Approach Operations by Hour of Day (Includes Outlying Airports)



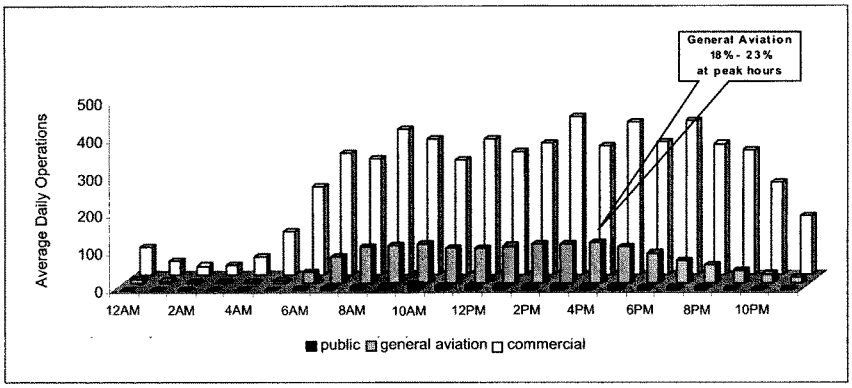
Source: OIG Analysis of FAA Data

Demand for En Route Services

We found that both commercial and general aviation operators contributed to congestion at the two heavily used en route centers we examined. General aviation operators' use of en route services was not insignificant. Their demand for air traffic control services peaked during the busy periods at the en route centers. Due to data limitations, we included fractional and air taxi services with air carriers in a "commercial" category and presented general aviation separately in the en route time of day demand analysis.

As shown in figure 6, 80 percent of operations during July 2005 at the Cleveland en route center were attributable to commercial operators and 17 percent of operations were attributable to general aviation. In addition, general aviation operations accounted for an even higher share of total operations, between 18 percent and 23 percent, during the most congested times.

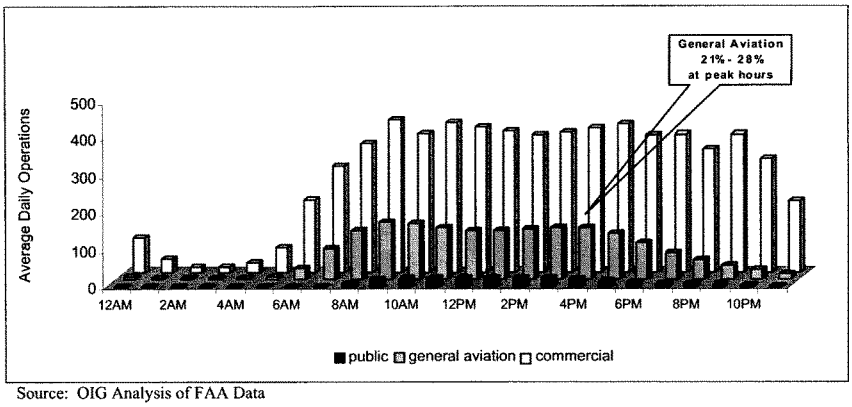
Figure 6. En Route Center Operations by Hour of Day
Cleveland Center – July 2005



Source: OIG Analysis of FAA Data

We found the same pattern of usage at the Atlanta en route center. Seventy-five percent of operations during July 2005 were attributable to commercial operators and 21 percent of operations were attributable to general aviation. As in Cleveland, the share of operations at the Atlanta en route center attributed to general aviation during peak periods ranged from 21 percent to 28 percent (see figure 7 on the following page).

Figure 7. En Route Center Operations by Hour of Day
Atlanta Center – July 2005



Source: OIG Analysis of FAA Data

NAS Users Can Be Meaningfully Grouped Based on Their System Usage

Certain aircraft and operator types have distinct operating characteristics that form the basis of meaningful groupings. For example, jet and turboprop aircraft share different operating characteristics than piston engine airplanes and rotorcraft. Jet and turboprop aircraft have greater altitude capacity and usually employ more sophisticated navigational aids that make greater use of more complex air traffic control services. Piston engine airplanes and rotorcraft usually fly at lower altitudes than jet and turbo-prop aircraft, rarely using en route control services.

Similarly, air carrier operators have different operating characteristics than non-air carriers. Air carriers generally fly fixed routes, serve large metropolitan airports, and have specific time of day requirements. Non-air carriers generally do not operate on a fixed schedule and rarely use large primary airports. We found these groupings were more meaningful in terms of NAS usage than alternatives such as commercial versus recreational aircraft. Either of these groupings (engine or operator type) could form the basis for recovering from a group as a whole the costs it imposes on FAA.

Fuel Consumption is a Better Measure of Use of the NAS than Existing Passenger and Cargo Taxes, but it Does Not Measure the Use of Air Traffic Control Services

Existing passenger and cargo excise taxes have a minimal relationship to the use of air traffic control services. Trust Fund revenue generated by the passenger ticket taxes and cargo waybill taxes depends on the ticket price or waybill amount and the quantity of passengers or cargo on a flight, not the air traffic control services received. Thus, there is disparity among the commercial operators subject to the excise taxes—the revenue generated by large air carrier aircraft versus smaller aircraft operated by air taxis and fractional operators. The passenger and cargo excise taxes, which are applied only to commercial flights, also create a disparity when compared to the fuel tax paid by general aviation users of the same air traffic control services.

Based on a review of five nonstop markets, a tax based on fuel consumption would distribute the fee burden more equitably than the current excise tax system. In the markets studied, air carriers accounted for 92 percent of all flight activity, but paid 99 percent of the taxes collected under the current system (see table 5). The tax share would decline to 97 percent under a fuel only tax (see table 5). Non-air carrier flights, on the other hand, comprised 8 percent of the flight activity and contributed only 1 percent under the current tax and fee structure. Under a fuel-only tax system, contributions to the cost of operations by non-air carriers would increase to 3 percent.

Table 5. Fuel Consumption as a Measure of System Use
Flight Fuel Consumption and Current Tax Contribution – October 2006

Market	Air Carrier			Non-air carrier		
	Percent of Flights	Percent of Fuel Consumed	Contributions Under Current Tax	Percent of Flights	Percent of Fuel Consumed	Contributions Under Current Tax
Newark – Los Angeles	99.1%	99.5%	99.8%	0.9%	0.5%	0.2%
Salt Lake City – Seattle	70.4%	82.6%	88.9%	29.6%	17.4%	11.1%
Memphis – Miami	97.2%	99.3%	99.9%	2.8%	0.7%	0.1%
Boston – La Guardia	97.6%	99.1%	99.9%	2.4%	0.9%	0.1%
Las Vegas- Los Angeles	90.6%	94.4%	99.2%	9.4%	5.6%	0.8%
Weighted Average	**92.3%**	**96.9%**	**98.8%**	**7.7%**	**3.1%**	**1.2%**

Source: OIG Analysis of FAA, BTS and DOT Data

However, a tax based on fuel consumption is not a perfect proxy for NAS activity since fuel consumption can vary in proportion to factors unrelated to that activity, such as aircraft weight. In addition, fuel consumption neither measures whether ATC services are used nor distinguishes among the types and complexity of the services used. Similarly, the current ticket, segment, and freight waybill taxes do not vary according to the complexity or amount of ATC services consumed.

In conclusion, we did not find support for the arguments that either piston engine airplanes, rotorcraft, or non-air carrier operators are marginal users of the NAS and do not contribute to congestion. However, we did find support for the argument that these user groups tend to avoid the large primary metropolitan airports, particularly when a reliever airport is nearby. We found that both air carriers and non-air carriers contribute to congestion at the terminal area radar and en route facilities we examined. We also found that user groupings based either on aircraft or operator type would provide a more homogeneous grouping of users, according to their use of the NAS, than is inherent in the current excise tax structure. Finally, we found that a tax based on jet fuel consumption is a better proxy for the use of the NAS than the current aviation excise taxes, but it does not measure whether air traffic control services are used, nor does it distinguish between the types and complexities of services used.

We met with FAA officials to discuss our results, and their technical comments were incorporated into the report. Since we are making no recommendations, no formal response to this report is required. We appreciate the courtesies and cooperation given by FAA representatives during this audit. If I can be of further assistance, please feel free to contact me at (202) 366-1981 or Mitchell Behm, Program Director, at (202) 366-1995.

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cc: FAA Assistant Administrator for Aviation Policy,
Planning, and Environment
FAA Chief of Staff
FAA Audit Liaison

EXHIBIT A. SCOPE AND METHODOLOGY

Scope

In a letter to the Inspector General, the House Committee on Transportation and Infrastructure, Subcommittee on Aviation requested that our office determine who uses the National Airspace System and how users contribute to congestion. In addition, we were requested to evaluate whether jet fuel consumption was representative of NAS usage.

Data in this report were obtained from the FAA. The data was used to perform the analyses detailed below.

This performance audit was conducted in accordance with generally accepted Government Auditing Standards prescribed by the Comptroller General of the United States with the exception of the data quality standards described below. There has been no prior audit coverage in this area by the Department of Transportation's Office of Inspector General.

Methodology

Our analysis focused on the flight activity of FY 2005. It is the latest period for which enhanced FAA flight activity data were available.

We analyzed data on tower, terminal area, and en route air traffic control (ATC) operations to assess the use of air traffic control services. We obtained the operations data from FAA. We used the data to analyze the use of ATC services by aircraft operator type (carrier, non-air carrier, and public user) and by aircraft engine type (jet, turboprop, and piston/rotor). The analysis extended to use of ATC services at different types of towers and terminal control areas as well as at domestic and oceanic en route facilities. For tower facilities, we also conducted analyses of operations at individual tower facilities.

We examined contributions to congested air traffic control services by analyzing demand for the largest passenger service airports and several of the most heavily used terminal control TRACONs and en route centers. We analyzed demand by time of day and by user group.

The fuel as a proxy analysis was based on flight data obtained using the FAA's ETMSC database for selected origin and destination markets over the period of one month (October 2006).

For each of the markets selected:

- We utilized Form 41 data to determine fuel burn rates for each of the aircraft types (large jets, regional jets, business jets, general aviation aircraft, and cargo aircraft).
- We obtained revenue data from the FAA for cargo carriers, air taxi operations, belly cargo on commercial carriers, and fractional and other non-scheduled Part 135 passenger and cargo carriers.
- We utilized the quarterly airfare data for Q106 which is compiled published by OST to estimate the average air fares between the selected origin and destination markets.
- We utilized BTS data for estimates of average system-wide load factors.

Using this information we examined and modeled contributions made by different aircraft groups under the current excise tax system compared to a fuel only excise tax system and a weight and distance based user fee.

Data

We did not systematically audit or validate the data in any of the databases. However, in prior work, we conducted trend analyses and checks of the data to assess reasonableness and comprehensiveness. We also spoke with managers responsible for maintaining the databases to understand any noted inconsistencies and attempt to resolve them. Based on our understanding of the data through discussions with knowledgeable agency officials, as well as checks for obvious errors in accuracy and completeness, we determined that the data was sufficiently reliable for our purposes.

1. Data Package for Stakeholders: FAA-developed air traffic activity data and cost accounting data. The air traffic activity measures include operations data for FAA towers and approach control facilities and flight activity data for domestic and en route flights. The data provide information on air traffic activity by user groups (aircraft operator types) and by aircraft engine types. In addition, FAA provided individual flight operations records for flights at selected TRACONs, towers, and en route centers. This data included time of day information. Scope: FY 2005.

   We found that FAA understated piston engine airplane and rotorcraft NAS usage in FY 2005 by an estimated 6 percent due to a partial error in its

methodology.[14] As a result, we believe the actual percent of tower operations by piston engine airplanes and rotorcraft was approximately 47 percent as opposed to the 41 percent FAA reported. Conversely, jet and turboprop usage was approximately 53 percent as opposed to the reported 59 percent. The data did not allow us to restate the jet and turboprop categories separately. However, the error does not appear to have a significant impact on the results of the FAA cost allocation methodology.

2. Air Traffic Activity Data System (ATADS): An FAA database of flight activity at staffed facilities. Scope: Airport towers across the country, FY 2005.

3. Enhanced Traffic Management System (ETMS): An FAA-maintained database providing detailed flight records, including time, distance, aircraft types, and user types for aircraft flying under an instrument flight plan. Scope: October 2006.

[14] FAA made an allocation of generic general aviation operations among the different engine type classifications without taking into consideration that most general aviation jet and turboprop aircraft were already accounted for in another (ETMS) data source, thus creating duplicate counts for many of those types and under counting of piston and rotor aircraft operations.

EXHIBIT B. MAJOR CONTRIBUTORS TO THIS REPORT

THE FOLLOWING INDIVIDUALS CONTRIBUTED TO THIS REPORT.

Name	Title
David Tornquist	Assistant Inspector General for Rail and Maritime Program Audits and Economic Analysis
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Stephen Smith	Transportation Industry Analyst
Ralph W. Morris	Economist
Jay Borwankar	Financial Analyst
Meredith McDaniel	Analyst
Darlisa Crawford	Writer-Editor

The following pages contain textual versions of the charts and graphs found in this document. These pages were not in the original document, but have been added here to accommodate assistive technology.

Use of the National Airspace System
Section 508 Compliant Presentation

Figure 1. Use of Air Traffic Control Services by Aircraft Type – FY 2005

Aircraft Type	Tower	Terminal	En Route
Jet	46%	55%	89%
Turboprop	13%	14%	7%
Piston/Rotorcraft	41%	31%	4%

Figure 2. Use of Air Traffic Control Services by Operator Group – FY 2005

Operator Group	Tower	Terminal	En Route
Carrier	35%	44%	79%
Non-Air Carrier	59%	49%	17%
Public	6%	7%	4%

Figure 3. Jet Use of Air Traffic Control Services – FY 2005

Operator Group	Tower	Terminal	En Route
Carrier	30%	38%	75%
Non-Air Carrier	12%	13%	11%
Public	4%	4%	3%

Figure 4. New York Terminal Control Area – FY 2005
Arriving Flight Operations by Hour of Day
(LaGuardia, Newark, and John F. Kennedy Airports)

Time of Day	Air Carrier Operations	Non-Air Carrier Operations
7 a.m.	67	2
8 a.m.	69	2
9 a.m.	65	2
10 a.m.	78	3
11 a.m.	75	3
12 p.m.	89	2
1 p.m.	89	3
2 p.m.	106	3

3 p.m.	108	3
4 p.m.	115	4
5 p.m.	94	3
6 p.m.	100	3
7 p.m.	100	2

Figure 5. New York Terminal Control Area – FY 2005 Instrument Approach Operations by Hour of Day (Includes Outlying Airports)

Time of Day	Air Carrier Operations	Non-Air Carrier Operations
7 a.m.	71	19
8 a.m.	74	27
9 a.m.	73	29
10 a.m.	87	33
11 a.m.	82	36
12 p.m.	98	38
1 p.m.	96	39
2 p.m.	115	42
3 p.m.	117	46
4 p.m.	129	50
5 p.m.	105	53
6 p.m.	110	48
7 p.m.	108	40

Figure 6. En Route Center Operations by Hour of Day Cleveland Center – July 2005

Time of Day	Commercial Operations	General Aviation Operations	Public Operations
12 a.m.	75	9	2
1 a.m.	38	5	2
2 a.m.	26	3	2
3 a.m.	28	3	1
4 a.m.	52	4	1
5 a.m.	118	8	2
6 a.m.	237	28	4
7 a.m.	328	70	7
8 a.m.	312	95	9
9 a.m.	392	101	12
10 a.m.	366	104	13
11 a.m.	309	93	11

12 p.m.	366	94	12
1 p.m.	333	98	12
2 p.m.	354	103	13
3 p.m.	423	105	12
4 p.m.	347	109	11
5 p.m.	411	96	10
6 p.m.	359	80	9
7 p.m.	413	58	9
8 p.m.	352	47	7
9 p.m.	335	34	4
10 p.m.	248	23	4
11 p.m.	160	15	3

Note: General Aviation represents between 18 percent and 23 percent of total operations during peak hours.

Figure 7. En Route Center Operations by Hour of Day
Atlanta Center – July 2005

Time of Day	Commercial Operations	General Aviation Operations	Public Operations
12 a.m.	94	10	3
1 a.m.	38	6	2
2 a.m.	16	4	1
3 a.m.	15	4	1
4 a.m.	28	5	1
5 a.m.	70	8	1
6 a.m.	197	30	1
7 a.m.	286	83	4
8 a.m.	346	134	9
9 a.m.	412	155	20
10 a.m.	374	151	23
11 a.m.	403	141	24
12 p.m.	394	133	24
1 p.m.	380	133	24
2 p.m.	371	138	24
3 p.m.	378	142	24
4 p.m.	388	142	21
5 p.m.	401	124	15
6 p.m.	370	99	13
7 p.m.	372	72	11
8 p.m.	330	55	11

9 p.m.	371	38	8
10 p.m.	304	27	5
11 p.m.	193	16	3

Note: General Aviation represents between 21 percent and 28 percent of total operations during peak hours.

Testimony of Greg Principato
President, Airports Council International-North America

before the

House Transportation and Infrastructure Committee
Subcommittee on Aviation
"Aviation Delays and Consumer Issues"

April 9th, 2008

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Chairman Costello, Ranking Member Petri, members and staff of the House Transportation and Infrastructure Subcommittee on Aviation, thank you for allowing Airports Council International-North America (ACI-NA) the opportunity to participate in this important hearing on aviation delays and consumer issues. My name is Greg Principato and I serve as President of ACI-NA. Our 366 member airports enplane more than 95 percent of the domestic and virtually all of the international airline passenger and cargo traffic in North America. Nearly 400 aviation related businesses are also members of ACI-NA.

ACI-NA applauds the Subcommittee for its work on H.R. 2881, the "Federal Aviation Administration Reauthorization Act." H.R. 2881 will serve as the catalyst to reducing airline delays and passenger inconvenience by modernizing the U.S. air traffic and airport system. This crucial legislation provides airports the financial tools necessary to build critical safety, security and capacity projects, including new runways, taxiways and terminals to meet growing airline passenger needs by increasing the ceiling on the Passenger Facility Charge user fee to $7.00. By doing so, airports can meet the growing passenger demand by planning *now* to invest in modern, secure, comfortable and environmentally compliant facilities for air travelers.

Additionally, within the House FAA Reauthorization bill, the Subcommittee appropriately addressed the need for consumer concerns. While the vast majority of airports already have contingency plans in effect to assist airlines when such assistance is

requested, we agree that airport operators should work more closely with air carriers in enhancing these plans, including formalizing a process to offer assistance after being notified by the airline that an aircraft has been on the tarmac for an agreed-upon period of time. Additionally, we applaud your efforts to establish and publicize a consumer complaints hotline number for the DOT Aviation Consumer Protection Division, as well require DOT to collect and publish monthly data pertaining to cancelled and diverted flights of air carriers.

Newest Delay Stats/Impact on Airports: While demand for air travel continues to grow, airline delays and complaints are rising. According to information filed with the Bureau of Transportation Statistics (BTS), airlines reporting on-time performance with the Department of Transportation (DOT) recorded an on-time arrival rate of 73.4 percent in 2007, down from 75.4 percent mark in 2006. The rate was only 68.6 percent in February 2008. With almost one third of flights arriving at their final destination late, the total airline cost resulting from delays is more than $7 billion, based on data from the Air Transport Association. Of equal concern, consumers filed 13,168 complaints about airline service in 2007, up an astounding 58.2 percent over the 8,324 complaints filed in 2006. DOT's most recent Air Travel Consumer Report, released on April 3, indicates that complaints about airline service from consumers increased 13.3 percent in February 2008, compared with the same month in 2007. While these rising statistics are alarming, it is important to note that airports are working aggressively to enhance air travel by improving the airport customer experience during lengthy airline delays.

ACI-NA January Irregular Operations Workshop: Airports continue to take proactive measures to strengthen contingency plans and enhance customer service needs during extended ground delays and irregular operations (IRROPS). In September 2007, more than 40 industry representatives from thirteen airports and six major airlines gathered at Dallas/Forth Worth International Airport (DFW) to facilitate better planning to collectively respond to significant service disruptions affecting passengers. The session at DFW provided a forum for airport and airline staff to identify passenger needs and proactive strategies to minimize passenger discomfort during irregular operations. The single most important conclusion of the September workshop revealed that better communication, collaboration and coordination between all stakeholders; including airlines, airports, TSA, CBP, FAA, concessionaires, media, ground transportation, and hotels; before and during an event will dramatically improve customer service.

Building upon the successful September meeting, in January ACI-NA convened an industry-wide workshop meeting of more than 100 officials from airports, airlines, passenger organizations and the federal government. The workshop's goals and objectives were to promote an information exchange on providing excellent passenger care during extended delays and to work with industry peers to identify new opportunities to better serve passengers during extended ground delays and airline IRROPS events. To better enhance and strengthen airport contingency plans, the workshop identified immediate and near term actions to be undertaken on a local and national level.

Immediate actions to be undertaken on a local level include:

- Coordinate individual airline and airport IRROPS plans to identify overlaps and gaps across all service providers;
- Communicate, collaborate and coordinate to present consistent and accurate messages to both employees and passengers. For example, ensure all parties understand that a designated concession is open for business; review with concessionaires the value of remaining open and maintaining an adequately stocked supply of items unique to IRROPS such as medical and infant diapers/formula;
- Develop and implement a unified Communications Program providing consistent and timely messaging to the public and all employees; and
- Establish a network of stakeholder professionals that will develop, in advance, comprehensive IRROPS guidelines that encompass all stakeholders' needs and ensure they are met.

Near-term actions to be undertaken on a local level include:

- Create an IRROPS Committee comprised of all airport stakeholders (air carriers; airport departments; concessionaires; government agencies, including FAA, TSA and CBP; media; ground transportation service providers; as well as hotels);
- Develop a unified, major talking point, communications plan that considers the needs of all service providers, employees, and the traveling public;
- Partner with the local media for effective broadcasting of messages; and
- Enhance airport and airline web pages as a means of communicating real-time events to employees and the traveling public.

These actions to enhance airport contingency plans, as well as some of the "best practices" in place at airports throughout North America, have been provided to the Department of Transportation's "National Contingency Plan Task Force" which is working to develop model contingency plans to mitigate lengthy airline on-board ground delays.

Additionally, ACI-NA, in cooperation with the Air Transport Association, is reaching out to the FAA, TSA and CBP to explore opportunities by which federal entities might enhance their operations during irregular operations. Continued dialog with these federal agencies, as well as gaining a commitment to partner at the local airport level will only help to improve customer service issues during irregular operations.

National Contingency Plan Task Force: In addition to enhancing contingency plans, ACI-NA, as well as representatives from several large and small airports, including Atlanta; Allentown/Bethlehem/Easton; Dallas/Fort Worth; Pittsburgh and New York are actively participating on the Department of Transportation's National Contingency Plan Task Force. Established by the Secretary of Transportation, the Task Force is comprised of airlines, airports, the Federal Aviation Administration and others to coordinate and develop model contingency plans to deal with lengthy airline on-board ground delays.

The Task Force provides a forum, from a knowledgeable and independent perspective, to strategize and effectively develop recommendations to mitigate lengthy-on board ground delays nationwide. As participants, airports are working with the Task Force to review incidents involving long, on-board ground delays and their causes; identifying trends and

patterns of such events; and recommending workable solutions for mitigating the on-board consumer impact of extraordinary flight disruptions. Currently a working group, led by Jim Crites of DFW International Airport and Kate Hanni of the Coalition for a Passenger Bill of Rights, has developed a prioritized listing of passenger needs, whether on the aircraft or in the airport terminal, during extended ground delays. Another working group will develop a listing of the causes of lengthy tarmac delays and measures that could be used to mitigate or prevent them.

Additionally, airports are assisting the Task Force by reviewing existing airport and airline contingency plans, as well as "best practices." In fact, ACI-NA staff is now assembling a list of solutions that have been effectively implemented by airports throughout the United States to address passenger needs. These will be provided to the Task Force at its next meeting on April 29 to use as appropriate in the eventual development of measures to be included in model contingency plans. By the end of this year, if not sooner, the Task Force is expected to provide recommendations to the Secretary of Transportation.

DOT Proposal to Address Congestion and Delays: While airports are being pro-active in finding solutions that enhance customer service and decrease delays, the best solution to decreasing congestion and aviation delays is to add additional capacity. ACI-NA remains committed to the expansion of airport capacity, wherever possible, and the use of new technologies and procedures both to relieve existing problems of congestion and delays and to provide for the future growth of air transportation in the United States.

Airport capacity expansion, however, is not always an available alternative. In those limited situations where existing capacity is inadequate to meet demand and significant airfield capacity expansion is infeasible, market-based congestion management tools should be available to airport operators to address passenger delays and airport congestion.

For these reasons, ACI-NA recently filed comments supporting the Department of Transportation's "Notice of Proposed Amendment to Policy Statement Regarding Airport Rates and Charges" which also clarifies that airports may use a two-part landing fee, with both weight based and operations-based charges. While airports have strongly supported long term solutions such as increasing capacity and modernizing the air traffic control system, passengers need more timely solutions. By restructuring landing fees to reflect the full cost imposed by aircraft operations, airport proprietors can provide economic incentives for airlines to more efficiently use congested airfields and shift service to less congested secondary airports within the region.

There is no 'one size fits all' solution and as the "public face of aviation" airports must be able to respond to the concerns from their passengers and communities about continuing delays and increased traveler complaints about airline service quality. Because of the unique circumstance at each airport's facilities, including the configuration of runways, taxiways, and gates; the existing legal arrangements with tenant air carriers; and a wide variety of logistical details that affect the operational efficiency of each individual

airport, proprietors of congested airports need the ability to develop programs that are custom-fit to specific local circumstances.

Additionally, ACI-NA's comments emphasized that the air service needs of small communities must be protected. It is important that DOT permit congested airports to build reasonable exemptions to their rates and charges to preserve small community access at the same time they create incentives for airlines to use congested airport facilities more efficiently. This is an essential components of any program designed to align demand with capacity

Notice of Proposed Rulemaking for Oversales and Denied Boarding Compensation: In addition to DOT's most recent proposal to address congestion and delays, airports support previous DOT initiatives that will enhance and improve consumer protections. ACI-NA strongly believes that involuntary denied boarding compensation should be increased. In recent comments filed with the Department of Transportation (DOT), ACI-NA applauds the Department's Notice of Proposed Rulemaking (NPRM) proposal to amend the Part 250 compensation available to passengers who are involuntarily denied boarding. The NPRM incorporates ACI-NA's previously filed recommendations to increase compensation for involuntary denied boarding from $200 to $400 for passengers who are rerouted within two hours (four hours internationally) and from $400 to $800 for passengers who are not rerouted within these time frames.

ACI-NA also supports the Department's proposal that recommends that the seating-capacity exception for small aircraft be reduced from "60 seats or less" to "less than 30 seats." As mentioned in the NPRM, the use of regional carriers has increased tremendously since 1978. In addition, 99 percent of regional airline passengers travel on code-share flights; the percentage increase in passengers on 31 through 60-seat aircraft has outpaced that on larger aircraft; and being bumped from a small versus a large aircraft has the same effect on the passenger.

Advance Notice of Proposed Rulemaking for Enhancing Airline Passenger Protections: Additionally, in recent comments filed with the Department of Transportation, ACI-NA supports the Department's proposal to enhance consumer protection from chronically delayed flights. However, ACI-NA wants to ensure that when defining a "covered carrier" the Department includes the operations of regional or feeder carriers that are affiliated with the major/national airlines that account for at least 1 percent of domestic scheduled passenger revenue. The effects of passenger delays are the same regardless of which certificate holder actually operates the aircraft. Moreover, given the fact that regional airlines now transport one out of every four domestic passengers and operate half of daily domestic flights, as well as provide the only scheduled service to approximately 70 percent of U.S. airports, it is critical that DOT include their operations in the final rule.

Additionally, ACI-NA does not support DOT's proposal that would define a flight arriving more than 70 percent as chronically late. Consumers rightfully expect more

accurate information and ACI-NA proposes that to maintain consumer confidence that minimum threshold for a chronically delayed flight should be set no higher than 50 percent on time.

Delays and Cancellation Rates at Small Airports:

While consumers are typically paying more when utilizing air service at small airports, due to lengthy delays and high rate of cancellations, many small airports remain at a competitive disadvantage. ACI-NA remains concerned that flight delays and cancellation rates at many small airports continue to have a negative effect on abilities to make connections at large hubs and are more disruptive to passengers flying to and from smaller communities.

In May 2006, the DOT-OIG conducted a report on "Small Community Aviation Delays and Cancellations." Findings from the study concluded that the overall length of delays, as well as number of cancellations remains highest at small airports, particularly those small airports closest to large hubs. Today, the percentage of delayed and cancelled flights at these particular small airports has not improved. According to 2007 Bureau of Transportation Statistics, small and non-hub airports within 300 miles of a large hub averaged 37% more delay minutes and nearly 39% more cancellations than small and non-hubs overall.

Madison, Wisconsin is a case in point, as 27 percent of total scheduled flights to Chicago O'Hare were delayed in 2007. After the flight was classified as late by the Bureau of

Transportation Statistics, the average departure delay on all flights leaving Madison to Chicago was 59.8 minutes. Of equal concern, the average arrival delay into Chicago grew to 75.13 minutes. Delays to and from Chicago are so common that private companies provide scheduled bus service on the two and half hour drive between O'Hare and the University of Wisconsin at Madison.

Other small airports, like Lincoln, Nebraska, continue to suffer from extraordinary delays and high cancellation rates. From October 2007 through March 2008, 32 percent of Northwest Airlines' total Lincoln schedule was delayed 30 minutes or more. Within these delayed flights, 84 percent were delayed one hour or more, 51 percent two hours or more and nearly 18 percent three hours or more. Of equal concern, the number of scheduled Northwest flights cancelled during this 6 month period totaled nearly 15 percent.

Summary: In closing, ACI-NA and its member airports thank you for the opportunity to share our views on this important matter. Addressing this important issue is critical for the future of the aviation industry. Increasing consumer confidence that the aviation system can work efficiently without extended delays and passenger inconvenience is important for both airports and airlines. We look forward to working with you as we continue to address these vital passenger service issues.

Before the Committee on Transportation and Infrastructure
Subcommittee on Aviation
United States House of Representatives

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Status Report on Actions Underway To Address Flight Delays and Improve Airline Customer Service

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

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to discuss initiatives underway by the Department of Transportation (DOT), Federal Aviation Administration (FAA), airlines, and airports to address delays and improve airline customer service. This hearing is timely given the record-breaking delays and cancellations that air travelers experienced last year and the upcoming busy travel season.

As this Subcommittee is aware, summer 2007 was part of the worst year on record for flight delays, cancellations, and long, on-board delays. From January through December 2007, over 1 in 4 flights (29 percent) was delayed or cancelled, affecting about 163 million passengers. More than 88,234 flights experienced taxi-in and taxi-out times of 1 hour to 5 hours or longer, affecting nearly 5.9 million passengers.

Our statement today is in response to the Chairman's request for an "after-action" analysis of (1) contributing factors to last summer's record-breaking flight delays; (2) the status of ongoing efforts by DOT, the airlines, and airports to improve airline customer service in response to record delays and our recommendations last September;[1] and (3) actions needed in the near- and mid-term to mitigate congestion and delays.

Secretary Peters has made reducing delays and improving the treatment of travelers a top priority within the Department. Because delays in the New York region had a nationwide effect, the Secretary formed the New York Aviation Rulemaking Committee (ARC) last September to explore various strategies to alleviate congestion and reduce delays in the New York area. At the same time, the Department ordered a schedule reduction meeting for John F. Kennedy International Airport (JFK), resulting in temporary flight caps at both JFK and Newark airports beginning this spring. The Department has also established a national task force to develop model contingency plans for minimizing the impact of long, on-board delays.

The success of efforts by all aviation stakeholders is particularly critical as aircraft load factors are at an all-time high of over 80 percent. Each year, Americans lose over $9 billion in productivity from flight delays. Moreover, in the last 7 years, flight delays and cancellations have continued as the underlying causes of deep-seated customer dissatisfaction with air travel. We share the Subcommittee's concerns and note that ongoing efforts must translate into relief for air travelers in summer 2008 and beyond.

[1] OIG Testimony Number CC-2007-099 "Actions Needed To Improve Airline Customer Service and Minimize Long, On-Board Delays," September 26, 2007. OIG reports and testimonies are available on our website: www.oig.dot.gov.

After-Action Report: Multiple Factors Contributed to Last Summer's Flight Delays

The record-breaking flight delays of 2007 were magnified during the summer of 2007 when flight delays and cancellations hit all-time highs at major airports nationwide. We found that the number of passengers affected by delays last summer increased by 20 percent over the summer of 2006 (from 37,521,321 passengers to 44,871,404 passengers). The statistics below illustrate the severity of delays and cancellations during this period[2] at the 55 airports tracked by FAA.

- *Delayed flight arrivals*[3] rose from 26 percent in the summer of 2006 to 29 percent last summer. This represents nearly 621,000 delayed flights in the summer of 2007—an increase of 15 percent above the approximately 539,000 delayed flights in the summer of 2006.
- *The average length of delays* rose from 56 minutes in the summer of 2006 to 60 minutes in the summer of 2007 (a 7-percent increase). The length of the delays at 52 of the 55 airports increased, ranging from a less than 1-minute increase at Phoenix Sky Harbor International Airport to an 11-minute increase at Dallas/Fort Worth International Airport (DFW).
- *Flight cancellations* last summer (48,000 flights) increased by 28 percent over the summer of 2006 (37,000 flights cancelled), affecting nearly 3.2 million passengers during the summer of 2007.
- While *flight operations* for last summer were mostly unchanged nationwide compared to the summer of 2006, some airports experienced increased flight operations and corresponding delays. For example, at JFK, flight operations increased by 18 percent (an additional 9,700 scheduled flights) last summer. Delays and cancellations also increased during that period by 36 percent.

Also, according to the Department's Bureau of Transportation Statistics (BTS), *long, on-board tarmac delays* of 1 hour to 5 hours or longer increased by 25 percent (from 25,547 to 31,931 flights) over the summer of 2006, affecting over 2 million passengers last summer.

This statistics underscore the degree to which passengers are inconvenienced when traveling by air. The traveling public knows the aviation system needs improvement, and actions are needed by the airlines, airports, and FAA if consumer confidence is to be restored.

In the summer of 2007, we found that late arriving aircraft ranked as the number one cause of delays (35 percent), with carrier-caused delays (29 percent) and weather (23 percent) ranked as number two and three, respectively.

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[2] Data for summer months were taken from June, July, and August.

[3] A flight is considered delayed when it arrives 15 or more minutes after its scheduled arrival time.

However, the causal categories that BTS uses to gather data from airlines are too broad to accurately portray delay types. For example, late arriving aircraft delays can be attributable to a single factor, such as severe weather conditions, or a combination of factors, such as aircraft maintenance issues or ground holds. Also, the root cause of "carrier-caused delays" cannot be determined with any degree of precision because that information is not collected.

BTS needs to analyze the "late arriving aircraft" category to identify the factors driving delays and allocate those factors across the other categories—carrier-caused, weather conditions, the National Airspace System, and airport security. This type of analysis could also help to determine the underlying causes of flight cancellations, but no agency currently conducts this analysis. Until this step is taken, the *root causes* of delays cannot be determined with any degree of precision.

We therefore used various sources of data to further examine causes of delays at 15 major airports[4] that had the largest increases in delays between the summers of 2006 and 2007.

System-Wide Effect of Prior Delays: Delays are categorized as "late arriving aircraft" when the previous flight operated with the same aircraft arrives late, delaying that aircraft's next flight. This categorization is non-specific because it does not address the root causes of the late arriving aircraft. Although carrier- and weather-caused delays were reported as the leading causes of delayed flights, the system-wide effect of those delays is far reaching. This "ripple effect" can then become the underlying cause of delays for other flights throughout the system, which are not directly experiencing carrier- or weather-caused delays. Late flights caused by previous delays in the system increased during the summer of 2007 to over one-third of all delayed flights. At the 15 airports reviewed, the "ripple effect" delayed 64,000 arriving aircraft last summer.

Carrier-Caused Delays: Carrier-caused delays were reported as the number one cause of delays at 5 of the 15 airports we reviewed last summer. Details were not available to identify the specific carrier issues, such as mechanical, aircraft servicing, or gate availability problems. However, we did determine that shortages of cockpit crew members led more than 1,000 cancellations at Northwest Airlines last summer.

Weather Conditions: At the majority of the airports we reviewed, the severity of weather impacting flight operations did not decline appreciably between the summers

[4] The 15 airports examined for delays are members of the Airports Council International-North America (ACI) and include Chicago O'Hare International, Dallas/Fort Worth International, Dallas Love Field, Denver International, Fort Lauderdale International, Hartsfield-Jackson Atlanta International, John F. Kennedy International, LaGuardia, Miami International, Minneapolis-St. Paul International, Newark Liberty International, Philadelphia International, Phoenix Sky Harbor International, Ronald Reagan Washington National, and Tampa International. ACI is the trade association for America's largest airports. Its members enplane more than 95 percent of the domestic and virtually all the international airline passenger and cargo traffic in North America.

of 2006 and 2007. Nonetheless, airlines at those airports reported that weather was the leading, direct cause of delays (32 percent). The apparent conflict is answered by considering that as schedules increasingly exceed capacity, even in good weather, the slightest degradation in weather conditions can disproportionately affect on-time performance.

Airspace Congestion: While many airports and their surrounding airspace have adequate capacity, other locations reached their saturation points, including air corridors connecting New York, Chicago, and Atlanta. The biggest airspace bottlenecks this past summer were at the three major New York area airports and the surrounding airspace, accounting *for more than one-third* of the flight delays system-wide.

Airline Scheduling and Airport Capacity: In 2007, airlines scheduled flights above airport capacity to handle demand, and this contributed significantly to delays at specific airports. Our analysis of the 15 airports examined showed that during summer 2007, 6 had flights scheduled either at or over capacity at optimum weather conditions. For example, in one 15-minute period at Chicago O'Hare International Airport, we found that over 45 flights were scheduled to depart—nearly double the average departure capacity of the airport at that time. There were 2 other 15-minute time periods when 35 or more flights were scheduled to depart in one 15-minute period.

When airports are over-scheduled during peak hours, even small increases in flight operations can have a disproportionately larger impact on flight delays, as was the case in the New York region. For example, as flight operations expanded at JFK over the last several years, delays increased at that airport and at LaGuardia and Newark.

Spacing of Aircraft on Final Approach: While problems are traceable to increased operations, "excessive spacing" on final approach was also a factor in the New York area. In its December 2007 report, the New York ARC reported that spacing between aircraft on final approach has been steadily increasing beyond limits needed for safety, which contributed significantly to arrival delays at JFK, LaGuardia, and Newark airports.

Because of additional spacing, well-established, predictable airport acceptance rates became unreliable. This resulted in increased probability of go-arounds, no-notice holdings, increased vectoring, and sector overload. FAA recognizes the importance of the problem but has not quantified the impact on last summer's delays.

Outlook for Summer 2008

Whether or not delays this summer will reach the extreme levels of last year depends on several factors. These include weather conditions, impacts of a softening economy and higher fuel prices on the industry, major airlines' efforts to reduce capacity (by taking aircraft out of service), and the effectiveness of initiatives planned or underway at already congested airports. We note that three airlines have ceased operations in the last 2 weeks.

Our analysis shows that there are several airports to watch closely this summer because of severe peaking during part of the day. These include the three New York airports as well as the Chicago O'Hare and Minneapolis-St. Paul airports. For example, Northwest Airlines has scheduled 56 departures in one 15-minute window at Minneapolis-St. Paul—nearly three times the airport's departure capacity for that window.

DOT, the Airlines, and Airports Have Progressed Toward Improved Airline Customer Service, but Much Work Remains

Since we last testified in September 2007, DOT, the airlines, and airports have begun initiatives to address the action items we outlined at that hearing.

Departmental Efforts: In 2007,[5] we recommended that the Department take a more active role in overseeing customer service issues by ensuring that airlines include long, on-board delays in their on-time performance reporting, conducting incident investigations of these delays, and closely monitoring the airlines' policies for dealing with them.

- In November 2007, the Department issued two proposed rulemakings to address measures for enhancing airline passenger protection and airline quality performance reporting (to fill in data gaps giving consumers a more accurate portrayal of arrival and tarmac delays). Specifically, these two rulemakings address, among other things, clarifying terms in airlines' contingency plans, establishing specific targets for reducing chronically delayed or cancelled flights, disclosing on-time flight performance on the airlines' Internet sites, resuming efforts to self-audit customer service plans, and implementing the necessary changes in the airlines' on-time performance reporting to capture all long, on-board delays.
- In January 2008, the Department established a national task force to develop model contingency plans for minimizing the impact of long, on-board delays. The task force will also address our recommendation to conduct incident investigations of long, on-board delays and their causes; identify trends and patterns of such incidents; and determine solutions to mitigate the impact on passengers. The task force will report its results and recommendations directly to the Secretary.

[5] OIG Report Number AV-2007-077 "Actions Needed To Minimize Long, On-Board Flight Delays," September 25, 2007.

Airline Efforts: The airlines have initiated their own voluntary actions to enhance customer service, as promised in the Airline Customer Service Commitment of 1999 (see figure below).

As we emphasized at the last hearing—the key for to the success of these planned actions will be execution. In 2007, we recommended, among other things, that DOT require airlines to clarify delay terminology, set limits for delay durations before deplaning passengers, and establish targets to reduce chronically delayed flights.

The following summarizes the Air Transport Association (ATA) member-airlines'[6] progress to date:

Figure. 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

- Eleven of 12 ATA member airlines have defined "an extended period of time" for meeting passengers' essential needs during long, on-board delays. Two airlines consider this internal policy not publicly available, three have incorporated it into their customer service plans and placed it on their Internet sites, and six have incorporated it into their contracts of carriage[7]—only then does it become legally enforceable by the customer against the airline.

  The trigger thresholds for meeting passengers' essential needs vary from a half-hour to 2 hours on arrival and from 1.5 hours to 3 hours on departure. We think it is unlikely that passengers' definition of an extended period of will vary depending upon which airline they are flying. We are still of the view that a consistent policy across the airlines would be helpful to passengers.

- Eleven of the 12 ATA airlines have now set a time limit on delay durations before deplaning passengers or elevating the situation to senior operational managers for resolution. Three airlines consider this as an internal policy, only one has incorporated it into its customer service plan, and seven have incorporated this into

[6] The Air Transport Association is the trade association for America's largest air carriers. Its members transport over 90 percent of all the passenger and cargo traffic in the United States. The 12 airlines selected for review are members of the Air Transport Association (ATA) and include Alaska Airlines, Aloha Airlines, American Airlines, Continental Airlines, Delta Air Lines, Hawaiian Airlines, JetBlue Airways, Midwest Airlines, Northwest Airlines, Southwest Airlines, United Airlines, and US Airways. Aloha Airlines just recently went out of business. AirTran Airways just recently became a member of ATA.

[7] 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.

their contracts of carriage. The trigger thresholds for deplaning passengers vary from a half-hour to 5 hours on arrival and 1 hour to 5 hours on departure.

- Only 4 of the 12 ATA airlines have completely satisfied our recommendation to establish specific targets for reducing chronically delayed or cancelled flights. These airlines established a "zero tolerance" policy for reducing chronically delayed and cancelled flights. However, only three of those four airlines publish information about chronically delayed flights and methods for handling them in their customer service plans. Unfortunately, many airlines are losing an opportunity to educate the public on the efforts they are taking to reduce delays.

While some airlines are making a concerted effort to improve the passenger experience, others are not willing to formally promise this in their customer service plans and contracts of carriage. It is still our opinion that the airlines need to publish their promises to customers in writing all the Commitment provisions and associated policies. This would hold the airlines to a higher standard and clearly demonstrate that their commitment to customer service matters.

Airport Efforts: In 2007, we recommended that DOT, airlines, and airports convene a task force to address lengthy delays. We also recommended that airport operators implement processes to monitor and mitigate long, on-board delays. The airports have begun the following initiatives to address delays and improve air travelers' experience, but further actions are needed:

- *Convening a task force of vested stakeholders to address flight delays and customer service issues in the New York area.* In our prior testimony, we reported that the Port Authority of New York and New Jersey convened a task force in July 2007 to focus on the burgeoning problem of flight delays and customer service. The task force issued its report on December 6, 2007, identifying a total of 96 recommendations to enhance capacity, reduce delays, and improve customer service for the region's three major airports. Nineteen of the recommendations address improving customer service through better communication with passengers and better coordination among airlines, airports, and the various service providers. The task force intends to meet this summer to assess the status of the recommendations.

- *Convening workshops of vested stakeholders to address contingency planning for extraordinary flight disruptions.* Two workshops were convened—one hosted by DFW and the other by Airports Council International-North America—to identify best practices for contingency planning during extraordinary flight disruptions. A cross-section of airports, airlines, government agencies, and industry vendors attended the workshops. Breakout sessions were held to identify best practices for dealing with flight disruptions and passenger care.

- *Monitoring tarmac delays and assisting airlines during flight disruptions.* In our prior testimony, we emphasized that airport operators must become more involved in contingency planning for extraordinary flight disruptions. We found that the Airports Council International member-airports selected for review[8] are, to some degree, getting more involved in contingency planning for extraordinary events.[9] For example, of the 20 airports we reviewed, 8 have either refined or established policies to identify the resources and procedures needed to assist airlines in extended ground delays. These procedures include identifying remote areas for parking aircraft when gates are not available and methods to transport passengers from remote parking areas to the terminal.

In our view, all airports need to establish policies and procedures to proactively monitor and minimize the impact of long, on-board delays. As passenger traffic continues to grow, airports will need to become more responsive in dealing with contingency planning for extraordinary flight disruptions, especially those airports with limited airfield or gate capacity.

These initiatives have merit and, if properly executed, should help to improve airline customer service. However, most of these will not be in place by summer 2008. The Department should continue to make these efforts a priority to improve the accountability, enforcement, and the protection afforded to air travelers. In the meantime, the airlines and airports must follow through with their plans to reduce delays and improve airline customer service.

Actions Are Needed in 2008 and 2009 To Mitigate Congestion

The long-term solution to customer dissatisfaction with air travel and reducing delays depends largely on expanding capacity through the Next Generation Air Traffic Management System (NextGen). Since this program is targeted for the 2025 timeframe, it will be important to keep efforts on track that can enhance capacity over the next 5 years, such as new airport infrastructure and airspace redesign efforts.

It is important to note that ongoing and planned initiatives are not intended to significantly boost capacity but rather to enhance efficiency and better manage delays. While capping hourly operations at JFK and Newark may alleviate the over-scheduling at peak times, history shows that caps do not necessarily translate into a significant reduction in delays or an increase in airline on-time performance.

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[8] The 20 airports selected for review are members of the Airports Council International-North America (ACI) and include Boston Logan International, Chicago O'Hare International, Dallas/Fort Worth International, Dallas Love Field, Denver International, Fort Lauderdale International, General Mitchell International, George H. Bush Intercontinental, Hartsfield-Jackson Atlanta International, Honolulu International, John F. Kennedy International, LaGuardia, Miami International, Minneapolis-St. Paul International, Newark Liberty International, Philadelphia International, Phoenix Sky Harbor International, Ronald Reagan Washington National, and Seattle-Tacoma International and Tampa International.

[9] An extraordinary event is any event that does not fall under an Emergency Operation category (e.g., crash, hijacking, or bomb threats) and disrupts optimized flight schedules and negatively impacts the normal flow of passengers through the air transportation system.

For example, flight caps at Chicago O'Hare have been in place since 2004, and although delays have stabilized, they still occur at about 25 percent annually, with a delay rate of 31 percent last summer.

With this in mind, we see several near-term actions that are needed to reduce congestion and delays:

- DOT needs to negotiate a plan with the Department of Defense for use of *special use airspace* to open up additional lanes of traffic at specific chokepoints during summer 2008.
- FAA needs to continue to address concerns about controller productivity and excess spacing on final approach while training large numbers of new controllers.
- FAA needs to further expand the number of its *Airspace Flow Program* locations to help reduce delays. This program allows FAA to manage traffic fairly and efficiently by identifying only those flights scheduled to fly through storms and giving them estimated departure times. Airspace Flow Programs can also be used in conditions not related to weather, such as severe congestion near major cities.
- FAA needs to establish procedures for keeping capacity benchmarks for the major airports current. We recommended this in 2000, but FAA has not published updated capacity benchmarks since 2004. These benchmarks are critical to understanding airline scheduling practices and what relief can be expected from new procedures, technology, and new runways.
- The airlines should attempt to level out the arrival and departure banks at their large-hub airports to create more manageable flight operations at peak times at these airports. Airlines have successfully rescheduled at hub airports in the past, which reduced congestion and delays.
- The airports need to work jointly with FAA to improve procedures governing efficient use of taxi-ways and runways. Improvements to ground movement enable aircraft to taxi more quickly and safely between runways and terminals.
- BTS needs to perform an analysis of the causal flight delay and cancellation data submitted by the airlines. BTS should use the data to analyze locations of initial delays, underlying causes of system-wide effects, and the role of airports as net generators or absorbers of delays. This would provide the Congress, DOT, FAA, and other stakeholders a better understanding of the causes of delays and the solution sets needed to address them.

That concludes my statement, Mr. Chairman. The attachment to this testimony contains further details on the issues I have outlined today. I would be pleased to answer any questions that you or other Members of the Subcommittee may have.

Actions Underway To Address Flight Delays and Improve Airline Customer Service

Flight delays continue as a major source of customer service dissatisfaction. The severe delays and cancellations last year drew national attention and demonstrated that airlines, airports, the Federal Aviation Administration (FAA), and the Department (DOT) must work together to mitigate delays and cancellations and minimize the impact on passengers. The extent to which delays will impact passengers in the reminder of 2008 and beyond will depend on several key factors. These include weather conditions, the impact of the economy on air travel demand, and capacity management at already congested airports.

At the request of the Chairman of the House Subcommittee on Aviation, we have completed an after-action analysis of last summer's record-breaking flight delays, their causes, and actions needed to mitigate recurrence of such events. We have also assessed progress by DOT, FAA, airlines, and airports to improve airline customer service.

Airlines Agreed To Execute a Voluntary Airline Customer Service Commitment

Airline customer service first 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 issues, the Air Transport Association (ATA) member-airlines agreed to execute a voluntary Airline Customer Service Commitment[1] to demonstrate their dedication to improving air travel (see figure 1). The Commitment provisions include meeting passengers' essential needs during long, on-board delays.

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

Because aviation delays and cancellations continued to worsen, eventually reaching their peak during the summer of 2000, Congress directed our office to evaluate the effectiveness of the Commitment and the customer service plans of individual ATA

[1] 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).

airlines. We issued our final report in February 2001.[2] 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, such as offering the lowest fare available, holding reservations, and responding in a timely manner to complaints. However, these areas are not directly related to flight delays or cancellations—which the Commitment did not directly address—and these areas are still the underlying causes of deep-seated customer dissatisfaction.

Following the December 2004 holiday period, we issued a report[3] assessing severe air travel disruptions in various parts of the Nation over a 7-day, holiday travel period. We reported that, system-wide for the 7-day holiday travel period, 44.5 percent of flights were delayed compared to 23.4 percent during the same period in 2003, and 6.2 percent of flights were canceled compared to 1.3 percent in 2003. The contributing causes at airlines we reviewed included severe weather, failure of computer systems used to schedule crews, and staffing shortfalls going into the holiday travel period in two critical functions—fleet service employees and flight attendants.

In November 2006,[4] at the request of the Chairman of this Subcommittee, we issued a follow-up review of airlines' efforts to fulfill the Airline Customer Service Commitment. We found that the airlines needed to: (1) resume efforts to self audit their customer service plans, (2) emphasize to their customer service employees the importance of providing timely and adequate flight information, (3) train personnel who assist passengers with disabilities, (4) provide transparent reporting on frequent flyer award redemptions, and (5) improve the handling of bumped passengers. We also recommended that the DOT's Office of Aviation Enforcement and Proceedings improve oversight of air traveler consumer protection requirements and that DOT strengthen its oversight and enforcement of air traveler consumer protection rules.

In December 2006 and February 2007, severe weather crippled flight operations at airports in Dallas, Texas, and the New York area—with many passengers delayed on the tarmac for more than 5 hours. After the 2007 incidents, Secretary Peters requested that we review these events and examine airlines' customer service commitments, contracts of carriage, and policies for on-board, extended ground delays. The Secretary also requested that we recommend actions that the airlines, airports, and Federal Government could take to prevent these situations in the future.

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[2] OIG Report Number AV-2001-020, "Final Report on the Airline Customer Service Commitment, February 12, 2001. OIG reports and testimonies are available on our website: www.oig.dot.gov.

[3] OIG Report Number SC-2005-051, "Review of December 2004 Holiday Travel Disruptions," February 28, 2005.

[4] 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.

Our report[5] recommended, among other things, that airlines define what constitutes an "extended period of time" for meeting passengers' essential needs and setting limits for delay durations; establish specific targets for reducing chronically delayed or cancelled flights; disclose on-time customer performance; and self-audit customer service plans. We also recommended that DOT, FAA, airlines, and airports establish a task force to develop and coordinate contingency plans to address lengthy delays.

Observations on Record-Breaking Flight Delays and Cancellations in 2007

Last year, flight delays and cancellations exceeded the previous peak set in 2000 by 4 percent (2.4 million versus 2.3 million). During the early part of the decade, the affect that key global events had on air travel temporarily suppressed delays; these included a persistent slowdown in economic growth, the terrorist attacks of September 11, 2001, and the war in the Middle East. However, we began to see rising delays and cancellations again in 2003, and these numbers have continued to escalate through 2007, reaching new highs of 29 percent. Likewise, the average length of arrival delays also increased after an initial decline—from 51 minutes in 2000 to 56 minutes in 2007 (see figures 2 and 3).

Figure 2. Percent of Flights Arriving Late and Cancelled, 2000 to 2007

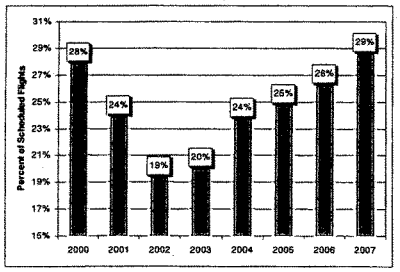
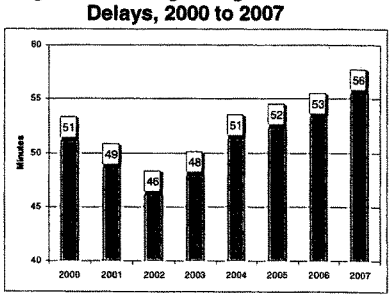


Figure 3. Average Length of Arrival Delays, 2000 to 2007



Flight delays have increased nationwide since 2000, and some airports experienced reductions in service coupled with significant increases in delays. This was evident when comparing the arrival delay data from the summers of 2006 and 2007. For example, although there was a 2-percent decrease in the number of flights to Dallas-Fort Worth International Airport (DFW) during this time period, arrival delays increased from 20.3 percent to 32.6 percent.

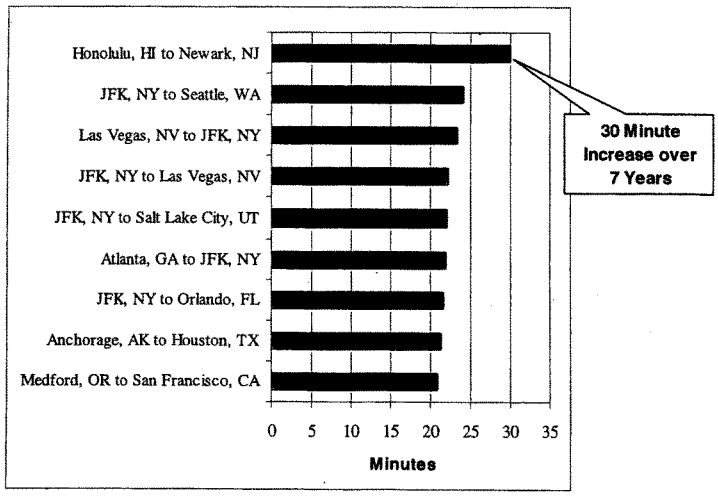
[5] OIG Report Number AV-2007-077, "Actions Needed To Minimize Long, On-Board Delays," September 25, 2007.

Travel Between Airports Is Taking Longer Due to Growing Air and Ground Delays

We examined the actual gate-to-gate times (i.e., the time it takes to travel between 2 airports) of 2,392 routes (i.e., city pairs) during the summer of 2000 through the summer of 2007. We found that nearly 63 percent of the routes experienced increases ranging from 1 minute to 30 minutes. Of these, 154 routes experienced increases of 10 minutes or more, affecting nearly 5 million passengers. We also found that over half of the increase in gate-to-gate times took place in the air (54 percent), with the remainder occurring on the ground during taxi-in (28 percent) and taxi-out (18 percent) times.

Figure 4 lists those eight routes with the largest increases in gate-to-gate times of 20 to 30 minutes. It is important to note that six of these routes included John F. Kennedy International Airport (JFK) as either the origin or destination airport. Several factors influenced the increase in gate-to-gate times; these factors were primarily driven by congestion-related system delays, both on ground and in the air. We found that over 50 percent of the gate-to-gate increase occurred en route.

Figure 4. Routes With Largest Increases in Gate-to-Gate Times, Summer 2000 to 2007



Rising Flight Delays Are Leading to More Long, On-Board Delays

Rising flight delays have also led to an increase in more on-board tarmac delays. In 2007, over 88,000 scheduled flights—affecting nearly 5.9 million passengers—experienced taxi-in and taxi-out times of 1 hour to 5 hours or longer. This is an increase of 69 percent (from 52,200 to 88,234) as compared to 2000 (see table 1).[6]

Table 1. Number of Flights With Long, On-Board Tarmac Delays of 1 Hour to 5+ Hours, 2000 and 2007

Time Period	2000	2007	% Change
1-2 Hrs.	44,701	78,903	76.51%
2-3 Hrs.	5,859	7,659	30.72%
3-4 Hrs.	1,255	1,377	9.72%
4-5 Hrs.	303	243	-19.80%
5 or > Hrs.	82	52	-36.59%
Total:	52,200	88,234	69.03%

Source: OIG analysis of BTS data

We also found that long, on-board, tarmac delays increased by 25 percent between the summers of 2006 and 2007, with even larger increases at some of the 15 airports we examined. For example, long, on-board, tarmac delays increased from 198 to 544 (175 percent) at Denver International Airport, from 3,483 to 6,441 (85 percent) at JFK, and from 815 to 1,489 (83 percent) at DFW.

Also of concern are the growing average taxi-out times at some of these airports. In July 25, 2000, we first reported on the rise in average taxi-out times at the New York area airports. In particular, we noted that if current projections held, average hourly taxi-out times "...for these airports could well surpass 1 hour in the next 10 years..."[7] In the summer of 2007, this occurred for at least one of these airports. As figure 5 illustrates below, JFK's average hourly taxi-out times exceeded 1 hour for a large portion of the evening hours.

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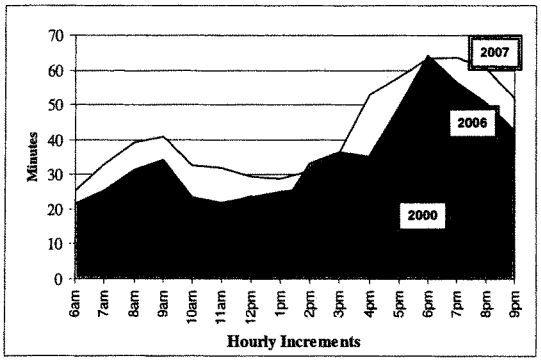
[6] The increase in the number of long on-board tarmac delays between 2000 and 2007 is partly due to changes in BTS reporting requirements, which resulted in many of the smaller carriers submitting their on-time performance data.

[7] OIG Report Number CR-2000-112 "Air Carrier Flight Delays and Cancellations," July 25, 2000.

Figure 5. JFK's Average Hourly Taxi-Out Times Summer 2000, 2006, and 2007

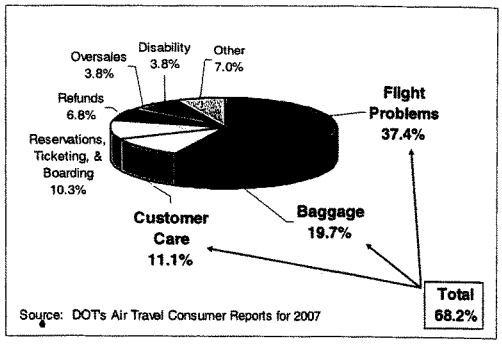


Rising Flight Delays Are Also Leading to More Air Traveler Complaints

Against this backdrop of increasing delays and cancellations, consumer complaints are also rising. Although customer complaints received by DOT in 2007 did not reach the levels reported in 2000 (23,381 in 2000 versus 10,937 in 2007), complaints in 2007 were at the highest levels since then—and nearly 70 percent higher than 2006 levels (6,436 to 10,937). In 2007, flight delays, cancellations, and misconnections represented 37.4 percent of all complaints.

Over the last several years, DOT ranked flight problems as the number one air traveler complaint, with baggage complaints and customer care[8] ranked as number two and number three, respectively. As shown in figure 6, data from 2007 show that these three types of complaints accounted for 68.2 percent of all complaints the Department received against U.S. airlines.

Figure 6. Air Travel Consumer Complaints, 2007



[8] Complaints such as poor employee attitude, refusal to provide assistance, unsatisfactory seating, and unsatisfactory food service are categorized as customer care complaints.

Passengers' Flight Experiences Are Further Complicated by Capacity and Demand Matters

Air travelers' dissatisfaction with flight problems, especially cancellations, is further compounded by reduced capacity and increased demand, which leads to fuller flights. Between 2000 and 2007, airlines have managed the growth in seat capacity to constrain costs.

- During that period, domestic available seat-miles rose by only 3.1 percent. Meanwhile, passenger ridership grew by a much larger 16.3 percent.

- The percent of seats occupied, or load factor, increased from 71 percent in 2000 to 80 percent in 2007—a rise of 9 points, with an unprecedented 86.1 percent in June 2007.

- 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 or those missing connections due to flight delays. This situation has been further compounded by the recent grounding of numerous passenger aircraft by American, Delta, Southwest, and United Airlines in the aftermath of growing maintenance concerns.

The following details our analysis, as requested by this Subcommittee, on the causes of last summer's severe flight delays and cancellations and actions needed to prevent recurrence and minimize the impact of delays on passengers.

After-Action Analysis: Multiple Factors Contributed to the Rise in Summer 2007 Delays

The record-breaking flight delays of 2007 were magnified last summer when flight delays and cancellations hit all-time highs at major airports nationwide. When the system is under stress it is usually affected by flight delays and cancellations—the chief underlying causes of customer dissatisfaction.

We found that on-time flight performance during the summer of 2007 deteriorated broadly from the already poor levels of 2006. Of the 55 airports tracked by FAA, the number of delayed flights increased at 51 airports, and the average length of delays increased at 52 airports. In contrast, the number of scheduled flights increased at only 33 of the airports. Table 2 compares increases in delays and cancellations in the summers of 2006 and 2007.

Table 2. Increases in Flight Delays and Cancellations

(Summer 2006 and Summer 2007)

Notable Statistics	Summer 2006	Summer 2007	Percent Change
Scheduled Flights	1,986,654	2,014,279	+ 1%
Delayed Flights	539,0000	621,000	+15%
Airports With Delays > 30%	9	26	+ 189%
Length of Arrival Delays	56 minutes	60 minutes	+ 7%
Cancelled Flights	37,396	47,911	+ 28%

* Comparison of June through August 2006 and 2007, as tracked by FAA at 55 airports.

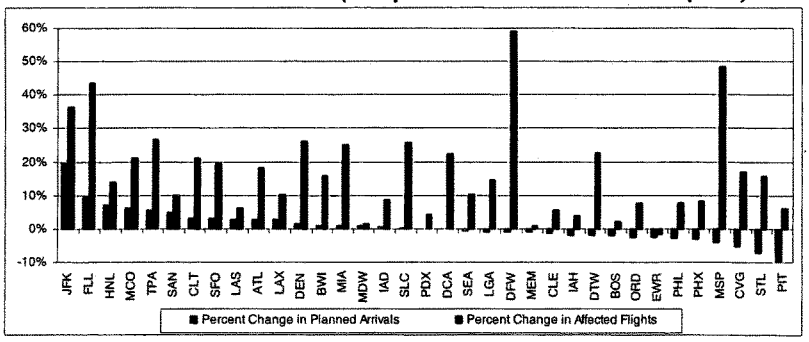
The Number of Scheduled Flights Remained Relatively Flat Since 2006, With a Few Notable Exceptions

On average, domestic passenger service (scheduled flights) remained steady over the last year. At the country's largest airports, scheduled departures in the summer of 2007 were up by only 1 percent over the summer of 2006, remaining relatively unchanged at most of these airports. Notable exceptions occurred at JFK (up by 25 percent), San Diego International, Orlando International, San Francisco International (each up by 6 percent), and Pittsburgh International Airports, where scheduled departures declined by 11 percent.

While flight operations last summer were unchanged on a nationwide basis compared to 2006, a closer examination shows that the national average masked increased flight operations and delays at some airports. Conversely, delays were up at those airports that had no increase in flight operations (see figure 7 below).

For example, at JFK, flight operations were up by 18 percent last summer (an additional 9,700 scheduled flights) from the summer of 2006. Delays and cancellations were also up for the same period by 36 percent. In contrast, scheduled flights last summer at DFW were down by 1 percent from the summer of 2006, and the airport still experienced increased delays and cancellations by nearly 60 percent.

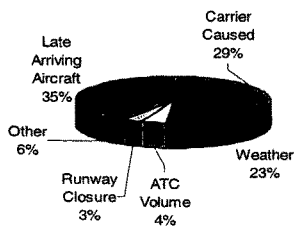
Figure 7. Changes in Arrival Demand and Flight Delays and Cancellations, Summer 2006 versus 2007 (35 Operational Evolution Plan Airports)



Multiple Factors Contributed to Last Summer's Flight Delays

Last summer's delays were driven by multiple factors. Some of these were uncontrollable by airlines (e.g., weather, air traffic control, and airport security). Some problems also stemmed from factors that were controllable by airlines, such as mechanical issues, crew availability, and holding for connections. Airlines also reported delays caused by late arriving aircraft—when the previous flight operated with the same aircraft arrives late, resulting in a ripple effect throughout the day. Figure 8 depicts the reasons for delays as reported by the airlines.

Figure 8. Reasons for Flight Delays (June through August 2007)



However, the causal categories that DOT's Bureau of Transportation Statistics (BTS) uses to gather data from airlines are too broad to accurately portray delay types. For example, late arriving aircraft delays can be attributed to a single factor, such as severe weather conditions, or to a combination of factors, such as aircraft maintenance issues or ground holds. Also, the root cause of "carrier-caused delays" cannot be determined with any degree of precision because that information is not collected.

BTS needs to analyze the "late arriving aircraft" category to identify the factors driving these delays and allocate those factors across the other categories—carrier-caused, weather, the National Airspace System, and airport security—to assess the

primary cause of delays. This type of analysis could also help to determine the underlying causes of flight cancellations, but no agency currently conducts this analysis. Until this step is taken, the *root causes* of delays cannot be determined with any degree of precision.

Causal Factors Impacting 15 Major Airports With the Largest Increases in Delays

To more closely examine the situation of delays and cancellations during the summer of 2007, we reviewed 15 airports[9] that either experienced large deteriorations in on-time performance measures between the summers of 2006 and 2007 or were among the largest and most delayed airports in the country. Utilizing data reported by the airlines,' we identified causes of delays at these airports.

System-Wide Effect of Prior Delays: Delays are categorized as "late arriving aircraft" when the previous flight operated with the same aircraft arrives late, delaying that aircraft's next flight. This categorization is non-specific because it does not address the root causes of the late arriving aircraft. Late arriving flight delays can be attributable to a single factor, such as severe weather conditions, or a combination of factors, such aircraft maintenance issues, crew availability, or an air traffic control ground hold. When an aircraft is delayed early in the day, often its remaining flights scheduled in the day are all delayed.

Although carrier- and weather-caused delays were reported as the leading causes of delayed flights, the system-wide effect of those delays is far reaching. This "ripple effect" can then become the underlying cause of delays for other flights throughout the system, which are not directly experiencing carrier- or weather-caused delays. Late flights caused by previous delays in the system increased during the summer of 2007 to over one-third of all delayed flights. At the 15 airports reviewed, the "ripple effect" delayed 64,000 arriving aircraft last summer.

Carrier-Caused Delays: Carrier-caused delays were reported as the number one cause of delays at 5 of the 15 airports we reviewed last summer—Denver, Ft. Lauderdale, Miami, Minneapolis, and Tampa. Details were not available to identify the specific carrier issues, such as mechanical, aircraft servicing, or gate availability problems. However, we did determine that shortages of cockpit crew members led more than 1,000 cancellations at Northwest Airlines last June.

Weather Conditions: Weather is categorized as either severe or operable. We used FAA data to compare the impact of weather on flight operations for the summers of

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[9] The 15 airports examined include Chicago O'Hare International, Dallas-Fort Worth International, Dallas Love Field, Denver International, Fort Lauderdale International, Hartsfield-Jackson Atlanta International, Houston George H. Bush Intercontinental, John F. Kennedy International, LaGuardia, Miami International, Minneapolis-St. Paul International, Newark Liberty International, Philadelphia International, Ronald Reagan Washington National, and Tampa International.

2006 and 2007 and found no appreciable change in the national weather between these periods.

While 23 percent of arrival delays across the country were attributable to weather during summer 2007, we found that weather had either no or minor impact on operations for 52 of 90 days. Even on days when weather was reported as having no or minor impact, airlines still could only achieve an average on-time performance of 74 percent.[10]

On days with higher levels (over 10 percent) of severely or moderately affected operations, arrival delays were only 30 percent greater than on days where weather had no or minor impact. However, on days with severe and moderate weather impact, average daily cancellations were twice as high as on days where weather had no or minor impact. Some airports did see selected periods of worsened weather last summer.

At the majority of the 15 airports we reviewed, the severity of weather impacting flight operations did not decline appreciably between the summers of 2006 and 2007. Nonetheless, airlines at those airports reported that weather was the leading, direct cause of delays (32 percent). The apparent conflict is answered by considering that as schedules increasingly exceed capacity, even in good weather, the slightest degradation in weather conditions can disproportionately affect on-time performance.

While extreme weather conditions can significantly delay or prevent the operation of a flight, extreme weather only accounted for 4 percent of delays in summer 2007 at the 15 airports examined. However, we did find that extreme weather was a significant cause of delays (1,300) and cancellations (1,100) at DFW in June 2007.

Nation-Wide Airspace Congestion: While many airports and their surrounding airspace have adequate capacity, other locations reached their saturation points, including air corridors connecting New York, Chicago, and Atlanta, accounting for more than 50 percent of flight delays system-wide. The biggest airspace bottlenecks this past summer were at the three major New York area airports and the surrounding airspace, accounting for more than one-third of the flight delays system-wide.

Airline Scheduling and Airport Capacity: In 2007, airlines scheduled flights above airport capacity to handle demand, and this contributed significantly to delays at specific airports. Our analysis of the 15 airports examined showed that during summer 2007, 6 had flights scheduled either at or over capacity at optimum weather conditions. Combined, airlines scheduled flights above the average optimum capacity at key airports such as JFK, LaGuardia, Newark Liberty, Philadelphia, Chicago O'Hare, and Ronald Reagan Washington-National.

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[10] Consists of days where FAA reports of the combined "none" or "minor" weather impacts on flight operations equaled or exceeded 90 percent of each day's operations for the group of 55 airports tracked by FAA.

In summer 2007 at Chicago O'Hare, there was evidence of some peaking beyond optimum weather conditions in the morning hours, and again, later in the afternoon. The problems with over-scheduling are exacerbated when scheduled flights exceed optimum airport capacity in poor weather conditions (i.e., when Instrument Flight Rules take effect) throughout most of the day.

For example, in one 15-minute period at Chicago O'Hare International Airport, we found that over 45 flights were scheduled to depart—nearly double the average departure capacity of the airport at that time. There were 2 other 15-minute time periods when 35 or more flights were scheduled to depart in one 15-minute period.

When airports are over-scheduled during peak hours, even small increases in flight operations can have a disproportionately larger impact on flight delays, as was the case in the New York region. For example, as flight operations expanded at JFK over the last several years, delays increased at that airport and at LaGuardia and Newark.

Scheduled flights at JFK increased by 21,000 between the summers of 2006 and 2007, and delays and cancellations at all three New York airports increased by 40,000 for the same period. When weather or other disruptions at these airports do occur, they can disproportionately impact on-time performance and cause longer recovery time for airports.

Spacing of Aircraft on Final Approach: While problems are traceable to increased operations, "excessive spacing" on final approach was also a factor in the New York area. In its December 2007 report, the New York Aviation Rulemaking Committee (ARC) reported that spacing between aircraft on final approach has been steadily increasing beyond limits needed for safety, which contributed significantly to arrival delays at the JFK, LaGuardia, and Newark airports.

Because of additional spacing, well-established, predictable airport acceptance rates became unreliable. This resulted in increased probability of go-arounds, no-notice holdings, increased vectoring, and sector overload. FAA recognizes the importance of the problem but has not quantified the impact on last summer's delays.

Outlook for Summer 2008: Near-Term Solutions Are Urgently Needed To Mitigate Congestion

Whether or not delays this summer will reach the extreme levels of last year depends on several factors. These include weather conditions, impacts of a softening economy and higher fuel prices on the industry, major airlines' efforts to reduce capacity (by taking aircraft out of service), and the effectiveness of initiatives planned or underway at already congested airports. We note that three airlines have ceased operations in the last 2 weeks.

Our analysis shows that there are several airports to watch closely this summer because of severe peaking during part of the day.

We examined the published airline schedules for the 15 airports reviewed to identify where the potential exists for continued or new problems this summer. We compared those schedules, in 15-minute increments, with the average capacity in optimum weather conditions and under instrument flight conditions for each airport. If the level of demand shown in the schedules and in the FAA-approved operations materializes this summer, we see the potential for continued or increased delays at the following airports:

- **Minneapolis-St. Paul:** Unlike last year's crew and runway problems, this summer's schedules show new, severe peaking throughout the day, pointing to a potential repeat of high delay levels. For example, Northwest Airlines has 56 departures scheduled in one 15-minute period—nearly 3 times the average departure capacity of the airport for that time.
- **Chicago O'Hare and New York LaGuardia:** The summer 2008 schedules at these two airports show more peaking in excess of optimum capacity than last summer, indicating the potential for worsened delay conditions.
- **JFK and Newark Liberty:** There is a potential for continued delay problems at these airports this summer. FAA's caps on operations at these airports are below the level of operations that airlines wanted to operate this summer. However, we found that the FAA-approved operations for this summer represent an increase in flights of 8.9 percent at JFK and 4.6 percent at Newark Liberty over last year's levels with more time-of-day peaking at both airports.

On a more positive note, published schedules for Ronald Reagan Washington National Airport show less peaking above capacity for summer 2008, which could help reduce delays at that airport.

Actions Needed in 2008 and 2009 To Mitigate Congestion

The long-term solution to customer dissatisfaction with air travel and reducing delays depends largely on expanding capacity through the Next Generation Air Traffic Management System (NextGen), which is targeted for 2025. Although FAA is exploring ways to accelerate NextGen, much work remains to set realistic expectations for when its capacity-enhancing capabilities can be delivered. Therefore, it will be important to keep efforts on track that show promise for enhancing capacity over the next 5 years. These efforts include new airport infrastructure projects at six airports, new procedure development, and airspace redesign efforts.

Ongoing Efforts To Enhance Efficiency and Better Manage Delays

Since last spring, DOT, FAA, and various stakeholders have identified a wide range of initiatives to reduce delays in the near-, mid- and long-term, particularly in the New York area. Specifically, the ARC recommended over 77 initiatives, and FAA organized these into 3 categories: 26 short-term initiatives that can be completed within 12 months, 7 mid-term initiatives that can be completed by the end of fiscal year 2009, and 44 long-term initiatives with completion dates still to be determined.

The 26 short-term initiatives are primarily procedural initiatives, such as re-routing arrival and departure routes and reducing excessive spacing of aircraft on final approach into the New York area airports. According to FAA, eight of the short-term initiatives are already in place, such as utilizing multiple runways at JFK to improve throughput. Overall, FAA plans to have all the short-term initiatives in place by year end. FAA also hopes to have as many as these initiatives in place as possible by this summer, as they may directly reduce delays.

The 51 mid- and long-term initiatives primarily consist of technological and capital infrastructure efforts, such as installing the new Airport Surveillance Detection Equipment-Model X (ASDE-X) ground surveillance systems at Newark and JFK, improving taxiways at JFK, and adding NextGen automation systems.

DOT and FAA also proposed amendments to the Department's policy regarding airport rates and charges. The amendments are intended to allow operators at congested airports flexibility when varying charges based on the time of day and air traffic volume and when including the cost of projects designed to expand capacity in the new landing fees.

It is important to note that ongoing and planned initiatives are not intended to significantly boost capacity but rather to enhance efficiency and better manage delays. While capping hourly operations at JFK and Newark may alleviate the over-scheduling at peak times, history shows that caps do not necessarily translate into a significant reduction in delays or an increase in airline on-time performance. For example, flight caps at Chicago O'Hare have been in place since 2004, and although delays have stabilized, they still occur at about 25 percent annually, with a delay rate of 31 percent last summer.

Near-Term Solutions Are Urgently Needed

With this in mind, we see several near-term actions that are needed to reduce congestion and delays. Specifically:

- **Making Better Use of "Special-Use Airspace:"** FAA needs to negotiate a plan with the Department of Defense (DOD) for use of special-use airspace to open up additional lanes of traffic at specific chokepoints this summer.

Before the Thanksgiving and Christmas holiday travel periods last year, DOT worked with DOD to open up special-use airspace along the east and west coasts to help mitigate delays during these heavy traffic periods. This effort proved to be effective in reducing delays. Special-use airspace is often inactive (i.e., not utilized for military purposes), thus offering potential options for more direct routing of civilian flights and additional paths to alleviate airspace congestion. Industry groups noted that "repeatable procedures" need to be developed to enhance coordination between military managers of special-use airspace on each coast and at FAA's command center during periods of severe weather.

- **Continuing to Address Concerns and Excessive Spacing on Final Approach and Enhancing Controller Productivity:** FAA needs to continue to address concerns about controller productivity and excessive spacing on final approach as it trains large numbers of new controllers. Air Traffic Organization officials commented that concerns about excessive spacing extends beyond New York facilities. FAA developed a new tool to help monitor spacing and embarked upon educational efforts for controllers in both the en route and terminal lines of business. FAA is also developing new performance measures and policies to ensure efficiency without jeopardizing safety. We will continue to monitor these efforts.

- **Expanding FAA's Airspace Flow Program:** FAA needs to further expand the number of its Airspace Flow Program locations—locations chosen for their combination of heavy traffic and frequent bad weather—to help reduce delays. This program gives airlines the option of flying longer routes to safely maneuver around storms and has successfully reduced delays. The program, which is managed by FAA's command center, should also be utilized in heavy traffic conditions to space en route traffic to create gaps, thereby enabling ground-delayed traffic to depart more quickly.

- **Updating Capacity Benchmarks:** An important first step in addressing the delay problem in the 2000 timeframe was to develop a set of "capacity benchmarks" for the Nation's top 30 airports. However, FAA has not published updated capacity benchmarks since 2004.

  As we have noted in the past, establishing benchmarks is critical to understanding airline scheduling practices and what relief can be expected from technology and new runways. At the very least, benchmarks provide a common framework for understanding what maximum arrival and departure rates can physically be handled at the busiest airports under good and poor weather conditions, by time of day. Given the projected demand, FAA needs to update the benchmarks.

- **Keeping Planned Airport Infrastructure and Airspace Projects on Track:** FAA reports that new runways provide the largest increases in capacity.

Currently, runway projects at five airports (including projects at Washington Dulles and Chicago O'Hare) are planned to be built by 2012. History shows that airspace changes are vital for realizing benefits from new runway projects and can enhance the flow of air travel even without new airport infrastructure.

- **Monitoring Airline Scheduling Practices:** The airlines should make every attempt possible to level out the arrival and departure banks at their large-hub airports to create more manageable flight operations at peak times at these airports.

  Since the airline industry is opposed to the Department's proposal to allow the Nation's busiest airports to charge higher landing fees during peak travel times, as an alternative, the airlines should voluntarily reduce peak scheduling. Airlines have successfully conducted re-scheduling (i.e., de-peaking) at hub airports in the past. Following the summer of 2000, several major airlines voluntarily adjusted their flight schedules in early 2001, which helped to reduce congestion and delays at several major airports. It is time for the airlines to again consider adjusting their schedules to disperse flights from peak periods of demand to less congested periods.

  For the 15 airports reviewed, we examined the published flight schedules for this summer to identify where airlines have scheduled more flights than the airports are capable of handling without delays. Without further adjustments to arrival and departure levels during peak periods, we see the potential for ongoing delay problems for the summer of 2008 at the three New York airports—JFK, Newark Liberty, and LaGuardia—along with Chicago O'Hare and Minneapolis. Delays at any one of these airports will have a "ripple effect" across the National Airspace System.

  As we have noted in the past, BTS should perform an analysis of the Official Airline Guide schedule for all carriers (majors, nationals, regional, commuters, and small air carriers) to determine what, if any, changes in air carrier schedules have occurred and how they have contributed to the reduction in flight delays so far this year. This effort should be reconvened before this summer.

- **Expanding the Parameters for Targeting Chronically Delayed or Cancelled Flights:** In May 2007, DOT's Office of Aviation Enforcement and Proceedings initiated an industry-wide investigation of airlines' chronically delayed flights and took enforcement action against carriers for any flights that were chronically delayed. This is an important step forward.

  Currently, DOT considers a flight to be chronically delayed if it operates more than 15 minutes late, more than 70 percent of the time in any calendar quarter. However, these parameters need expanding. DOT's current parameters identify

less than 200 regularly scheduled flights[11] per quarter as chronically late and, therefore, do not accurately portray the magnitude of chronically delayed flights.

We found that expanding the parameters to:

- 30 minutes late or more, 50 percent or more of the time, results in a total of 2,789 regularly scheduled flights that were chronically delayed.
- 30 minutes late or more, 40 percent or more of the time, results in a total of 5,369 regularly scheduled flights that were chronically delayed.

Targeting so few flights when delays and related passenger complaints continue to rise does not send a message to the airlines that delayed flights, especially chronically delayed flights, will not be tolerated.

- **Improving Airside Procedures:** The airports, in collaboration with FAA, need to work on procedural improvements, such as more efficient use of taxi-ways and runways. In its December 2007 "Flight Delay Task Force Report," the Port Authority of New York and New Jersey identified "improvements to ground traffic movement" as one near-term recommendation to minimize delays at the JFK, LaGuardia, and Newark Liberty airports. Improvements to ground movement enable aircraft to taxi more quickly and safely between runways and terminals.

  FAA is exploring ways to accelerate deployment of ASDE-X technology at JFK to improve surface operations. However, we note that ASDE-X was designed as runway safety technology—not a surface management system and, therefore, software modifications will be required. Once experience is gained, FAA should consider expanding this capability to other locations.

- **Following Through on Conducting Incident Investigations:** In our September 25, 2007, report, we recommended that DOT's Office of General Counsel—in collaboration with FAA, airlines, and airports—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. To address this recommendation, DOT assigned this responsibility to the national task force on contingency planning. Since the national task force's initial meeting on February 26, 2008, there have been several missed opportunities to investigate incidents involving long, on-board delays.

- **Analyzing Causes of Delays and Cancellations:** To accurately assess the primary cause of delays, BTS needs to analyze the "late arriving aircraft" category to identify the driving factors of delays and allocate those factors across the other

[11] A regularly scheduled flight is a flight segment representing a city pair (e.g., Chicago to Miami).

categories—carrier-caused, weather conditions, the National Airspace System, and security. This type of analysis should also be done for flight cancellations, but no agency currently conducts this analysis. Until this step is completed, the *root causes* of delays cannot be determined with any degree of precision.

The record-breaking flight delays and cancellations of last summer underscore the degree to which passengers are inconvenienced when traveling by air. The traveling public knows the aviation system needs improvement, and actions are needed by the airlines, airports, FAA and DOT if consumer confidence is to be restored.

As we testified in September 2007,[12] DOT should take a more active role in overseeing customer service issues, and there are actions that it, the airlines, and airports can undertake immediately to do so. Many of the actions are not new and date back to recommendations in our 2001 report, which were directed at delay and cancellation problems—key drivers of customer dissatisfaction with airlines. The following is an assessment of DOT's, FAA's, the airlines', and airports' progress in implementing the actions outlined in our September 2007 testimony before the House Subcommittee on Aviation.

DOT, the Airlines, and Airports Have Progressed Toward Improved Customer Service, but Much Work Remains

Since we last testified, DOT, the airlines, and airports have begun initiatives to address the action items we outlined at that hearing. Specifically, these actions are in response to outstanding recommendations to improve airline customer service and minimize long, on-board delays (see figure 9).

Figure 9. Actions Outlined in September 2007 To Improve Airline Customer Service and Minimize Long, On-Board Delays

We recommended that:

- DOT conduct incident investigations involving long, on-board delays.
- DOT's Enforcement Office oversee the airlines' policies for dealing with long, on-board delays.
- BTS implement the necessary changes in the airlines' on-time performance reporting to capture all long, on-board delays.
- Airlines clarify terms in their contingency plans.
- Airlines establish specific targets for reducing chronically delayed or cancelled flights.
- Airlines disclose on-time flight performance.
- Airlines resume efforts to self-audit customer service plans.
- Airlines reconvene the contingency planning task force.
- Airports implement processes for monitoring lengthy delays.

Departmental Efforts

In our September 2007 report, we made a series of recommendations to the Secretary of Transportation to improve the accountability, enforcement, and protection afforded to air travelers. One such recommendation requires each certificated and commuter airline that provides domestic scheduled service using any aircraft with more than 30 passenger seats to: (a) define what constitutes an extended period of time, (b) set a time-limit on delay

[12] OIG Testimony Number CC-2007-099 "Actions Needed To Improve Airline Customer Service and Minimize Long, On-Board Delays," September 26, 2007.

durations before deplaning passengers, and (c) incorporate such policies in its contract of carriage[13] and post on its Internet site.

The Department has begun addressing our recommendations by using its regulatory authority to issue rulemakings and to establish Federal advisory committees. However, most of the initiatives the Department is proposing will not be in place by this summer.

Actions Initiated Under Rulemaking

DOT has initiated actions to address each recommendation (10 recommendations in total) using two rulemakings as the primary vehicle to enhance airline passenger protections.

BTS Rulemaking Issued in November 2007: BTS issued a rulemaking proposing to collect additional data elements when flights are cancelled, diverted, or returned to the gate. The additional proposed data elements would fill in data gaps, thereby providing a more accurate portrayal of on-ground delays. *BTS expects to issue its final rule in August 2008, with October 1, 2008, as the effective date of the airlines' new reporting requirements.*

Delay statistics that airlines are reporting to BTS do not accurately portray the magnitude of long, on-board delays because (1) if a flight taxies out, sits for hours, and then taxies back in and is cancelled, the delay is not recorded and (2) if a flight is diverted to an airport other than the destination airport and sits on the tarmac for an extended period of time, the flight is not recorded in delay statistics.

Also, airlines are not required to report gate departure times when a flight is later cancelled. So, there is no record of how long a flight remains at the gate or sits on the tarmac before it is cancelled. This is true for flights with lengthy delays at the originating airport that are later cancelled. This was the case with some JetBlue Airways flights at JFK on February 14, 2007. On that day, JetBlue's JFK operations suffered when severe weather hit the northeastern United States, leading to 355 cancellations; 6 diversions; and 26 on-board delays exceeding 4 hours on flights that were later cancelled.

It is also true for flights with lengthy delays at airports where flights were diverted and then cancelled, such as some of the American Airlines flights diverted to Austin-Bergstrom International Airport on December 29, 2006. On that day, American's operations at DFW were severely affected by unprecedented weather; this led to 654 flight cancellations, 124 diversions, and 44 on-board delays exceeding 4 hours.

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[13] 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.

The diversions to Austin-Bergstrom generated substantial interest because some of the lengthiest on-board delays occurred at that airport—in one case for over 9 hours.

DOT Rulemaking Issued in November 2007: DOT issued a rulemaking seeking comments on whether the Department should adopt a rule to enhance airline passenger protections that would require airlines to:

- *Adopt contingency plans for lengthy tarmac delays and incorporate them in their contracts of carriage.* Each plan would require, among other things, the maximum tarmac delay that the airline will permit; the amount of time on the tarmac that triggers the plan's execution; a plan to meet passengers' essential needs, such as food, water, and lavatory facilities; and assurance that the plan has been coordinated with the airport operator.
- *Respond to consumer problems.* Each airline would be required to designate a consumer advocate who resides at the airline's system operations center and at each airport dispatch. The consumer advocate would be part of the team that is responsible for monitoring the impact of flight delays, cancellations, and long, on-board delays and would provide input on decisions concerning which flights are cancelled and which flights are subject to long, on-board delays. The advocate would also be required to respond to each passenger complaint within 30 days.
- *Publish delay data on their Internet sites.* Each airline would be required to report its prior month's on-time performance to include the percentage of on-time arrivals and arrivals more than 30 minutes late, flights that were late more than 50 percent of the time, and percentage of cancellations. Currently, the airlines are required to disclose on-time performance only upon request from customers. To date, only 5 of 12 ATA airlines report on-time performance on their Internet sites. Given the ease of availability of this information to the airlines, we continue to recommend that the airlines post on-time flight performance information on their Internet sites and make it available through their telephone reservation systems and without prompting.
- *Publish complaint data.* Each airline would be required to disclose on its Internet sites the number of complaints received regarding tarmac delays, missed connections, and failures to meet passengers' essential needs affected by delayed or cancelled flights.
- *Report on-time performance for international flights.* Currently, U.S. airlines that account for at least 1 percent of the domestic scheduled passenger revenue are only required to report on-time performance for domestic flights. This provision would require those airlines to report on-time performance for international flights to and from the United States. This provision would also require the largest foreign airlines to report on-time performance for their flights to and from the United States.

- *Audit their compliance with their customer service plans.* This provision dates back to a recommendation we made in our 2001 report. The ATA airlines agreed to establish quality assurance and performance measurement systems and conduct internal audits to measure compliance with the Commitment provisions and customer service plans. Only a few ATA airlines have them in place today.

The rule also would declare the operation of flights that remain chronically delayed to be an unfair and deceptive practice and unfair method of competition, as we recommended in our November 2006 report.[14] In that report, we noted that another option for curbing congestion is for DOT to investigate unrealistic scheduling of flights by any air carrier. These flights are referred to as "chronically delayed." When we issued our report, we reported that for 2005, there were 15,640 unique flight numbers (215,016 individual flights) that were chronically delayed or cancelled, affecting an estimated 16 million passengers. For 2007, several of those numbers increased significantly—there were 10,935 unique flight numbers (291,547 individual flights) that were chronically delayed or cancelled, affecting an estimated 19.4 million passengers.

DOT's view at that time was that the flights that are chronically delayed are mostly due to reasons beyond the air carriers' control—mostly weather but also congestion. As a result, in DOT's view, a successful enforcement action for unrealistic scheduling would be difficult at best. Nevertheless, we recommended that DOT 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. In May 2007, DOT's Office of Aviation Enforcement and Proceedings initiated an industry-wide investigation of airlines' chronically delayed flights and took enforcement action against carriers for any flight that is "chronically delayed"[15] and was not corrected by the second calendar quarter thereafter.

Actions Initiated Under the Federal Advisory Committee Act

As we recommended, DOT established a national task force of individuals who represent a cross-section of government agencies, airlines, airports, consumer groups to develop model contingency plans for minimizing the impact of long, on-board delays.

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[14] 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.

[15] DOT defines a chronically delayed flight as a flight that operates at least 45 times over calendar quarter and is late more than 70 percent of the time by 15 minutes or more.

The task force will undertake the following initiatives:

- Develop model contingency plans for minimizing the impact of lengthy tarmac delays.
- Be responsible for reviewing incidents involving long, on-board delays and their causes; identify trends and patterns of such events; and recommend workable solutions for mitigating the passenger impact of extraordinary flight disruptions.
- Review existing airline and airport contingency plans identifying best practices for extended tarmac delays.
- Report the results of its efforts and a description of the model contingency plan developed to the Secretary.

The task force held a kick-off meeting on February 26, 2008, with a second meeting planned for April 29, 2008. At the February 26 meeting, Office of Inspector General staff presented their perspectives on actions needed to minimize long, on-board delays. Two working groups were established—one on passenger needs and the other on delay causes—with reports to be presented at the April 29 meeting.

The Department has moved quickly to address our recommendations. While it is too soon to evaluate the effectiveness of these ongoing initiatives, they all have merit and, if properly executed, should help in mitigating long, on-board delays. However, most of the initiatives will not be in place by this summer. Also, recommendations from the national task force to the Secretary are scheduled for submission in August 2008, when summer air travel is in decline. Therefore, the airlines and airports must follow through on their plans to reduce delays and improve airline customer service—without waiting for the outcome of the rulemakings or the national taskforce's recommendations.

The Airlines Have Begun Their Own Customer Service Initiatives, but Further Actions Are Needed

At the September 2007 hearing, we testified that many of the actions to improve airline customer service and minimize long, on-board delays are not new and date back to recommendations in our 2001 report, which were directed at delay and cancellation problems—key drivers of customer dissatisfaction with airlines. As we emphasized at that hearing—the key for each of these actions is execution. We conducted a follow-up examination on progress made to implement these actions. We found, for the most part, that the airlines under review have begun initiatives to improve air travelers' experiences, but more action is needed. The following summarizes the Air Transport Association (ATA) member-airlines' progress to date in response to our recommendations.

Clarify Terms in Airlines' Contingency Plans. In examining the ATA member-airlines' contingency plans, we found that:

- Eleven of 12 ATA member airlines have defined "an extended period of time" for meeting passengers' essential needs during long, on-board delays. Two airlines consider this internal policy not publicly available, three have incorporated it into their customer service plans and placed it on their Internet sites, and six have incorporated it into their contracts of carriage—only then does it become legally enforceable by the customer against the airline.

  The trigger thresholds for meeting passengers' essential needs vary from a half-hour to 2 hours on arrival and from 1.5 hours to 3 hours on departure. We think it is unlikely that passengers' definition of an extended period of will vary depending upon which airline they are flying. We are still of the view that a consistent policy across the airlines would be helpful to passengers.

- Eleven of the 12 ATA airlines have now set a time limit on delay durations before deplaning passengers or elevating the situation to senior operational managers for resolution. Three airlines consider this as an internal policy, only one has incorporated it into its customer service plan, and seven have incorporated this into their contracts of carriage. The trigger thresholds for deplaning passengers vary from a half-hour to 5 hours on arrival and 1 hour to 5 hours on departure (see table 3).

Table 3. Selected Airlines' Terms and Conditions for Handling Long, On-Board Delays

Airline	Definition of Extended Period of Time Stated in Customer Service Plans and/or Contracts of Carriage	Time to Deplane Stated in Customer Service Plans and/or Contracts of Carriage
Alaska	90 Minutes	2 Hours for Arrivals
Aloha	None	None
American	2 Hours	4 Hours
Continental	2 Hours	2 Hours for Arrivals 4 Hours for Departures
Delta	1 Hour for Arrivals 2 Hours for Departures	At 1 Hour Elevate Up* (Arrivals) At 2 Hours Elevate Up* (Departures)
Hawaiian	2 Hours	2 Hours
JetBlue	1 Hour	5 Hours
Midwest	30 Minutes for Arrivals 1 Hour for Departures	30 Minutes for Arrivals 1 Hour for Departures
Northwest	1 Hour for Arrivals 3 Hours for Departures	1 Hour for Arrivals 3 Hours for Departures
Southwest	2 Hours	2 Hours
United	2 Hours	90 Minutes for Arrivals 4 hours for Departures
US Airways	1 Hour	At 3 Hours Elevate Up*

* Point in time when situation is elevated to senior management for a decisive action.

Establish Specific Targets for Reducing Chronically Delayed or Cancelled Flights. Between 2000 and 2007, the number of chronically delayed flights has increased nearly 27 percent (from 229,961 to 291,547). Likewise, the number of unique flight numbers that are chronically delayed month after month has also increased, with those delayed 6 months or longer increasing nearly 57 percent (380 to 595) over this time period. Overall, 19.4 million passengers were impacted by chronically delayed flights in 2007.

In 2001, and in subsequent reports, we recommended that the airlines establish specific targets for reducing chronically delayed or cancelled flights. To date, we found:

- Nine of the 12 airlines monitor chronically delayed or cancelled flights based on BTS criteria.
- Four of the 12 airlines have established a "zero tolerance" target for reducing chronically delayed and cancelled flights.
- Only three of the four airlines publish any information about chronically delayed flights and how they handle them in their customer service plans—a lost opportunity to educate the public on the efforts the airlines are taking to reduce delays.

The following examples are ways in which airlines can reduce chronically delayed flights.

- Increasing the block times (often referred to as "padding the schedule") of the flight. This is generally not a good idea for economic reasons—increased block time can result in fewer flights segments for each aircraft for each operating day resulting in lost revenue.
- Pairing entire flight crews together throughout a day to minimize potential disruptions generated by separating aircraft and crew.
- Working with FAA to find alternative departure routings especially for flights departing from the New York area.

Disclose On-Time Flight Performance at Time of Booking Without Prompting and On Internet Sites. None of the 12 ATA airlines have completely satisfied our recommendation to disclose on-time flight performance at time of booking without prompting and post it on their Internet sites. We found that:

- Nine of the 12 airlines will disclose the prior month's on-time flight performance upon request only. We tested five of the airlines' compliance with providing the performance data upon request through their reservations agents and they were in compliance.

- Only 5 of 12 ATA airlines are placing the flights' prior month, on-time performance on their Internet sites. In this case, several airlines are awaiting the final outcome of the Department's proposed rulemaking on this matter.

Resume Efforts To Self-Audit Customer Service Plans. We recommended in 2001, and in subsequent reports, 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. To date, only 5 of the 12 airlines are still performing self-audits of the Commitment's provisions, while others have a self-audit system that does not include all the Commitment provisions. These airlines may be awaiting the outcome of the Department's rule on this matter. In its rule, the Department proposes to require that airlines establish quality assurance and performance measure systems and conduct internal audits to measure compliance with the Commitment provisions. It is our view that there is nothing in the Department's rule to prevent the airlines from self-policing themselves, just as they had promised to do back in 2001.

While some airlines are making a concerted effort to improve the passenger experience, others are not willing to formally promise all their Commitment provisions and associated customer service policies in their contracts of carriage or customer service plans. It is still our opinion that the airlines need to publish their promises to customers in writing regarding long, on-board delays. This would hold the airlines to a higher standard and clearly demonstrate that they take customer service matters very seriously.

Airports Are More Involved in Contingency Planning for Extraordinary Events, but Further Action Is Needed

Since we last testified, airports have moved out with initiatives to mitigate long, on-board delays and minimize passenger discomfort, but more is still needed. Airports have taken several actions since September 2007 to address these matters, such as convening a task force to address flight delays and customer service issues. However, individual airports can do more to enhance passengers' experiences, especially during extraordinary flight disruptions.

Convening a Task Force and Workshops Among Stakeholders To Address Flight Delays and Customer Service Issues in the New York Area

In our prior testimony, we reported that the Port Authority of New York and New Jersey convened a task force in July 2007 composed of Port Authority staff, airline executives, Federal, state, and city government officials, and other industry stakeholders in the region's aviation system to focus on the burgeoning problem of flight delays, including initiatives to improve the passenger experience when delays occur.

The task force issued its report on December 6, 2007, identifying a total of 96 recommendations to enhance capacity, reduce delays, and improve customer service for the region's three major airports—JFK, LaGuardia, and Newark Liberty. Nineteen of the recommendations address improving customer service through better communication with passengers and coordination among airlines, airports, and the various service providers.

Key customer service recommendations include:

- Establishing a baseline maximum time for a plane to sit on tarmac before the Port Authority must be notified to prepare support services.
- Creating an "early warning" system to inform passengers of delay before arrival at the airport terminal.
- Providing delayed passengers with information on alternate flights and transportation to allow sooner arrival at their final destination.

The task force intends to meet in early this summer to assess the implementation status of the recommendations in its report.

Convening Workshops Composed of Vested Stakeholders To Address Contingency Planning for Extraordinary Flight Disruptions

Two workshops were convened—one sponsored by DFW and the other sponsored by Airports Council International-North America (ACI)—to identify best practices for contingency planning during extraordinary flight disruptions. A cross-section of airports, airlines, government agencies, and industry vendors attended the workshops. Highlights from the workshop action items include the following:

- Identified and explored the causes of the public's concern that airports and airlines lack awareness of or fail to adequately prepare for Irregular Operations as they continue to take proactive measures to address customer needs.
- Acknowledged that better communication, collaboration, and coordination between all stakeholders (the airlines, airports, the Transportation Security Administration and FAA)—before and during an event—will dramatically improve the level of customer service to passengers.

Breakout sessions were held to, among other things, identify a "tool box" of templates, best practices, and communication plans for dealing with flight disruptions and passenger care.

Monitoring Tarmac Delays and Assisting Airlines During Flight Disruptions

In our last testimony, it was our view then, as it is now, that large- and medium-hub airport operators should establish and implement a process for monitoring and

mitigating long, on-board delays that involves contacting the airline to request a plan of action after an aircraft has remained for 2 hours on the tarmac. Absent any airline policy, the airport operators should work with airlines to establish policies for deplaning passengers and ensure that these policies are adhered to.

In support of our view, on January 7, 2008, Secretary Peters, sent letters to the Presidents of ACI and the American Association of Airport Executives "urging them and their members to take immediate steps to address our recommendation if they have not already done so."

Since then, we found that the ACI member-airports selected for review are, to some degree, getting more involved in contingency planning for extraordinary events. For example, of the 20 airports we reviewed:

- Four currently do not have a process for monitoring extended ground delays.
- Only three have established policies and procedures to proactively monitor and minimize the impact of long, on-board delays that involves contacting the airline to request a plan of action after an aircraft has remained on the tarmac for 1 hour to 2 hours.
- The remaining 13 monitor delays as part of their normal operations but do not have formalized, written policies outlining the monitoring procedures and/or timeframes for taking action.

Also, 8 of the 20 airports have either refined their existing policies or established new policies to identify the resources and procedures needed to, upon request, assist airlines in extended ground delays, such as identifying remote areas for parking aircraft when gates are not available and methods to transport passengers from remote parking areas to the terminal.

Investigating Incidents of Extended Delays To Identify Causal Factors and Mitigate Future Occurrences

Following an extraordinary flight disruption event, airports conduct post-incident investigations on what contingency planning procedures work well during the event, and what did not. Of the 20 airports we reviewed:

- Fourteen conduct investigations of long, on-board flight delays.
- Twelve of the 14 airports' investigations include a debriefing after the event with all involved stakeholders.
- Six either do not or rarely investigate long, on-board flight delays. This is sometimes contingent on whether the airport is the possible cause of the delays. Four of those six airports do not consider it necessary to investigate long, on-board flight delays because they seldom occur at their airports.

To minimize or mitigate future occurrences, airports have implemented solutions, ranging from continuous monitoring of a long, on-board flight delay until resolved to purchasing specialized equipment to better manage and prevent long, on-board flight delays. The criteria to trigger an airport investigation vary among the airports and can range from a 2- to 4-hour delay or the mere occurrence of any irregular or extraordinary event. Airports indicated that weather and flight diversions were the primary causes of long, on-board flight delays.

It is encouraging to see that some airport operators are becoming more involved in mitigating long, on-board delays. However, as passenger traffic continues to grow, airports will need to become more proactive in dealing with long, on-board delays, especially those airports with limited airfield or gate capacity.

U.S. House of Representatives
Committee on Transportation and Infrastructure

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June 6, 2008

The Honorable Calvin L. Scovel, III
Inspector General
U.S. Department of Transportation – W70-300
1200 New Jersey Avenue S.E.
Washington, D.C. 20590

Dear Inspector General Scovel:

On April 9, 2008, the Subcommittee on Aviation held a hearing on the "**Aviation Delays and Consumer Issues.**"

Attached are questions to answer for the record. 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

JFC:jd/pk
Attachment

APRIL 9, 2008
SUBCOMMITTEE ON AVIATION
HEARING ON

AVIATION DELAYS AND CONSUMER ISSUES

QUESTIONS FOR THE RECORD
TO:

THE HONORABLE CALVIN L. SCOVEL, III
INSPECTOR GENERAL
U.S. DEPARTMENT OF TRANSPORTATION

Inspector General Scovel, thank you for your participation in the House Subcommittee on Aviation's Hearing on Aviation Delays and Consumer Issues. I appreciate you taking the time to respond to the following questions:

1. Carrier-caused delays were the number one cause of delays at 5 of the 15 airports reviewed. Are details available to identify specific carrier issues?

2. Based on your testimony, how do scheduling and capacity tie into delays? Which airports should be watched for 2008?

3. You testified that a consistent policy regarding tarmac delays across the airlines would be helpful to passengers. What should be included in such a policy? Should the DOT create the policy?

4. In your testimony you state that the DOT minimum threshold for chronically delayed flights should be set no higher than 50 percent on time (it is currently 70 percent). Please explain.

Questions for the Honorable Calvin L. Scovel III, Inspector General, DOT from Chairman Jerry F. Costello House Subcommittee on Aviation Hearing on Aviation Delays and Consumer Issues April 9, 2008

1. Carrier-caused delays were the number one cause of delays at 5 of the 15 airports reviewed. Are details available to identify specific carrier issues?

   Inspector General Scovel: Air carriers that account for at least 1 percent of domestic scheduled passenger revenues are required to submit monthly reports to the Department's Bureau of Transportation Statistics (BTS). These reports help determine, among other things, the percentage of flights (1) departing and arriving on time by airport; (2) delayed, cancelled, and diverted; and (3) delayed by cause.

   These reports, however, use very broad causal categories to define flight delays and cancellations (e.g., air carrier delay or cancellation) rather than more specific categories (e.g., flight delayed or cancelled due to mechanical reasons). Therefore, details are not readily available to identify the specific carrier issues such as mechanical, aircraft servicing, or gate availability problems.

   As we noted in our statement, BTS needs to analyze the causal flight delay and cancellation data submitted by the airlines to identify locations of initial delays, underlying causes of system-wide effects, and the role of airports as net generators or absorbers of delays. This would provide the Congress, DOT, FAA, and other stakeholders with a much better understanding of delay causes and the solution sets needed to address them.

2. Based on your testimony, how do scheduling and capacity tie into delays? Which airports should be watched for 2008?

   Inspector General Scovel: Airline scheduling and airport capacity are closely linked to flight delays at congested airports. The FAA published capacity benchmarks for 35 airports to establish how many arrivals and departures each airport can handle under conditions involving both optimum weather and instrument flight rules, or IFR (pilots must rely on these when weather reduces airports' operative capacity). Even under optimal weather conditions, significant delays occur when flights are scheduled above an airport's capacity and when those operations peak at certain times during the day.

   Scheduling above capacity, in 15-minute periods, mostly occurs at a few key hub airports, several of which previously implemented flight caps under the High Density Rule. Over-scheduling can take two forms: periodic over-scheduling and saturation scheduling.

- *Periodic over-scheduling* occurs when airlines schedule flights above the optimum weather capacity of an airport at certain periods during the day. This type of over-scheduling can lead to delays even in good weather; however, they are often shorter in duration, and recovery is possible during lulls between the periodic peaks. Examples of airports where periodic over-scheduling occurs include Charlotte-Douglas and Philadelphia International.
- *Saturation scheduling* occurs when airlines schedule flights at or above an airport's IFR capacity throughout the day. As a result, on-time performance at airports with saturation scheduling is highly susceptible to even minor operational or weather disruptions. Further, the resulting delays affect more flights over a longer period as there are no lulls to allow recovery. Examples of airports where saturation scheduling occurs include Chicago O'Hare International, LaGuardia, Newark Liberty International, and John F. Kennedy International (JFK).

With respect to which airports should be watched for 2008, we updated our outlook for this summer's flight delays by examining recently updated airline schedules (and new FAA-approved flight caps for JFK and Newark Liberty airports) for last summer's 15 worst airports to identify where continued or new problems could occur. We see the potential for continued or increased delays at the following airports this summer:

- **Chicago O'Hare International and New York LaGuardia:** The summer 2008 schedules at these two airports continue to show more peaking in excess of optimum capacity than last summer, indicating the potential for worsened delay conditions.
- **Hartsfield-Jackson Atlanta International:** This airport has become a watch-item for this summer since we highlighted airports of concern in our April testimony. Since April, changes in this airport's flight schedules suggest there could be increases in the number of peaks over last summer. These changes could contribute to another summer of poor on-time performance at this airport.
- **JFK and Newark Liberty:** Delay problems could continue to occur at these airports this summer. FAA's summer 2008 operations caps at these airports are below the level of operations that the airlines wanted to operate. The FAA-approved operations, however, represent an increase in flights of 8.9 percent at JFK and 4.6 percent at Newark Liberty over last year's levels and show more time-of-day peaking at both airports. Consequently, the FAA order that approved carrier schedules at JFK acknowledged that delays will likely be increased over last summer.

Additionally, our testimony indicated a potential problem at Minneapolis this summer. At that time, our analysis was based on flight schedules that Northwest Airlines subsequently identified as preliminary. The carrier's revised schedule spreads out the worrisome peak demand over a broader time period, thereby alleviating our prior concerns regarding the potential for extensive delays at this airport.

3. You testified that a consistent policy regarding tarmac delays across the airlines would be helpful to passengers. What should be included in such a policy? Should the DOT create the policy?

   Inspector General Scovel: We believe a consistent policy on tarmac delays would be an important step forward. We would support a DOT policy that would require airlines to do what they promised to do, which is: (1) define what constitutes a long, on-board delay; (2) set a time limit on delay durations before deplaning passengers; (3) incorporate such policies in their contracts of carriage and post them on their websites; and (4) work with airports to minimize long, on-board delays. With regard to other issues, such as the provision of meeting passengers' essential needs (e.g., food, water, and lavatory facilities), a consistent policy across the industry would certainly be helpful to customers.

   With respect to setting a uniform time limit on delay durations before deplaning passengers, however, we would caution DOT against a "one size fits all" policy. There may be situations or conditions that make it difficult to bring passengers back to a gate during long, on-board delays. The physical layouts of the airports are very different and have to be taken into account. Some airports—by virtue of their location, design, and more modern age—may be able to safely accommodate this type of aircraft movement. Other airports, because they are much more crowded and narrow, may not be able to accommodate aircraft moving about in this way or guarantee passenger safety.

   We note that in January 2008, the Department issued a rulemaking seeking comments on whether it should adopt a rule to enhance airline passenger protections that would require airlines to, among other things, adopt contingency plans for lengthy tarmac delays and incorporate them in their contracts of carriage. Each plan would require the maximum tarmac delay that the airline will permit; the amount of time on the tarmac that triggers the plan's execution; a plan to meet passengers' essential needs, such as food, water, and lavatory facilities; and assurance that the plan has been coordinated with the airport operator.

   Whether or not the Department further advances this rulemaking through the regulatory process is not known at this time. Therefore, the airlines must

follow through on their plans to reduce delays and improve customer—without waiting for the outcome of the rulemaking.

4. In your testimony, you state that the DOT minimum threshold for chronically delayed flights should be set no higher that 50 percent on time (it is currently 70 percent). Please explain.

   Inspector General Scovel: DOT currently considers a flight chronically delayed if it is at least 15 minutes late 70 percent or more of the time in any calendar quarter. Using this parameter, DOT identified fewer than 200 flights per quarter (i.e., regularly scheduled flight segments or city pairs) for 2007:

   - 1st quarter (January – March): 184
   - 2nd quarter (April - June): 129
   - 3rd quarter (July - September): 171
   - 4th quarter (October - December): 103

   Targeting so few flights when delays and passenger complaints continue to rise only masks the true impact of delays and their impact on passengers. To better illustrate the impact of chronically delayed flights on air travelers, we increased the delay threshold to at least 30 minutes late 40 percent or more of the time. Using these parameters for the summer quarter of 2007 (i.e., June, July, and August), we found that the number of delayed flights increased dramatically to 5,369. We first made this point in our February 2001 report.

   When DOT only shows that fewer than 200 flights per quarter are chronically delayed, it is not sending a message to the airlines that delayed flights, especially chronically delayed flights, will not be tolerated.

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April 8, 2008

The Honorable Calvin L. Scovel
Inspector General
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear General Scovel:

Thank you for the opportunity to meet with you and your staff to discuss the recently released report, "Use of the National Airspace System" (CR-2008-028). We appreciate the time you took to clarify the report's focus, especially given the misinformation about the report that has circulated in recent weeks.

Specifically, we are pleased that you confirmed the following:

- The report does NOT address FAA cost allocation and does not make any judgments on current segment contributions. As the document clearly states, "this report does not address the cost of providing individual services."

- The report does NOT draw any conclusions on the causes of delay and specifically does NOT point to general aviation (GA) as a driver of airline delays. In fact, the report states "...at the 26 large primary airports we examined, air carriers accounted for 93 percent of all operations."

- With respect to the fuel tax, the report correctly notes that a fuel tax does mirror system usage and your report does NOT endorse any new fee or change in existing funding mechanisms. As NBAA noted in the meeting, air traffic control fees and charges everywhere in the world are based on weight and distance, and taxing fuel is the most efficient proxy for measuring weight and distance.

As you know, the general aviation community is committed to modernizing air traffic control and expanding the capacity of the aviation system. As a result, GA is partnering with the government to move modernization forward as quickly as possible. We look forward to working with you in the months ahead to expedite the system's transformation.

Thank you again for meeting with NBAA.

Sincerely,

Ed Bolen
President and CEO

Written Testimony of
Bill Connors, Executive Director and Chief Operating Officer,
National Business Travel Association

U.S. House of Representatives Transportation and Infrastructure Committee
Subcommittee on Aviation
"Aviation Delays and Consumer Issues"
April 9, 2008

The National Business Travel Association (NBTA) is the world's premier business travel organization. U.S.-based NBTA and its regional subsidiaries – NBTA Asia Pacific, NBTA Canada and NBTA Mexico – serve more than 3,200 members in 30 nations around the globe. NBTA has 42 U.S. Chapters with more than 5,000 members. NBTA members are corporate and government travel and meetings managers, as well as travel service providers, who collectively manage and direct more than US$170 billion of global business travel expenditures annually. The association provides industry-leading networking, education & professional development, research, news & information, and advocacy.

NBTA appreciates the Subcommittee's attention to aviation delays and consumer issues. The environment in which our members fly has been become increasingly difficult in recent months. Delayed flights, involuntary failures to board ticketed passengers, delays on the tarmac, and a host of new security programs have created serious concerns for employees of our membership who rely on air travel to conduct vital business activity. While we recognize that these problems defy easy solutions, we urge the Congress to work with executive branch agencies and private sector stakeholders to develop solutions now.

In September of last year, the Office of the Inspector General (OIG) for the Department of Transportation (DOT) published its report entitled, "Actions Needed to Minimize Long On-Board Delays." OIG made several recommendations aimed at improving airline customer service and minimizing long on-board delays. Shortly thereafter, on November 15th, 2007, President Bush, Secretary of Transportation Mary Peters and Acting Federal Aviation Administrator Robert Sturgell announced that the Administration would be taking a number of steps to alleviate the epidemic of aviation delays and proposing new regulations affecting aviation industry practices. NBTA congratulates the Administration for addressing these issues that negatively impact the aviation community.

As described more fully in comments filed in these three related rule-makings, NBTA supports some of the proposed concepts but believes others are inappropriate and likely to be ineffective. As a general matter, the government should establish systems for basic consumer protection and then allow the consumer to use their purchasing power to choose those airlines that best address these customer service needs. No one benefits from micromanagement of customer service; the added costs of overregulation of the airline industry would only serve to inhibit innovation in the industry and increase costs for passengers. Customer service is a market-driven issue, with purchasers able to make informed buying decisions based on facts related to airline service. As

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certain types of information are only in the possession of air carriers, NBTA generally supports greater transparency and reporting requirements so long as such requirements provide useful information to the airline passenger and/or their purchasing agent and can be conducted with reasonable costs...Moreover, while NBTA believes the federal government has an interest in mandating certain baseline consumer protections for airline customer service – or 'passenger rights' – in general, airlines are in a much better position to ascertain what their customers expect and whether certain practices are worth the cost they entail. Basic economics dictate that government mandates create private sector costs, and those costs are going to be borne, directly or indirectly, by the traveling public.

In response to the rule-making request for comments, NBTA supports a number of measures aimed at increasing transparency in the aviation system, including reporting on tarmac delays, publishing delay data on carrier websites, and establishing a "bright-line test" to identify chronically delayed flights (more than 15 minutes late at least 70% of the time). That transparency will increase competition by helping airline passengers and corporate travel buyers make well-informed decisions.

With respect to reimbursing passengers for involuntary denials of boarding due to overbooking, business travelers are more likely to be flying at peak schedule times at the beginning and end of the business day and are at much greater risk to book tickets on a flight that ends up being overbooked. NBTA believes that DOT should require that carriers compensate travelers the greater of $400 or half of their airfare for travelers involuntarily denied boarding and arriving at their destination within two hours of their scheduled arrival time [and] the greater of $800 or half of their airfare for travelers involuntarily denied boarding and arriving at their destination more than two hours after their scheduled arrival time.

The business travel community is glad to see that DOT and FAA are taking a hard look at the problems facing our air travel system and that this Subcommittee is conducting vigorous oversight of their activities and of the aviation system. Our ability to travel and the U.S. economy depend on finding the right solutions. The technology exists to open airspace that currently goes unused, to improve our ability to fly in bad weather and to move more planes in and out of airports faster. In addition to these issues mentioned above, let us focus on implementing those technologies with a Next Generation air transportation system for the twenty-first century. NBTA encourages the subcommittee to review our comments filed on these proposals when considering further action on these issues.

More information about NBTA's public policy agenda can be found at http://www.nbta.org.

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