



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

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Chairman

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April 18, 2007

James W. Coon II, Republican Chief of Staff

**SUMMARY OF SUBJECT MATTER**

**TO:** Members of the Subcommittee on Aviation  
**FROM:** Subcommittee on Aviation Staff  
**SUBJECT:** Hearing on Aviation Consumer Issues

**PURPOSE OF HEARING**

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

**BACKGROUND**

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

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

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

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

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

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

## I. Airline Customer Service Commitment

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

The Airline Customer Service Commitments include:

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

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<sup>1</sup> 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.

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

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

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

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

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

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

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

## **III. DOT IG Reports on Customer Service**

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

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

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

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

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

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

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

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

#### **IV. Bills Introduced**

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

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

#### WITNESSES

#### MEMBER PANEL

**The Honorable Mike Thompson**  
Congressman  
California, District 1

**The Honorable Jean Schmidt**  
Congresswoman  
Ohio, District 2

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

PANEL I

**The Honorable Calvin L. Scovel, III**

Inspector General

U.S. Department of Transportation

**The Honorable Andrew B. Steinburg**

Assistant Secretary for Aviation and International Affairs

U.S. Department of Transportation

Accompanied by

**Mr. Dan Smiley**

Operations Manager

FAA Command Center

PANEL II

**Mr. David Neeleman**

CEO

JetBlue

**Mr. Jim May**

President and CEO

Air Transport Association

**Ms. Kate Hanni**

Executive Director

Coalition for Airline Passengers' Bill of Rights

**Mr. Kevin Mitchell**

Chairman

Business Travel Coalition

**Mr. Paul M. Ruden, Esquire CTC**

Senior Vice President for Legal and Industry Affairs

American Society of Travel Agents