



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

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September 25, 2007

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SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Aviation
FROM: Subcommittee on Aviation Staff
SUBJECT: Hearing on Airline Delays and Consumer Service

PURPOSE OF HEARING

The Subcommittee will meet on Wednesday, September 26, 2007, at 2:00 p.m. in room 2167 of the Rayburn House Office Building to receive testimony regarding airline delays and consumer service.

Background

The first half of 2007 has been the worst for airline delays since the Department of Transportation (DOT) Bureau of Transportation Statistics (BTS) started keeping comprehensive statistics 13 years ago: through July, only 72.2 percent of flights were on time¹, and 6.4 percent of flights arrived more than 1 hour late. Long, on-board tarmac delays have increased by almost 49 percent from 2006 and delays of 5 hours or more have increased 200 percent. According to the Federal Aviation Administration (FAA), delays are up 20 percent since last year, and traffic is up at some busy airports by as much as 50 percent.

The BTS tracks the on-time performance of domestic flights operated by large air carriers (these include 19 U.S. air carriers that have at least 1 percent of total domestic scheduled-service passenger revenues). The airlines report the causes of delays to BTS in five broad categories: air carrier; extreme weather; national aviation system (NAS); late-arriving aircraft; and security.

- **Air carrier:** The delay or cancellation was within the airline's control (e.g. maintenance, crew problems, aircraft cleaning, baggage loading, fueling, etc.). In 2007, 28 percent of delays and cancellations were assigned to the air carrier.

¹ A flight is counted as "on time" if it operated less than 15 minutes later than the scheduled time shown in the carriers' computerized reservations systems.

- Extreme weather: Momentous weather circumstances (actual or forecasted) that, in the judgment of the carrier, delays or prevents the operation of a flight (e.g. tornado, blizzard, hurricane, etc.). 6 percent of the delays and cancellations in 2007 were attributed to extreme weather.
- NAS: Includes a broad set of circumstances — non-extreme weather, airport operations, heavy traffic volume, air traffic control, etc. This category accounted for 28 percent of delays and cancellations.
- Late-arriving aircraft: An earlier flight using the same aircraft arrived late, causing the current flight to depart late. This category accounted for 38 percent of delays and cancellations this year.
- Security: Cancellations or delays caused by evacuation of any part of an airport, re-boarding of aircraft because of security breach, inoperative screening equipment and/or long lines in excess of 29 minutes at screening areas. Less than one percent of delays and cancellations are caused by security.

I. Industry Trends

As BTS data indicate, weather, particularly during summer months, is a significant factor causing delays. Weather is a factor in three of the categories above and, in total, accounted for 41 percent of delays and cancellations this year. Unlike winter weather conditions and snowstorms that take time to develop and move slowly, one bad summer storm can stretch hundreds of miles wide, grounding flights and sending chain reaction delays throughout the aviation system. Yet, while weather is a major source of delays, there is some evidence to suggest that industry operational, technological and economic trends are also a factor.

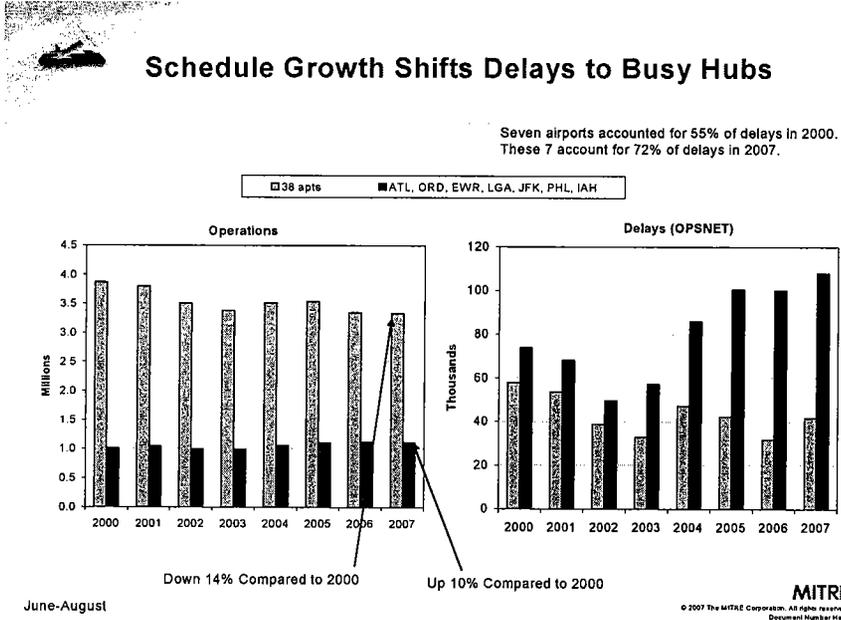
While delays have increased, system-wide total airport operations have actually decreased by about 11 percent since 2000. The decline in total operations has been driven largely by a decline in general aviation (GA) operations: since 2000, system-wide commercial airport operations have remained relatively flat and system-wide GA operations have decreased by about 17 percent.

However, while commercial operations remained flat, they have also become more highly concentrated in certain areas, and greatly increased at some of the nation's largest and busiest airports. For example, according to the Federal Aviation Administration (FAA), commercial operations at New York's John F. Kennedy International (JFK) airport have increased 27 percent from 2000, and 44 percent from 2004. Areas that have the largest challenges meeting current demand with available capacity are the New York City metropolitan area (including Newark (EWR), Chicago O' Hare (ORD), and Fort Lauderdale (FLL)). At the same time, in the first six months of this year, on-time arrival performance has improved slightly from last year at Oakland, San Francisco, San Diego, Atlanta, Las Vegas and Houston; all other major airports' on-time arrival is worse.

While the number of operations is decreasing and becoming more consolidated at some airports, commercial enplanements and demand for air travel is continuing to grow steadily. Airlines have responded to passengers' demand to fly and have scheduled flights to accommodate the increase in demand, particularly in the most desirable markets. In June 2007, BTS data show record load factors for domestic flights at 86.4 percent and for the combined domestic-international system

at 85.8 percent. The implications of these increased load factors means more crowded planes and a decreased margin for error in case of cancellations or missed connections.

Analysis by MITRE-CAASD (“MITRE”)² reveals the increasing concentration of operations at busy hub airports and their potential impact on delays. MITRE’s analysis shows that in the



summer of 2000, of the 45 major airports reported on by DOT/FAA, just 7, Atlanta (ATL), ORD, Philadelphia (PHL), EWR, LaGuardia (LGA), Houston (IAH), and JFK, accounted for 55 percent of all major airport delays recorded under the FAA’s Operational Network (OPSNET) system of measuring delays. Today, these 7 airports account for 72 percent of the total delays. Since 2000, operations at those airports increased by nearly 10 percent while operations at the other 38 airports decreased by nearly 14

percent. While delays at these 7 airports increased 39 percent overall, delays decreased a combined 27 percent at the other 38.

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 over 200 percent since 2000, from 570 in 2000 to 1,746 in 2006. In many instances, airlines have replaced slower, lower-flying turboprops with regional jets. Because regional jets fly closer to, or at the same altitudes and use the same runways, as larger commercial jets, they put more demand on the system than turboprops. To the extent regional jets are a straightforward additive to the commercial airline fleet (versus replacing turboprops), they enable airlines to offer more frequent service that their customers prefer (e.g. 5 flights a day from A to B in a regional jet versus 3 flights from A to B in a 737 to carry the same number of passengers). The overall average size of aircraft in the airline fleet has declined since 2000, largely a result of regional jets entering the fleet.

II. Scheduling

As a result of this summer’s delays, airlines’ on-time performance and scheduling practices will likely come under increasing scrutiny. The FAA has indicated its intentions to more closely

² MITRE is a non-profit organization, and the Center for Advanced Aviation System Development (CAASD) was established in 1990 within MITRE. MITRE-CAASD is sponsored by the FAA as a Federally Funded Research and Development Center (FFRDC). An FFRDC meets certain special long-term research or development needs that cannot be met as effectively by existing in-house or contractor resources.

examine scheduling practices, particularly in the New York metropolitan area. During a September 11, 2007, speech, outgoing FAA Administrator Marion Blakey stated:³

To be clear, the airlines need to take a step back on the scheduling practices that are at times out of line with reality. . . And if the airlines don't address this voluntarily, don't be surprised when the government steps in. Drawing down the schedule at Chicago was not my happiest hour, but it could come to that on the East Coast as well.

On September 19, 2007, the FAA issued notice to airlines asking for advance schedule information for JFK and 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."

In 2000, the DOT Inspector General (DOT IG) released a report entitled an *Audit of Air Carrier Flight Delays and Cancellations*, where it recommended that airlines make scheduling changes taking into account the benchmarks established for the top 30 airports, and data related to chronically delayed and canceled flights. The report warns that if these steps are not taken by airlines, the options are congestion pricing or administrative allocations of capacity, such as slot lotteries or scheduling committees under antitrust supervision.⁴

a. Capacity Benchmarks

After U.S. airports experienced significant delays in the summer of 2000, the FAA set about developing a framework for better understanding what arrival and departure rates can physically be accommodated by airports to help evaluate airline scheduling practices, and to assist in policy and planning decisions. At the time, the DOT IG, in particular, urged that "A set of capacity benchmarks is essential in understanding the impact of air carrier scheduling practices and what relief can realistically be provided by new technology, revised air traffic control procedures, new runways, and related airport infrastructure."⁵

In April 2001, the FAA published the *Airport Capacity Benchmark Report 2001*. An updated report was published in September 2004. Since then, the planning and analysis process has evolved to include other measures and computer simulations of airport delays, this report is entitled the *Future Airport Capacity Task (FACT)*. For the *FACT 2* report, published in May 2007, the 2004 benchmark capacities for 35 airports were updated as needed, and similar capacity measures for 21 additional airports were generated.

Capacity benchmarks are defined as the maximum number of flights that an airport can routinely handle in an hour. They are, however, only estimates that attempt to quantify complex airport runway capacity issues that vary widely with weather conditions, controller efficiencies, runway configurations, and a mix of aircraft types, and have been described by the FAA as a simple

³ *Change*, a speech by FAA Administrator Marion C. Blakey at the Aeroclub of Washington, D.C., September 11, 2007.

⁴ *Audit of Air Carrier Flight Delays and Cancellations*, U.S. Department of Transportation Inspector General, CR-2000-112, July 25, 2000.

⁵ Statement of Inspector General Kenneth M. Mead, Before the Committee on Appropriations, Subcommittee on Transportation and Related Agencies, March 16, 2001.

indicator – a starting point for a diagnosis. Looking forward, policymakers will likely continue to look for some standardized measure of airport capacity, whether benchmarks or other measures, to evaluate airline scheduling vis-à-vis the limitations of technology, procedures, and infrastructure to achieve a delicate balance between reducing delays while maximizing airport capacity.

b. Delay Reduction Actions

Section 41722 of U.S. Code Title 49 gives the Secretary of Transportation the authority to request that air carriers meet with the Administrator of the FAA to discuss flight reductions at severely congested airports to reduce over scheduling and flight delays during peak hours of operation if the FAA Administrator thinks it is necessary or the Secretary “determines it will meet a serious transportation need or achieve an important public benefit.” The meeting is chaired by the Administrator, open to scheduled air carriers and limited to the discussion of airports and time periods determined by the Administrator. The Administrator establishes flight reduction targets for the meeting and notifies the air carriers of those targets 48 hours in advance. The Administrator is required to make a transcript of the meeting available to the public within three days of the meeting.

The FAA has used this legal authority only once to hold scheduling meetings, which resulted in administrative caps at ORD. In 2003, delays in Chicago created a rippling effect that resulted in missed flights and delays across the country, due to the presence of two major carriers using ORD as their hub and the geographic location of the airport near the center of the country. ORD experienced a passenger rebound – returning to its pre-September 11th levels in late 2003 with over 30 million enplaned passengers and 928,000 operations. In November of 2003, ORD ranked last among the 31 largest airports in on-time arrival performance (57.26 percent) and departure performance (66.94 percent).

As a result, in 2004, DOT and FAA held scheduling meetings with American and United, which accounted for 86 percent of the operations at ORD, and asked them to voluntarily reduce their flight schedules by 7.5 percent through October 2005. However, despite these voluntary reductions, other air carriers continued to schedule operations into ORD during peak hours. The DOT and FAA then convened a voluntary, airline scheduling conference to pursue delay reductions at ORD. Following this scheduling conference, the DOT and FAA announced a temporary cap on ORD’s flights during peak hours at 88 scheduled and 4 non-scheduled arrivals per hour, between the hours of 7:00 a.m. and 8:59 p.m. In 2006, the FAA extended the cap to October 31, 2008. The FAA reviews every six months the level and length of delays and other operating conditions to determine if the airport can accommodate more arrivals. If additional capacity becomes available, the FAA proposes a method to assign the additional capacity scheduled to air carriers interested in initiating or expanding service at ORD. Since these caps were put into place, delays fell by 20 percent at ORD, according to the FAA.

III. Infrastructure: Runways, Air Traffic Control and Airspace

a. Runways

The FAA states that new runways and runway extensions provide the most significant capacity increases. The majority of air traffic delays can be traced to inadequate throughput, and the construction of new runways and runway extensions are the most effective method of increasing throughput. Since fiscal year (FY) 2000, 13 new runways have opened at the FAA’s 35 critical

Operational Evolution Partnership (OEP) airports providing the airports with the potential to accommodate 1.6 million more annual operations and decrease average delay per operation at these airports by about 5 minutes.

Looking forward, 8 OEP Airports have airfield projects (3 new runways, 2 airfield reconfigurations, 1 runway extension, 1 end around taxiway, 1 one centerfield taxiway) under construction. These projects will be commissioned through 2012 providing these airports with the potential to accommodate about 400,000 more annual operations and significantly reducing runway crossings. Ten other projects at OEP airports (3 airfield reconfigurations, 3 runway extensions, and 4 new runways) are in the planning or environmental review stage.

While new runways provide significant capacity benefits, on average the process of building a runway takes approximately ten years from start to finish. The process includes 4 major steps: planning (a 1 to 2 year process), environmental review (a 3.5 year average for an Environmental Impact Statement (EIS) on a major runway), financing, which can be done relatively quickly, and then the construction itself, the time for which can vary greatly depending on the complexity of the project. In addition, in many instances, runways will not provide full capacity benefits unless the airspace above the runway is reconfigured.

b. Air Traffic Control (ATC)

Congress created the Joint Planning and Development Office (JPDO) in Vision 100 – the Century of Aviation Reauthorization Act (P.L. 108-176), and tasked it with developing a Next Generation Air Transportation System (NextGen) that will handle the anticipated tripling of passengers, operations, and cargo by 2025. The NextGen plan developed by the JPDO will provide new technologies and capabilities, including: satellite-based surveillance; enhanced automation of air traffic controller functions; digital datalink communications; networked communications, and an integrated weather system.

Yet, while the Administration embarks on a major new modernization program, in recent years it has requested that its facilities and equipment (F&E) account – the primary vehicle for modernizing the NAS – be funded well below congressionally authorized levels for the program. In 2003, the FAA requested and received from Congress an authorization of approximately \$3 billion per year for its F&E program. For the past three years, the Administration has requested and received roughly \$2.5 billion per year for F&E.⁶ As a result, some ATC modernization initiatives were cancellation and deferred, including a few NextGen capabilities.⁷

In addition, many core NextGen technologies that the FAA is now beginning to implement will not be fully functioning within the NAS for several more years. For example, in August 2007, the FAA awarded the contract for its satellite-based Automatic Dependence Surveillance – Broadcast (ADS-B) surveillance system. According to FAA officials, full ADS-B ground-based

⁶ In fact, the FAA's total estimated requirement for F&E funding in its most recent three year reauthorization proposal, the *Next Generation Air Transportation System Financing Reform Act of 2007*, is approximately \$380 million less than what the FAA requested for the first three years of its last reauthorization proposal, the *Centennial of Flight Aviation Authorization*.

⁷ For example, the Next Generation Communication (NEXCOM), designed to transition analog air-to-ground transmissions to digital; Controller Pilot Datalink Communications (CPDLC), which would allow digital email-type capability between controllers and pilots. Digital communications capability will be revived as part on NextGen.

infrastructure deployment will not be completed until the 2013 timeframe. Moreover, the total benefits of ADS-B will not be realized until aircraft equip over the next decade or so.

In recent years, the FAA has moved forward with technologies and procedures that improve efficiency, increase capacity and reduce congestion in the system. For example, the FAA is expanding the use of procedures like Area Navigation (RNAV) and Required Navigation Performance (RNP). RNAV operations remove the requirement for a direct link between aircraft navigation and a ground-based navigational aid, thereby allowing aircraft better access and permitting flexibility of point-to-point operations. By using more precise routes for take-offs and landings, RNAV enables reductions in fuel burn and emissions and increases in capacity. The FAA is expanding the implementation of RNAV procedures to additional airports. The FAA has authorized 128 RNAV procedures at 38 airports for FY 2005 and FY 2006, and plans to publish at least 50 additional procedures in FY 2007.

RNP is RNAV with the addition of an onboard monitoring and alerting function. This onboard capability enhances the pilot's situational awareness providing greater access to airports in challenging terrain. RNP takes advantage of an airplane's onboard navigation capability to fly a more precise flight path into an airport. It increases access during marginal weather, thereby reducing diversions to alternate airports. RNP reduces the overall noise footprint and aggregate emissions. The FAA has authorized a total of 40 RNP procedures at 18 airports. The FAA plans to publish at least 25 RNP approach procedures in FY 2007.

In 2005, the FAA implemented Domestic Reduced Vertical Separation Minima (DRVSM). DRVSM has increased capacity in the en route airspace by doubling the number of usable altitudes between 29,000 and 41,000 feet. The procedure permits controllers to reduce minimum vertical separation at altitudes between 29,000 and 41,000 feet from 2,000 feet to 1,000 feet for properly equipped aircraft.

c. Airspace Redesign

The FAA's airspace redesign efforts will play a critical, near-term role in enhancing capacity, reducing delays, transitioning to more flexible routing and ultimately saving money for airlines and airspace users in fuel costs. The critical importance of airspace redesign efforts is underscored by their inclusion in FAA's strategic plans, *Flight Plan 2008-2012* and *Operational Evolution Partnership (OEP)*.

Recently, two large airspace redesign projects were completed, the Florida Airspace Optimization (FAO), and the Midwest Airspace Enhancement (MASE) that encompasses nine Air Traffic Control Centers (ARTCCs). On September 5, 2007, the FAA signed the Record of Decision on its preferred alternative for the New York/New Jersey/Philadelphia (NY/NJ/PHL) Airspace Redesign project. According to the FAA, delay benefits for the NY/NJ/PHL Airspace Redesign project are estimated to reach 20 percent by the year 2011 compared to the amount of delays the air traffic system would have without the changes. Yet, despite progress on airspace redesign efforts, recent funding cuts have led to delays and deferrals of some critical airspace redesign efforts.

IV. Consumer Protection

Record numbers of people are flying. In 2006, 740 million passengers flew in the United States and the FAA predicts this figure will reach one billion by 2015. Flight arrival delays have increased with the growing traffic. 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.

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 JFK and LGA 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.

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 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 slated to be released on Tuesday, September 25, 2007.

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 40 percent on disability and civil rights complaints, 30 percent on economic authority and economic licensing issues, and thirty percent on consumer protection, such as truth in fare advertising (or chronically delayed flights). Current law directs OAEP to investigate every civil rights and disability claim, while other investigative actions are left to the Secretary's discretion. 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. In the first 7 months of 2007, air travel complaints rose 65 percent compared with the same period in 2006. 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.

V. Bills Introduced

During the 106th and 107th Congresses, many bills were introduced to strengthen airline consumer protections and decrease delays. 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 and antitrust immunity to allow airlines to discuss ways to reduce delays.

In the 110th Congress, bills have been introduced in the House and Senate that would address tarmac delays, conditions on aircraft, and make passengers aware of their rights. The recently-passed H.R. 2881, the FAA Reauthorization Act of 2007, includes:

- Provisions to mandate that air carriers and airports submit emergency contingency plans and detail in their plans how they will allow passengers to deplane following excessive delays. DOT can assess a civil penalty against an air carrier or airport that fails to adhere to an approved contingency plan.
- Requirement for 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.
- Establishment of an Advisory Committee for Aviation Consumer Protection at DOT.
- DOT IG review of air carrier flight delays, cancellations, and associated causes.
- Requirement that DOT issue denied boarding compensation final regulations within one year, with such rates appropriately adjusted.

WITNESSES

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