

JOINT STATEMENT OF CHRISTA FORNAROTTO, ACTING ASSISTANT SECRETARY FOR AVIATION AND INTERNATIONAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION AND NANCY LOBUE, ACTING ASSISTANT ADMINISTRATOR, AVIATION POLICY, PLANNING, AND ENVIRONMENT, FEDERAL AVIATION ADMINISTRATION, ON AVIATION CONSUMER ISSUES: EMERGENCY CONTINGENCY PLANNING AND OUTLOOK FOR SUMMER TRAVEL , BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON AVIATION, MAY 20, 2009.

Chairman Costello, Ranking Member Petri, Members of the Subcommittee:

Thank you for inviting us here today to discuss issues facing aviation consumers and the outlook for air travel in the United States this summer. Both the Office of the Secretary of the Department of Transportation (DOT) and the Federal Aviation Administration (FAA) continue to work hard to ensure the welfare and safety of consumers. This joint testimony will detail recent actions that each has undertaken in this effort. Specifically, we will be discussing the status of our current consumer protection and regulatory compliance initiatives, the FAA's on-going efforts to reduce congestion-related delays, including the actions affecting the three busy New York airports, and, finally, our work in coordination with other Federal agencies in connection with the H1N1 outbreak.

In 2007, complaints by airline consumers filed with the Department spiked sharply. This spike was in part due to deteriorating on-time performance and incidents such as those that occurred in December 2006 and February 2007 in which passengers on-board many aircraft were stranded for hours on airport tarmacs while waiting for their flights to take off. Since 2007, however, data reported to the Department show improvements in the quality of air service:

- In 2008, the Department received 10,643 air service complaints from consumers, compared to 13,180 complaints received in 2007. This downward trend has continued. For the first quarter of 2009, the Department received 2,164 air service complaints, compared to 3,122 complaints received during the first quarter of 2008, and 2,887 complaints received during the first quarter of 2007.
- The U.S. carriers reporting on-time performance data recorded an overall on-time arrival rate of 76.0 percent for January through December 2008, compared to 2007's 73.4 percent rate. For the first quarter of 2009, the on-time performance rate was 79.2 percent, compared to 70.8 percent during the first quarter of 2008, and 71.4 percent during the first quarter of 2007.
- The U.S. carriers reporting mishandled baggage data posted a mishandled baggage rate of 5.26 reports per 1,000 passengers in 2008, compared to 2007's rate of 7.05. For the first quarter of 2009, the mishandled baggage rate was 4.29, compared to 6.81 for first quarter of 2008, and 8.05 for January-March 2007.
- In 2008, the involuntary oversales ("bumping") rate was 1.10 per 10,000 passengers, compared to 1.12 for 2007. For the first quarter of 2009, the bumping rate was 1.31 per 10,000 passengers, compared to 1.37 for the first quarter of 2008, and 1.46 for the first quarter of 2007.
- Despite applying a different performance standard, the number of chronically delayed flights dropped from 507 in 2007 to 244 in 2008. In the first quarter of 2009, there were 32 chronically delayed flights compared to 79 in the first quarter

of 2008 and 183 in the first quarter of 2007. In 2008, the Department's Office of Aviation Enforcement Proceedings (Enforcement Office) began using an expanded definition of what constituted a chronically delayed flight, i.e., a flight that was delayed more than 15 minutes on more than 70% of the flight's operations per quarter, with a minimum of 30 operations. Previously, the Department's standard used a minimum of 45 operations per quarter.

Although these statistics show a trend in the right direction, they do not necessarily indicate that the underlying problems that they measure are being solved. Rather, much of the improvement may be attributable to capacity cuts by airlines, which result in fewer planes and fewer passengers in the air. With this in mind, the Department is committed to protecting consumers and ensuring that the quality of air service continues to improve, even when airlines return to adding capacity as the economy recovers. To this end, more can and will be done.

We recognize that a number of steps have recently been undertaken to improve the quality of air service, including increasing the resources of the Enforcement Office, which acts as the prosecuting office for aviation consumer enforcement cases, organizing a task force to develop practices for mitigating the hardship caused by extended tarmac delays, raising the amount of civil penalties assessable for violations of certain laws and regulations protecting air travelers, improving the reporting of tarmac delays for diverted and cancelled flights, and increasing the amount of compensation for passengers who are involuntarily denied boarding. Currently, we are reviewing the effectiveness of these steps and considering additional ones.

In December 2008, we issued a notice of proposed rulemaking (NPRM) proposing to enhance airline passenger protections by designating the operation of a chronically delayed flight as an unfair and deceptive practice and by requiring carriers to (1) adopt contingency plans for lengthy tarmac delays and to incorporate them in their contracts of carriage, (2) respond to consumer complaints, (3) publish delay data, and (4) have customer service plans, incorporate them into their contracts of carriage, and audit their compliance with their plans. We are currently evaluating the NPRM and the comments filed in response to it and we will determine the next steps associated with this NPRM once we are through with our evaluation.

While consumer protection is a priority for the Department, so too is congestion. The Department shares the Committee's longstanding concern regarding congestion, especially in the New York area. The FAA's key mission is to provide the safest, most efficient aerospace system in the world. Although it is extremely safe, the current system is not performing adequately. We saw the difficulties in air travel during the congested summer of 2007. The Next Generation Air Transportation System (NextGen) will change the way the system operates – reducing congestion, noise, and emissions, expanding capacity and improving the passenger experience while enhancing safety. NextGen is needed to bring to air transportation twenty-first century technology and flexibility to ensure reliability and predictability for airlines and passengers.

Even in the face of falling passenger demand and a reduced number of airline flights, we still experience congestion in our busiest airspace. We know that we must be poised to handle future demand that will surely return as the nation's economy improves. FAA's

preliminary modeling of a series of NextGen capabilities shows that by 2018 total flight delays can be reduced by 35-40 percent over the current system, saving almost a billion gallons of fuel and the emissions produced.

Secretary LaHood has made clear that delivering the capabilities of NextGen, is a key priority for him and this Administration. We also appreciate the support that this Committee, as well as Congress as a whole, has given us to move forward with NextGen.

The summer of 2007 was particularly troublesome and filled with delays, especially in the New York metropolitan region. During the months of June – August 2007, there were 1.9 million scheduled flights nationwide – and 28% of those were delayed, according to information provided by carriers that report delay data to the Bureau of Transportation Statistics (BTS). In the New York area it was worse: 37% of flights were delayed at LaGuardia Airport (LGA), John F. Kennedy International Airport (JFK) and Newark Liberty International Airport (EWR), which ranked as three of the five most delayed airports in the country. Causes of delay included over scheduling, mechanical issues for airlines, weather, late-arriving aircraft, and security difficulties.

Nationwide, the FAA has been putting a range of solutions into place. New runways provide significant capacity and operational improvements. On November 20th, three major new runways opened: at Seattle-Tacoma, Washington Dulles, and Chicago O'Hare International Airports. The Seattle runway is expected to cut local delays in half

by increasing capacity in bad weather by 60 percent, while the new runway at Dulles will provide capacity for an additional 100,000 annual operations.

The new Chicago runway adds capacity for an additional 52,300 annual operations and is a part of the greater O'Hare Modernization Program (OMP) that reconfigures the airport's intersecting runways into a more modern, parallel layout. The OMP substantially reduces delays in all weather conditions and increases capacity at the airfield, allowing O'Hare to meet the region's aviation needs well into the future.

On February 12, a runway extension at Philadelphia International Airport was completed, helping reduce delays there. Looking forward for the next three years, new runways will open at Charlotte and Chicago O'Hare. Eleven other runway projects are in the planning or environmental stage at Operational Evolution Plan (OEP) airports through 2018.

The FAA has been highly proactive in anticipating and planning to reduce delays nationally. We have been monitoring airline schedules six months into the future, in order to better anticipate potential problems at the major airports before they occur and we are ready to respond with "Congestion Action Teams" to any airports where delays appear likely to increase significantly.

While the FAA also strives to maintain as efficient an air traffic system as possible, the reality is that delays are caused for many different reasons, including weather. Increasing our ability to deliver air traffic arrivals and departures safely in bad weather is also one of

the areas NextGen is poised to tackle. We are working on capabilities that allow for continued use of parallel runways in low visibility conditions by providing precise path assignments that provide safe separation between aircraft assigned on parallel paths, restoring capacity and reducing delays throughout the system.

We are already safely reducing separation between aircraft approaching parallel runways at Boston, Cleveland, Philadelphia, St. Louis and Seattle. In good visibility, Seattle's pair of parallel runways, together, could handle roughly 60 operations per hour; poor visibility conditions cut that rate in half. Even in poor visibility, these capabilities now safely allow a rate of about 52 operations per hour, a significant improvement for the airport and its users. We are also beginning to see similar benefits in Boston.

We have already seen these improvements pay dividends. In the summer of 2008, we saw improvements in delays. From June – August 2008, nationwide there were 1.8 million scheduled flights, with 23% delayed, according to BTS data. The largest share of those delays can be traced back to weather – 44%, while the remainder was caused by a combination of other factors.

As we gear up for the summer of 2009, we are continuing our work on implementing measures to minimize delays. The economic downturn has resulted in lower passenger demand with a corresponding decline in overall operations and delays. However, in certain congested areas, we are not seeing as much of a downtown in traffic or delays. For example, in New York, the drop in the demand for travel has been about 5%,

compared to other large hubs, such as Chicago, which is down 7.5%, and Houston which is down nearly 10%. Consequently, the reduction in delays is not as pronounced in New York as in other parts of the country. With the decreased operations this year, we would expect on-time performance to be higher than last summer, but will be dependent on the severity of summertime weather.

Despite the downturn in traffic, FAA is continuing to work aggressively to implement operational and structural improvements so we are prepared to handle the inevitable uptick in traffic in the future. For example, the Automatic Dependent Surveillance Broadcast system (ADS-B), a system that moves air traffic control from a system based on radar to one that uses satellite-derived aircraft location data, is in use in southern Florida and in the Gulf of Mexico, where we have never had radar coverage before. We are now on our way to national deployment of broadcast services.

The Department anticipates some impact to operations because of various runway construction improvements. The Port Authority of New York and New Jersey is currently in the process of working on four taxiway and utility projects at JFK that has closed a runway there for the past few weeks. Other runway construction will necessitate runway closures at JFK from March-June 2010 and from September 16 - 29, 2010. During the construction, three of the four runways at JFK will always be available and every effort is being made to minimize the impacts to operations during the construction project. These efforts include the Port Authority working with the airlines and the FAA

to phase the project and include strong contracting terms to make sure the project gets done on time.

The FAA maximizes the use of airspace, especially in congested areas such as New York, through targeted airspace and procedures enhancements. Continuing work in the New York area includes integration of precision procedures such as area navigation and required navigation performance (RNAV/RNP), relocation and expansion of airways, airspace reconfiguration, and creation of optimal descent procedures. We have also limited scheduled operations at LGA, JFK and EWR and continue to work on the New York/New Jersey/Philadelphia (NY/NJ/PHL) Airspace Redesign, the necessary prerequisite to successful implementation of NextGen. The FAA has also accelerated the installation of Airport Surface Detection Equipment, Model X (ASDE-X) at JFK, which in addition to increasing safety, has also increased surface situational awareness for controllers and airlines resulting in more efficient operations.

A number of the operational improvements we have made so far are a result of collaborative efforts derived from the New York Aviation Rulemaking Committee (NY ARC or ARC), which convened in the fall of 2007 in order to prevent a repeat of the summer 2007 in New York. One of the products from the ARC was a list of ideas from various stakeholders that would help improve air traffic control operations, totaling 77 in all. Of these 77, FAA has substantially completed 30. Thirty-seven of these are ongoing, in various stages of assessment or implementation. Two of these include the removal of a hotel and a waste facility and may be outside the FAA's authority to control. Of the

remaining 10, seven are part of our NextGen planning and implementation, while the remaining three are dependent upon the successful completion of NY/NJ/PHL Airspace Redesign.

In our ongoing efforts to reduce delays, the FAA plans to continue to keep the limits on scheduled operations in place at LGA, JFK and EWR, while this Administration considers its next steps with regard to a long-term congestion management solution for the New York area airports. Just last week, Secretary LaHood announced that DOT is proposing to rescind the slot auction rules that were finalized for LaGuardia, JFK and Newark last October and has promised to talk with aviation and consumer stakeholders in New York this summer about the best way to move forward. The FAA continues to seek, develop, and implement congestion and delay solutions system-wide. While we have a strong focus in New York because of its impact on the rest of the NAS, we continue to work to improve the safety and efficiency of the entire system nationwide.

The recent H1N1 flu outbreak is another important issue that is getting significant attention from the Department. Let me start by reiterating an earlier comment by Secretary LaHood: It is safe to fly. And one of the reasons it is safe to fly is that the Department of Transportation and the FAA, together with several other government agencies, have been working hard to ensure that our aviation system is prepared to handle the kinds of concerns raised by the recent H1N1 outbreak.

The Department has been participating in an interagency working group led by the Homeland Security Council since 2006. We prepared and exercised a Department-wide pandemic influenza plan. Our operating administrations also prepared and exercised their own plans. Consequently when the 2009 H1N1 outbreak occurred, a response scheme was already in place and we were ready to take immediate action. Even though H1N1 did not exactly follow the model that the U.S. Government had anticipated (it was a swine flu outbreak in North American rather than an avian-based influenza coming from overseas), the planning components and exercises previously conducted ensured that DOT staff could rapidly and appropriately respond as the situation warranted. Over the weeks following the initial outbreak the measures taken and the communications initiated were scaled up and then down as more information about the virus became available.

During the initial stages of the 2009-H1N1 outbreak, the US government opted to not conduct either entry or exit health screening of international passengers, based on CDC's technical expertise and following advice from the World Health Organization.

Nonetheless, questions were raised regarding the airlines' authority to deny boarding to a passenger who may have the 2009 H1N1 virus. Airlines themselves do have the authority to refuse transport to any person who has a serious communicable disease to the extent permitted by their contract of carriage and the Department's disability regulation. The Department's disability regulation allows an airline to refuse transportation on the basis of a communicable disease if the passenger's condition is both readily transmitted under conditions of flight and represents a significant health risk to others and a less restrictive alternative than refusal to transport is not available. Additionally, CDC has

authority to quarantine inbound international passengers suspected of having specific communicable disease including any "novel influenza virus of pandemic potential."

Thank you again for this opportunity to testify. We would be happy to answer any questions that you may have.