



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

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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 delayed¹ 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 long² 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 OAEF 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 EWR⁵ 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. Circuit 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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General Counsel, Office of the
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Mr. Gregory Principato
President
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