



Coalition for an Airline Passengers

Bill of Rights

Fighting for Passengers' Health, Safety and Other Rights

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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 consumer 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.



**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.



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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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} <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">02/14/07</td> <td style="width: 15%;">Delta</td> <td style="width: 10%;">142</td> <td style="width: 15%;">Philly</td> <td style="width: 10%;">10</td> </tr> <tr> <td>06/01/07</td> <td>Delta</td> <td>1901</td> <td>JFK</td> <td>4+</td> </tr> <tr> <td>06/10/07</td> <td>Delta</td> <td>PM</td> <td>JFK</td> <td>4</td> </tr> <tr> <td>06/12/07</td> <td>Delta</td> <td>151</td> <td>JFK</td> <td>5</td> </tr> <tr> <td>06/21/07</td> <td>Delta</td> <td>5557</td> <td>JFK</td> <td>5</td> </tr> <tr> <td>06/25/07</td> <td>Delta</td> <td>6499</td> <td>JFK</td> <td>7</td> </tr> <tr> <td>07/29/07</td> <td>Delta</td> <td>279</td> <td>JFK</td> <td>4+</td> </tr> <tr> <td>12/2/2007</td> <td>Delta</td> <td>132</td> <td>Delta</td> <td>4</td> </tr> <tr> <td>01/16/08</td> <td>Delta</td> <td>1201</td> <td>Atlanta</td> <td>10</td> </tr> <tr> <td>01/18/08</td> <td>Delta</td> <td>1975</td> <td>Atlanta</td> <td>7.5</td> </tr> </table>	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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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 17 th 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 9 th , 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 14 th 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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Grade	4. Longest Time on the Tarmac / Stranding (thanks to press and passenger accounts)	Hours
F	United Airlines Dec. 1 st Chicago 644	7.5+
F	American Airlines August 9 th , 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. 29 th # 82	9+
F	US Airways October...9 #17 JFK to Phoenix Philadelphia March 17 th 2007	8+ 8+
F	Northwest Airlines 12/21/07 #3405 Flight #1192, March 24, 2007	8+ 8+
F	JetBlue February 14 th June 27, 2007 Jet Blue 29 JFK 6+	10+ 6+



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**“How much are people
willing to tolerate award”**

Events	5. Crisis Management	Grade
1	<p>Continental Airlines: Flight #1669 July 2007</p> <p>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.</p>	F
1	<p>Delta Comair Flight #5637: July 2007</p> <p>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.</p>	F
1	<p>United Airlines Flight #644: Dec. 1st Gonzales Family</p> <p>5 year old vomiting incessantly, given a blanket to cover up vomit after each exhale, layers of vomitous 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.</p>	F
1	<p>LAX : Aug. 9th 2007 Alaska Airlines, American Airlines²</p> <p>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.</p>	F



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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>



Court ruling grounds passenger bill of rights

It now looks as if an act of Congress "or more likely, an act of God, given Congress' record" 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 "not the states" 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.

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 ratchet 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.

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.