

*Airline Service Improvements*



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before the  
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AIR TRANSPORT ASSOCIATION

## INTRODUCTION

The hallmark of the *Airline Deregulation Act of 1978* (“ADA”) was Congress’ policy determination to place “maximum reliance on competitive market forces and on actual and potential competition”<sup>1</sup> among airlines to drive efficiency, innovation and low prices, and to provide “the variety and quality of, and determine prices for, air transportation services.”<sup>2</sup> While not always neat and clean, marketplace competition in the airline industry has produced stunning consumer benefits in the form of low fares, expanded service options and product differentiation, and a steady flow of new airlines eager to challenge incumbents. As a result, more Americans fly for business and pleasure, and ship goods by air, than ever before. Air transportation has become an indispensable element of America’s infrastructure and our nation’s economic well-being.

The proposed Airline Passenger Bill of Rights Act of 2007 (the “Bill”) was offered in response to specific delay events involving two ATA member airlines. These events were serious and regrettable, and travelers’ unhappiness is understandable. As explained below, however, the concerns that this Bill seeks to address do not require new legislation. The market forces the ADA unleashed, bolstered by existing regulatory mechanisms, are fully capable of bringing about appropriate changes to airline policies and procedures. Indeed, those changes are underway already. On the other hand, this Bill would undermine Congress’ judgment to place “maximum reliance” on market forces, add costs for airlines and reduce consumer benefits going forward. In addition, the Bill would have numerous unintended consequences that would increase, rather than prevent, customer inconvenience.

## AIRLINES CARE ABOUT AND PROVIDE GOOD CUSTOMER SERVICE

It should be obvious that no one cares more about completing scheduled flights on time than the airlines and their employees. After safety, on-time service is critical for success in the airline business. Good service and on-time performance are what the airlines sell, and the reputation an airline earns for good customer service is the currency it has to offer in the marketplace for passengers. Good service and on-time performance ensure repeat business, and that is the goal for all airlines because it leads to commercial success. On the other hand, poor service and on-time performance drive customers away and, ultimately, lead to failure. No airline is in business to fail.

Every year, airlines spend millions of dollars on new products and upgrades, reservations and check-in systems, online systems, personnel and training to make it easier for passengers to purchase tickets, print boarding passes, obtain special services, and enhance the inflight experience. They do this not only because of competition to differentiate themselves from their competitors and to drive customer satisfaction, but also because the easier it is for passengers to access their flights and services, the more efficient the airline operation becomes. This, in turn, drives down costs and frees up resources for growth, capital spending and further product enhancements.

A good example is online check-in. Many airlines have now deployed this service, which allows passengers to print their boarding passes at home or work and bypass traditional airport passenger processing. This benefits passengers and airlines alike, reducing the passenger’s time at the airport, easing crowded airport lobbies, and allowing gate agents and customer service representatives to focus on passengers who need personal assistance.

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<sup>1</sup> 49 U.S.C. § 40101(a)(6).

<sup>2</sup> 49 U.S.C. § 40101(a)(12).

Other examples abound. Airlines have begun introducing Spanish-language check-in kiosks, and many airlines are adding check-in kiosks throughout their systems as e-ticketing becomes more prevalent. New terminals are being constructed and aircraft interiors are being refurbished with new seats and entertainment systems.

In response to the 1999 Customer Service Commitment, ATA member airlines instituted a variety of measures and developed new systems to improve customer service, such as automated voice and internet messaging about delays and schedule changes, automated re-booking systems when severe weather forecasts lead airlines to proactively cancel flights in advance of extreme weather conditions, and re-booking hotlines. They also have developed internal policies and procedures to monitor delay situations, including taxi-out delays, and to implement event-specific plans to minimize customer inconvenience.

Notwithstanding these varied customer service initiatives, airline customer satisfaction is measured first and foremost by on-time service and flight completion. Airline operations are incredibly complex, intricate systems with a significant number of moving parts that airlines can control, but also two major external factors that are completely out of their control: weather and the air traffic control (ATC) system. These two factors greatly affect on-time performance and flight completion and, for this reason, can be the source of great frustration for airlines. ***Together they accounted for approximately 66 percent of all delays in 2006, according to FAA data.***<sup>3</sup> When bad weather hits, the best efforts of the airlines sometimes cannot overcome the impact on operations. That was the case in December 2006 and February 2007.

## LEGISLATION IS NOT NEEDED

### *Unusual Weather Conditions Triggered Unusual Delays*

The two delay events that led to the proposed Bill were caused by extraordinary weather conditions. This factor alone distinguishes these two events. In the case of American Airlines on December 29, a storm pattern in north Texas affecting Dallas-Ft. Worth International Airport (DFW) that normally would have dissipated relatively quickly (often in less than an hour) kept reforming over a period of eight hours. Every time it appeared that an operational window was about to open, the storm refocused and the window slammed shut. The storm literally defied years of experience and weather forecasting expertise. On almost any other day, the planes diverted to Austin would have recovered to DFW within two or three hours. In fact, American experienced more diversions on that day than any other day in its history except 9/11.

Likewise, in the case of JetBlue Airways, the winter storm that struck John F. Kennedy International Airport (JFK), which also affected most of the northeastern U.S., was extremely intense and unlike forecasts for much of the time consisted of a particular type of precipitation known as “ice pellets.” FAA recently had dictated severe departure restrictions in ice pellet conditions and these restrictions unexpectedly but effectively prevented JetBlue and other airlines from being able to operate departures. The airport continued to accept arrivals, however, and it quickly became gridlocked, with aircraft unable to either takeoff or return to the terminal.

In both cases, there were numerous factors that led to passengers being onboard some airplanes much longer than ever expected. Chief among them were (1) the reasonable expectation, based on past experience and current forecasts, that weather and airport conditions would change and permit operations to resume; (2) the knowledge that the overwhelming majority of passengers

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<sup>3</sup> FAA Opsnet, <http://www.apo.data.faa.gov/opsnet/entryOPSNET.asp>. The Bureau of Transportation Statistics, which DOT uses for its monthly “Air Travel Consumer Report,” uses slightly different data and categories, reported that just under 60 percent of 2006 delays were caused by weather and ATC.

much prefer to take a delay but get to their destinations rather than have their flights cancelled, especially over holiday travel periods; (3) crew members, like passengers, prefer to depart late and get home or to their intermediate destination rather than have a flight cancelled – particularly if the flight has been diverted; and (4) operational recovery occurs more quickly, and all upcoming passengers benefit, if as many airplanes and crew members as possible are able to reach their scheduled destinations, even if delayed. In short, these incidents are classic cases of “creeping delays” and best intentions of carriers gone awry.

In hindsight, could these situations have been handled better? Undoubtedly so, as the carriers themselves have stated. But it is also true that these airlines, and every other U.S. airline, learned valuable lessons from these incidents. As a result, ATA member airlines are all taking steps to prevent a recurrence of events such as these. Can we say they will never occur again? In truth, no. But the likelihood they will is extremely small.

### *Extreme Delays are Rare*

Another reason why this legislation is not needed is that extreme taxi-out delays are rare. In 2006, 36 out of 7,141,922 flights reported had delays of more than five hours after pushing back from the gate. That is just 0.0005 percent, or five ten-thousandths of a percent. This statistic is hardly reason to justify legislation to substitute the judgment of Congress for that of the executives who not only run these businesses on a daily basis but also are responsible for their safe and timely operation.<sup>4</sup>

Even if this number were to double in 2007, which we do not believe will be the case, it would not support new governmental impositions on the airlines. Likewise, if we consider the 2006 delays of three to five hours, there were only 1,259 flights affected. That amounts to 0.00018 percent of the 7,141,922 flights reported. In short, for a system that operates 24 hours a day, 365 days a year, that must respond to winter snowstorms and summer thunderstorms, and that safely moves more than 740 million passengers and 2.5 million tons of cargo annually, there are remarkably few extreme delays.

### *Delays are Costly for Airlines and Passengers*

Delays and cancellations are the enemies of every airline. They interfere with customers’ plans, drive missed connections and mishandled baggage, upset carefully balanced flight schedules, throw off carefully planned crew scheduling, and potentially create a cascading effect that can spread to many cities and disrupt passengers’ plans for several days. DOT has estimated the cost of delays to U.S. airline passengers in 2005 at \$9.4 billion. At \$62 in direct operating costs *per minute* of flight delay, DOT has estimated that in 2005 delays cost airlines an additional \$5.9 billion.

### *Market Forces and Existing Regulatory Oversight are Working*

Regulation of an industry or enterprise is justified when market/economic forces do not cause that industry or enterprise to conform to social norms or to protect the health and safety of workers and the public. That is not the case here. On the contrary, the intense media coverage of the negative public reaction to these incidents caused both American and JetBlue to promptly modify their policies and procedures. American, for example, has adopted an internal policy that will prevent onboard delays from exceeding four hours. Likewise, JetBlue voluntarily adopted a

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<sup>4</sup> To put that number into perspective, the chance of a flight delay of greater than five hours (approximately one-in-200,000) is approximately the same as dying from falling down the stairs, based on National Safety Council statistics. See: <http://www.nsc.org/lrs/statinfo/odds.htm>.

policy that will prevent onboard delays of more than five hours. JetBlue also implemented its own Customer Bill of Rights that covers (and in certain cases compensates for) delays and cancellations. This positive response by both carriers demonstrates that the pressure of market forces is working and that government intervention is not necessary.

Other carriers likewise have heard customer concerns and have responded by initiating internal reviews of their policies and procedures to deal with extended delays, by reviewing and updating contingency plans, and by engaging their key airports in discussions about how best to deal with these kinds of situations. Carriers also are examining the capacity of their call systems, adopting contingency plans for handling high volumes during emergencies, as well as evaluating computer-based systems that would automatically re-book passengers whose flights are cancelled.

In addition to airlines' voluntary responses, Department of Transportation (DOT) Secretary Peters has asked the DOT Inspector General (IG) to investigate these incidents in light of the airlines' commitment to meet customers' essential needs during extended onboard delays and to have contingency plans in place for such events. The 1999 "Airline Customer Service Commitment" by 14 ATA member airlines provides that "the airlines will make every reasonable effort to provide food, water, restroom facilities and access to medical treatment" in the event of extended onboard delays consistent with safety considerations. The Secretary also requested the IG to provide recommendations on what airlines, airports and the government might do to prevent a recurrence of these kinds of extended delays and to highlight industry best practices. American and JetBlue, as well as many other airlines, have cooperated with the IG's office during this investigation and have provided numerous documents and extensive data not only about these events, but also about their internal policies and procedures.

The IG's report, due in mid-May, thus will identify potential measures for carriers and other stakeholders to consider adding to their policies and procedures with respect to avoiding, and responding to, significant delays. ATA looks forward to the IG's report because it will also clarify the facts of these incidents – and correct inaccurate media reports indicating that particular flights had no food, water or working lavatories. We understand that neither American nor JetBlue flights were without food, drinks or water, and at least one working lavatory.

Finally, the proposed legislation is unnecessary because DOT already has existing authority to investigate air carrier compliance with its consumer protection regulations, including the prohibition against unfair and deceptive trade practices, and to fine carriers for violations of these obligations. DOT's enforcement office executes this authority and has a long history of actively protecting consumer rights, including issuing fines to airlines.

Congress' determination to rely on market forces clearly was the right judgment. As the carrier responses to the recent problems demonstrate, market forces are driving improvements to customer service. And the market-driven responses already undertaken by airlines have been bolstered by the Secretary's request for an investigation and report by the IG. When issued, the IG's report may identify additional measures the carriers can take. Finally, not to be overlooked is the significance of congressional hearings like this one and the upcoming hearing before the House Aviation Subcommittee. Together, these measures are more than adequate to ensure that consumer rights and interests are protected.

#### **AIRLINE OPERATIONS ARE COMPLEX AND THE PROPOSED BILL WOULD HAVE ADVERSE CONSEQUENCES FOR PASSENGERS**

The proposed Bill provides that any passenger who wants to get off an airplane delayed on departure for three hours must be deplaned if safe to do so, unless the pilot reasonably believes the plane will takeoff within 30 minutes. A hard and fast rule like this will have numerous

unintended consequences that, ultimately, will create even more inconvenience for passengers and lead to even more flight cancellations.

No passenger likes delay, especially long delays. But what the majority of passengers like even less is not being able to get to their destination at all. A late flight is better than no flight, and can mean the difference between attending and not attending an important event or long-planned vacation. If the flight returns to the gate and is cancelled, then the passengers will very likely be delayed at least into the next day, if not longer. Even if the flight is not cancelled, planes will lose their place in line to depart by being forced to go back to the terminal or getting out of line to deplane passengers by air stairs. This, necessarily, will cause even longer delays for everyone else. Consequences that will occur, particularly from a return to the gate to deplane a passenger, include:

- Cancellations because crews “time out”<sup>5</sup>
- Flights delayed because they lose their place in the departure line
- Unplanned overnight stays for unaccompanied minors
- Mishandled baggage
- Missed meetings and vacations
- Cascading cancellations and delays caused by planes and crews out of position, especially when diversions are involved
- An overall increase in cancellations because airlines will pre-cancel flights to limit passenger inconvenience and operational complications caused by the Bill’s requirements

These consequences are likely to be exacerbated if a flight cancels at a city to which it has been diverted.

The impact of flight cancellations extends beyond the passengers on the cancelled flight. Operationally, the consequences for airlines and the next day’s passengers include:

- Crews and aircraft are ‘out of position’ and the next day’s schedule is compromised
- Passengers at the destination city must wait for the aircraft to arrive the following day, delaying or cancelling *their* departures
- Flight crews ‘deadheading’ on the cancelled flight will not reach their destinations and will not be available to operate their scheduled flights
- Aircraft will be forced to traverse congested runways/taxiways when logistically possible (as it was not for long periods at JFK during the storm gridlock) to return to the terminal

## AIRLINE CUSTOMER SERVICE IN THE POST-9/11 ERA

On a broader basis, airline customer service in the post-9/11 is a relevant discussion point for this hearing. Good customer service is important to our members and they understand it drives consumer choices. But, as with virtually every other aspect of airline operations, the effects of 9/11 continue to be felt in the customer service area. While our members have done much to address customer service concerns over the last five-plus years, they also recognize that in some respects customer service is not at the level they want it to be or provided in the preferred manner. The reasons for this are many. Chief among these are the operating limitations imposed by an aged and inefficient air traffic control (ATC) system.

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<sup>5</sup> FAA regulations on duty limits and rest requirements for pilots and flight attendants, as well as carrier collective bargaining agreements that go beyond the regulations, limit the amount of time pilots may be on duty without a rest break. Limited provisions that allow the duty day to be extended because of reasons beyond the control of the airline assist in dealing with weather related delays. However, the utility of these provisions will be curtailed significantly by forcing planes back to the gate to deplane passengers.

### *The Air Traffic Control System is at Capacity*

The current ATC system relies on a series of ground-based platforms that are linked to form a very complex network system that supports airways, through which aircraft fly. The system was designed to create point-to-point routings which we now recognize are inherently limiting and inefficient. Today, airways increasingly resemble many highways: they have become saturated. Even in good weather, the system is just able to handle the traffic demand. When severe weather disrupts the airway system, the impact on airline operations is immediate and often widespread. FAA has developed a number of programs to ensure safe operations in these conditions, but the effect of these programs is flight delays and cancellation, which inexorably leads to unhappy passengers.

Government must do everything it can both in the near term and long term to improve airspace capacity and system performance, particularly during adverse weather conditions. Point-to-point airways cannot produce substantial new capacity, or allow operations in weather conditions that today force FAA to reduce airway capacity. In the long term, we have no choice but to introduce new technology to generate needed capacity and new operating capabilities. Potential capacity enhancements and efficiency improvements, so critical to meeting growing air traffic demand and responding to environmental concerns, will remain unrealized unless the ATC system is promptly and thoroughly transformed. In the near term, incremental capacity enhancements must be pursued vigorously. These include the New York and Chicago airspace redesign projects, ADS-B implementation and expedited development of RNAV/RNP procedures.

### *Most Airlines Remain Financially Precarious*

The well-documented drop in traffic after 9/11 and the related external shocks of SARS, the Gulf War and skyrocketing jet fuel prices brought the industry to its knees. From 2001 through 2006, the industry lost \$33 billion, including 2006 estimated net earnings of \$2 billion in 2006.<sup>6</sup> These conditions put four major airlines into Chapter 11 and forced the industry to shed jobs and airplanes, slash capital spending, and take on massive amounts of new debt, just to survive. Through 2006, airlines cut more than 150,000 jobs, shed more than \$8 billion in annual labor costs and parked hundreds of airplanes. At its peak in 2004, industry debt is estimated to have exceeded \$107 billion, and most recently stood at approximately \$79 billion. In short, the airline industry as a whole remains in extremely fragile condition. Earnings in 2006 and projected earnings for 2007 are helping to revive the industry, but it is far from where it needs to be to weather the next exogenous shock or economic recession. In fact, only one U.S. passenger airline enjoys an investment-grade credit rating from Standard and Poor's. Moreover, the industry's recovery remains hostage to stable oil prices, as the recent spike in oil prices stemming from Iran's capture of twelve British sailors demonstrates. In short, the projected 2007 earnings would quickly disappear should oil and jet fuel prices surge for a sustained period of time.

### *Cost and Capacity Discipline Remain Critical*

Assuming the industry recovery continues, airlines have many financial demands. These include repairing their balance sheets, funding fleet acquisitions to meet growing demand while reducing growth in emissions, improving wages and benefits for their employees – who have endured significant reductions since 9/11, funding airport development projects intended in part to improve customer service, acquire or upgrade ground service equipment to meet both operational needs and emissions reductions targets, modernize reservations and online booking systems to meet customer needs, and so forth. The point here is that as much as airlines might like to

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<sup>6</sup> By comparison, the industry earned only \$23 billion in 1995-2000, the industry's most profitable period ever. DOT has not yet released airline industry financial results for the fourth quarter of 2006.

redirect financial resources at improving customer service – by hiring lots of new staff and deploying new equipment – they must act deliberately to make sure that all priorities, including those related to passenger safety, are met and that they do not lose control of their costs. Airlines simply cannot afford a “fix it at any cost” mentality.

The same holds true with respect to capacity. The industry was finally able to achieve a profit in 2006 largely because supply began to align with demand. Prior to that point, supply – seat capacity – outstripped demand and, as a result, revenue could not keep up with costs. While our members recognize that increased capacity could, perhaps, make planes less crowded and provide a cushion to accommodate passengers when their flights are cancelled, the unfortunate truth is that this would greatly increase airline costs. Airlines either would have to raise prices, which is difficult to do in a highly competitive pricing environment driven by low-cost carriers, find new ways to cut costs – which could include more service cuts, or slip back into the category of money losing enterprises.

### *The Current FAA Funding System Hobbles the Airlines*

As we have stated in previous testimony concerning FAA reauthorization, the current funding system for the FAA unfairly burdens commercial airlines. There is no correlation today between revenue collected and services consumed. Airlines pay well over 90 percent of Trust Fund revenues but drive less than 70 percent of ATC system costs. The result of this inequity is that airlines, and ultimately their customers, are heavily subsidizing other users of the system – corporate aviation users in particular. A cost-based usage fee system would correct this disparity and, in the process, free up significant resources for airlines that can be used for, among other things, improving customer service.

### CONCLUSION

While commendable for its goals, the Bill is neither necessary nor prudent. Extreme weather conditions of the kind that struck in December 2006 and February 2007 are unusual, and DOT statistics demonstrate that, in fact, extreme delays are rare. And just as Congress anticipated when it enacted the Airline Deregulation Act, market forces have already caused airlines to change the way they prepare for, and respond to, extreme weather conditions and resulting delays and cancellations. Additionally, existing regulatory mechanisms are ensuring appropriate action by carriers and protect consumer interests.

As we all know, weather remains, by far, the chief cause of airline delays and cancellations. When weather hits, FAA slows down the system and airports often lose runway capacity. Because the existing ATC system is, for all intents and purposes, maxed out, the ripple effect on airline operations that results from ATC responses is enormous. Rather than layer on additional regulatory burdens that could prove costly and result in greater numbers of passengers being inconvenienced, we urge the Committee to pass legislation that will enable FAA to modernize the ATC system as quickly as possible. Expanding system capacity and putting technology in place that will allow better operations when weather hits is the most effective action for improving customer service.