



FlyersRights.org

Prepared Testimony of
Kate Hanni¹
Executive Director and Spokesperson
on

FAA REAUTHORIZATION ACT OF 2009
INCLUDING PASSENGER BILL OF RIGHTS

Before the
Subcommittee on Aviation
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C.

February 11, 2009

Mr. Chairman and Ranking Member Petri:

Thank you for inviting FlyersRights.org² to testify in connection with your Committee's introducing an **FAA Reauthorization Act of 2009**, hopefully including a Passenger Bill of Rights title that's even stronger than the last Congress' House-passed bill (H.R. 2881).

¹ Contact information: c/o FlyersRight.org. 159 Silverado Springs Drive, Napa, CA 94558. Phone: (707) 337-0328. Email: kate@flyersrights.com.

² FlyersRights.org is the new organizational name for the Coalition for an Airline Passengers Bill of Rights. Our section 501(c)(4) tax-exempt consumer group has grown to more than 24,000 air traveler advocates. After a passenger bill of rights legislation is enacted -- hopefully this year, we will still have a continuing agenda of safety, health and regulatory issues of continuing importance to airline passengers.



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Maximum Aviation Funding from House-Senate Conference on Economic Stimulus Legislation

First, our members are grateful for this Committee's support of higher levels of funding for aviation programs in H.R. 1, the House's economic stimulus legislation. Specifically we hope House conferees will be successful in pressing in conference for the highest possible level of airport grant funds, funds to the Transportation Security Administration (TSA) for speed-up of in-line baggage screening installations at U.S. airports, and investment in the NextGen airways modernization program. Industry witnesses appearing before you today are all divided as to how to allocate scarce airport capacity at the New York area airports during the near term. The sooner NextGen gets fully funded at the Federal level the sooner additional capacity will be available.

No Real Progress Since Your Last Hearing on Aviation Consumer Rights

Since your hearing on aviation consumer issues last April, a lot of trees have been sacrificed to produce a disappointing DOT Task Force Report on tarmac delays³ (see enclosed New York Times editorial) and a DOT-proposed regulation⁴ of passenger protections -- that won't protect passengers.

You will likely hear from the major scheduled airlines that "We're now doing a better job reducing or handling long tarmac delays." ...And with DOT's issuance of the industry Task Force Report and with DOT's working to finalize a draft regulation, there's no need for Federal passenger rights provisions to be included in your FAA Reauthorization Act legislation."

³ DOT Task Force, "Development of Contingency Plans for Lengthy Airline On-Board Delays" (November 12, 2008).

⁴ DOT Notice of Proposed Rule Making, "Enhancing Airline Passenger Protections" (December 8, 2008)

“Let us handle it,” they say again, using the same arguments they advanced in convincing Congress in 1999 to stop working on passenger rights legislation and accepting instead voluntary Airline Customer Service Commitments.⁵ However, the DOT’s Inspector General testified here in 2001 and 2006 that airline efforts slacked off after the threat of legislation abated, and after the 9/11 terrorist tragedy.⁶ ... And those Commitments or Customer Service Plans aren’t even enforceable.⁷

-- Task Force Exercise Was Disappointing to Passengers

We had asked the Task Force to establish minimum standards for passenger health and safety issues and for a maximum period for tarmac strandings. Instead, the airlines on the Task Force accepted no standards, with everything still being left to their unregulated discretion. ...And with no penalties for negligence.

During the Task Force meetings we also asked the FAA to allow ATC personnel to delay the “pushback” of airline flights from their gates if a long tarmac delay on the taxiway was inevitable. (We had reports from airline staff that airlines often move their planes away from their gates knowing that long tarmac delays are inevitable so they can load other scheduled planes from those same gates. Airport taxiways then often become aircraft parking lots.)

⁵ DOT OIG Report Number AV-2001-020, “Final Report on Airline Customer Service Commitment” (February 12, 2001) at p. 1: “Congress, the Department of Transportation (DOT), and the Air Transport Association (ATA) agreed that the air carriers should have an opportunity to improve their customer service without legislation. To demonstrate the Airlines’ ongoing dedication to improving air travel, ATA and its member Airlines executed the Airline Customer Service Commitment (the Commitment), on June 17, 1999. Each airline agreed to prepare a Customer Service Plan (Plan) implementing the 12 provisions of the commitment. The Airlines committed to:

- Offer the lowest fare available
- Notify customers of known delays, cancellations, and diversions
- On-time baggage delivery
- Support an increase in the baggage liability limit
- Allow reservations to be held or canceled
- Provide prompt ticket refunds
- Properly accommodate disabled and special needs passengers
- Meet customers' essential needs during long on-aircraft delays
- Handle "bumped" passengers with fairness and consistency
- Disclose travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration
- Ensure good customer service from code-share partners
- Be more responsive to customer complaints.”

⁶ DOT OIG Report AV-2007-012, “Follow-up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment” (November 12, 2006), at p. 4: “The ATA airlines committed to notify customers and the airport and on board an affected aircraft in a timely manner of the best available information regarding delays, cancellations, and diversions. However, just as we found in our prior review, the information being provided about delays and cancellations in boarding areas was not timely or adequate during our tests.” (Emphasis added)

⁷ American Airlines, Customer Service Plan (website as of 2-1-09): “The Customer Service Plan does not create contractual or legal rights.”

We cited a Joint Economic Committee Staff Report⁸ that concluded that 20% of all flight delays occur during taxiing to the runway, involving excess fuel burn as well as time costs for airlines and passengers measured in the billions of dollars annually.

FAA, a Task Force member, was totally unhelpful, citing existing policy that the airlines alone determine when to push back their aircraft from gates onto the tarmac, no matter how long the taxiway backup will be. FAA only regulates aluminum tubes, we were told; we should contact the DOT Secretary's office which alone has consumer protection jurisdiction for the passengers stuck for hours in those tubes on the tarmac.

– DOT's Proposed "Passenger Protections" Regulation Has No Standards

Similarly, in DOT's current draft of its weak, toothless "Enhancing Airline Passenger Protections" regulation, the airlines are asked 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.

The airline comments in the DOT rulemaking process make clear that they don't want any government body or individual passenger to be able to enforce any standards of airline behavior during long tarmac delays:

- **NOT THE STATES:** The airlines litigated the State of New York's recent attempt to establish minimum standards for air passenger health and welfare, imposing fines for violations. Ruling: only the Federal Government may regulate the airlines in this preempted area.
- **NOT FEDERAL DOT STAFF:** The airlines know that the Federal DOT staff won't enforce airline violations for individual passengers but merely collects passenger complaints and ships them off to the airlines "for appropriate action" without follow-up.
- **NOT FEDERAL REGULATION:** The airlines are opposed to DOT's requiring them in its pending rulemaking to list their 1999 Commitments and their tarmac stranding policies in their Contracts of Carriage⁹ for fear that some passengers will try to litigate those promises in state courts.
- **THUS, ONLY CONGRESS** can assure minimum protections for passengers.

⁸ Joint Economic Committee Majority Staff, "Your Flight Has Been Delayed Again: Flight Delays Cost Passengers, Airlines and the U.S. Economy Billions" (May 2008)

⁹ A Contract of Carriage is the document that air carriers use to specify any legal obligations to passengers, and technically is supposed to be enforceable in state courts. Each air carrier must provide a copy of its Contract of Carriage free of charge upon request. NOTE: FlyersRights.org believes that passenger lawsuits on Contract of Carriage provisions are both impractical and unsuccessful: (1) because the cost to a passenger of pursuing litigation is so high; and (2) because that Contract is filled with "wiggly lawyer words": "as appropriate," "if available," and "to the extent reasonable," so that judicial enforcement is unlikely.

Tarmac Strandings Continue Unabated

Our members were tremendously disappointed that the Passenger Bill of Rights provisions in your and the Senate's FAA Reauthorization Bills were not enacted during the last Congress. Airline and Federal agency (Customs and Border Protection (CBP), TSA) treatment of stranded airline passengers is not getting any better. I am attaching to my testimony partial transcripts from some typical calls to our 24-hour FlyersRights.org hotline. These frustrated passengers are Congress' constituents.

Strengthening Passenger Right Provisions In FAA Reauthorization Act of 2009

The bottom line here, Mr. Chairman, is that unless Congress mandates in your FAA Reauthorization legislation minimum standards for adequate food, water, working toilets and a passenger option to deplane¹⁰ after 3-plus hours of a tarmac delay (if it can be done safely), tomorrow's passengers will continue to be as exposed to airline negligence during tarmac strandings as they are today.

We urge you to update the passenger rights provisions you included in your last Congress' legislation. Some provisions are no longer needed and other provisions should be strengthened. Specifically, we hope you will incorporate the text of Congressman Thompson's H.R. 624, Airline Passenger Bill of Rights Act of 2009 (text enclosed). Your acceptance of that legislation, with 23 co-sponsors to date, would demonstrate that the new Congress cares about airline passenger health and safety and would also require DOT to strengthen its current draft regulation accordingly.

Again, thank you for the opportunity to testify. I'd be pleased to answer your questions.

Enclosures

¹⁰ DOT's draft regulation assumes incorrectly that deplaning involves returning the plane to the gate and giving up that plane's place in the queue on the taxiway. Not so. On some taxiways, buses (whose purchase is a Federal airport grant eligible item) could deplane those passengers who would opt off after long tarmac delays. Other airports have nearby holding areas that could be used for deplaning purposes.

The New York Times

ARTHUR OCHS SULZBERGER JR., *Publisher*

The Tarmac's Madding Crowds

A federal study group — created with fanfare to tackle the wretched ordeal of passengers stranded for hours on idled jetliners — has refused to mandate how long airlines can keep their passengers trapped before taxiing back for relief.

The experts' answer: Suck it up and sit there on America's unfriendly tarmacs for as long as it takes.

The task seemed a no-brainer a year ago when advocates for harried nonfliers estimated three hours would be a reasonable limit before heading back to the gate and civilization. But the so-called tarmac task force set up by the Department of Transportation was stacked with airline and airport executives who treated the definition of a lengthy delay as if it were some conundrum of astrophysics.

Instead, the 36-member task force feebly recommends that airlines try to update passengers every 15 minutes, even if there's nothing new to report and, of course, no end now mandated for their predicament.

As for the grisly tales of parched and frenzied passengers stranded without food or drink, the task force recommends that airlines offer refreshments and entertainment "when practical." Oh yes, and make reasonable efforts to keep restrooms more usable than fetid as stalled planes sit there clueless and unairconditioned.

The department's inspector general had recommended setting a limit for how long passengers can be forced to be sealed off in planes. But the task force's conclusion was that this is a complicated question best left to the different airlines and airports. Or, as one industry member arrogantly maintained: "One size doesn't fit all." Enough already.

Surely the incoming administration will be less captive to industry on this issue — and every other. It certainly doesn't take an expert to realize that it is the passengers who pay to keep the airlines airborne. It's only humane that they be accorded something short of full captivity on the ground.

Sample Airline Stranding/Long Tarmac Delay Stories

January 1st, Albany: United flight 5309 pushed only a few feet from the gate and sits for 7 hours and 50 minutes. The airline tell the passengers they could have deplaned, the door was shut and they were pushed back from the gate, but only a few yards from the gate. United opened the door but no stairs were presented. Passengers were told "you get off you don't get your luggage". The passengers were hungry, angry and lost. Their flight was, after 7 hours and 50 minutes canceled. Dan Higgins from the Times Post described it as near mutiny and said that many passengers were relieved to have a law that would protect them. Since the New York Law was overturned there are still no protections and the passengers got nothing to compensate them.

January 16th: Delta in Atlanta flight 1201: Chaira Bell sitting next to two elderly folks in coach was pushed back from the gate to a deicing line. This was early evening. She was headed from Atlanta to Palm Beach. The pilot said they would have to de-ice. What was never shared with them were the number of jets in the deicing line were 90. At 25 minutes per jet to de-ice, they were in the deicing line 5 hours before the pilot came on and said he was returning to the gate to allow folks to go get food, water, and a toilet, they had 15 minutes. He threatened them with not getting their baggage and not having a flight home at all if they did not return to complete the flight. He said they would re-enplane immediately and take off. But with full knowledge on the part of pilot and crew they went out and sat for another 5 hours in the deicing line and then took off. Elderly were shaking, diabetics were near shock and no one cared...For 4 solid days the Atlanta Constitution Journal reported that Delta airlines had lines of 30 to 90 jets deicing and folks sat for 8 to 10 hours in aircraft that held live human beings who were parched, hungry, tired and unsuspecting.

June 9, Gary Indiana: United flight 1020 was diverted out of Chicago airspace to Gary Indiana. The landing was so rough that the flight attendants had bruised ribs. Passengers were shaken from the dangerous landing and now at an airport that was closed. For 12 hours they were in that plane with no food, water or ability to get off. There were medical events treated on board but no plan in place for airports or airlines to do what should have been done to help them off of the plane. The airline blamed the airport for not being open. The airport said the airline never called them. The DOT stated, when I asked them, that folks were "just happy to be on the ground". We had a member on that plane Lucy Fitzpatrick and she was outraged to hear this summary dismissal of what really happened inside the plane. The passengers did want off and like prisoners, simply weren't allowed.

December 1st, TACA airlines flight 670 was diverted to Ontario airport due to FOG at LAX. Apparently their Brand New airbus 321 did not have appropriate equipment to land in FOG? Having been in flight for 5 hours they were then put down on the ground to sit for 9 solid hours. One passenger was so ill, she needed her medication and they made no effort to get it for her. She then called 911. Emergency vehicles came to the jet, but when passengers wanted off they were refused.

December 16th, AA flight 154 from Norita to Chicago was diverted to Detroit. Chris O'meara and his classmates were on board in Coach. DETROIT, the infamous home of the NWA debacle of 1999. Chris said he and his college friends were trading cell phones, trying to reach their parents as each cell phone died he found himself the only one with a live cell phone. When Chris went to the restroom (having been on board the same plane for 19 hours) there was vomit in the sink. Chris said there was no water, no food and people were shaking from lack of both. They were lied to and told that no gate was the size of their jet. Then no customs people were available. Then, well, the pilots rest hours expired so guess what? Gate and customs were ready and waiting.

January 22, Portland Oregon. Aero Mexico plane diverts to Portland. They had already flown for 6 hours and were tired when they were informed they were diverting to Portland due to fog in Seattle. The passengers became restless after 4 hours on the ground (10 hours in the plane) and they began to let the crew know they wanted off, the excuse was "No customs". Homeland Security entered the aircraft and told the hot, angry, hungry, thirsty people "if you want off, you'll be arrested". That plane then took off and flew all the way back to Mexico, only to turn around and fly back to Seattle.

111TH CONGRESS
1ST SESSION

H. R. 624

To amend title 49, United States Code, to ensure air passengers have access to necessary services while on a grounded air carrier, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 2009

Mr. THOMPSON of California introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend title 49, United States Code, to ensure air passengers have access to necessary services while on a grounded air carrier, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Airline Passenger Bill
5 of Rights Act of 2009”.

6 **SEC. 2. AIRLINE CUSTOMER SERVICE COMMITMENT.**

7 (a) IN GENERAL.—Chapter 417 of title 49, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

1 of passengers on board an aircraft at an airport in
2 any case in which the departure of a flight is de-
3 layed or disembarkation of passengers on an arriving
4 flight that has landed is substantially delayed, in-
5 cluding—

6 “(A) adequate food and potable water;

7 “(B) adequate restroom facilities;

8 “(C) cabin ventilation and comfortable
9 cabin temperatures; and

10 “(D) access to necessary medical treat-
11 ment.

12 “(2) RIGHT TO DEPLANE.—

13 “(A) IN GENERAL.—Each air carrier shall
14 submit a proposed contingency plan to the Sec-
15 retary of Transportation that identifies a clear
16 time frame under which passengers would be
17 permitted to deplane a delayed aircraft. After
18 the Secretary has reviewed and approved the
19 proposed plan, the air carrier shall make the
20 plan available to the public.

21 “(B) DELAYS.—

22 “(i) IN GENERAL.—As part of the
23 plan, except as provided under clause (iii),
24 an air carrier shall provide passengers with
25 the option of deplaning and returning to

1 the terminal at which such deplaning could
2 be safely completed, or deplaning at the
3 terminal if—

4 “(I) 3 hours have elapsed after
5 passengers have boarded the aircraft,
6 the aircraft doors are closed, and the
7 aircraft has not departed; or

8 “(II) 3 hours have elapsed after
9 the aircraft has landed and the pas-
10 sengers on the aircraft have been un-
11 able to deplane.

12 “(ii) FREQUENCY.—The option de-
13 scribed in clause (i) shall be offered to pas-
14 sengers at a minimum not less often than
15 once during each successive 3-hour period
16 that the plane remains on the ground.

17 “(iii) EXCEPTIONS.—This subpara-
18 graph shall not apply if—

19 “(I) the pilot of such aircraft
20 reasonably determines that the air-
21 craft will depart or be unloaded at the
22 terminal not later than 30 minutes
23 after the 3 hour delay; or

24 “(II) the pilot of such aircraft
25 reasonably determines that permitting

1 a passenger to deplane would jeop-
2 ardize passenger safety or security.

3 “(C) APPLICATION TO DIVERTED
4 FLIGHTS.—This section applies to aircraft with-
5 out regard to whether they have been diverted
6 to an airport other than the original destina-
7 tion.

8 “(D) REPORTS.—Not later than 30 days
9 after any flight experiences a tarmac delay last-
10 ing at least 3 hours, the air carrier responsible
11 for such flight shall submit a written descrip-
12 tion of the incident and its resolution to the
13 Aviation Consumer Protection Office of the De-
14 partment of Transportation.

15 “(e) AIRPORT PLANS.—Each airport operator shall
16 submit a proposed contingency plan under subsection (b)
17 that contains a description of—

18 “(1) how the airport operator will provide for
19 the deplanement of passengers following a long
20 tarmac delay; and

21 “(2) how, to the maximum extent practicable,
22 the airport operator will provide for the sharing of
23 facilities and make gates available at the airport for
24 use by aircraft experiencing such delays.

1 “(f) UPDATES.—The Secretary shall require periodic
2 reviews and updates of the plans as necessary.

3 “(g) APPROVAL.—

4 “(1) IN GENERAL.—Not later than 6 months
5 after the date of the enactment of this section, the
6 Secretary of Transportation shall—

7 “(A) review the initial contingency plans
8 submitted under subsection (b); and

9 “(B) approve plans that closely adhere to
10 the standards described in subsections (d) or
11 (e), whichever is applicable.

12 “(2) UPDATES.—Not later than 60 days after
13 the submission of an update under subsection (f) or
14 an initial contingency plan by a new air carrier or
15 airport, the Secretary shall—

16 “(A) review the plan; and

17 “(B) approve the plan if it closely adheres
18 to the standards described in subsections (d) or
19 (e), which ever is applicable.

20 “(h) CIVIL PENALTIES.—The Secretary may assess
21 a civil penalty under section 46301 against any air carrier
22 or airport operator that does not submit, obtain approval
23 of, or adhere to a contingency plan submitted under this
24 section.

