

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, DC**

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**In the matter of** :  
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**ADVANCE NOTICE OF PROPOSED** : **Docket DOT-OST-2007-0022**  
**RULEMAKING CONCERNING ENHANCING** :  
**AIRLINE PASSENGER PROTECTIONS** :  
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**COMMENTS OF THE  
AIR TRANSPORT ASSOCIATION OF AMERICA, INC.**

The Air Transport Association of America, Inc. (ATA) submits these comments in response to the Department of Transportation’s advance notice of proposed rulemaking concerning enhancing national airline passenger protections.<sup>1</sup> 72 Fed. Reg. 65233 (November 20, 2007).

The ANPRM seeks comments from the public about whether the Department should amend its economic and procedural regulations (14 C.F.R. Parts 234, 253, 259, and 399) to:

- Require contingency plans for lengthy tarmac delays and incorporate them in their contracts of carriage;
- Require carriers to respond to consumer problems;

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<sup>1</sup> ATA airline members are: ABX Air, Inc.; Alaska Airlines, Inc.; Aloha Airlines; American Airlines, Inc.; ASTAR Air Cargo, Inc.; Atlas Air, Inc.; Continental Airlines, Inc.; Delta Air Lines, Inc.; Evergreen International Airlines, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Midwest Airlines, Inc.; Northwest Airlines, Inc.; Southwest Airlines Co.; United Airlines, Inc.; UPS Airlines; and US Airways, Inc. ATA Airline Associate Members are: Air Canada; Air Jamaica Ltd.; and Mexicana.

- Declare the operation of flights that remain chronically delayed to be an unfair and deceptive practice and an unfair method of competition;
- Require carriers to publish delay data on their web sites;
- Require carriers to publish complaint data on their web sites;
- Require carriers to report on-time performance for international flights; and
- Require carriers to audit their adherence to their customer service plans.

### **I. SUMMARY OF ATA POSITION**

ATA supports DOT's efforts to provide passengers with transparent information and protections when delays occur. While passenger protections are one component of the Department's strategy to deal with the impact of delays on consumers, we emphasize here, as we have in other proceedings, the importance of addressing the root cause of delays: insufficient airspace capacity and an operating environment handcuffed by outdated radar technology. Many of the consumer issues the ANPRM addresses result from operational complications driven by inadequate system capacity and technology.

Delays and unhappy passengers do not benefit anyone -- the public, the Department, Congress, or airlines. ATA and its members are committed to implementing measures to avoid customer service problems in the first instance, and minimizing and resolve them promptly when they arise. To this end, ATA members have made extensive efforts to combat delays and provide passengers with the information they need to make an informed choice when choosing a flight. Efforts to date include: (1) advocating for upgrading the air traffic control system; (2) advocating for opening additional airspace to relieve critical pressure points in the National Airspace System; (3) adopting new policies and operational measures to reduce delays; (4) updating contingency plans; (5) investing

in technology and software to assist in minimizing the impact of delays; (6) sharing best practices with the Department; (7) adding staff, and; (8) advocating for additional delay reporting requirements.

ATA and its members look forward to working with DOT to continue looking for ways to improve the flying experience for the more than 767 million passengers who fly annually.

## **II. ANPRM Provisions**

We offer the following comments on the specific provisions included in the ANPRM:

### **1. Require Contingency Plans for Lengthy Tarmac Delays and Incorporate Them in Their Contracts of Carriage**

ATA recognizes the Department's overall goals of requiring carriers to create and implement contingency plans and making those plans transparent to the public. We agree with the objectives of having a contingency plan; indeed, carriers already have various operational procedures and plans of action for extraordinary circumstances. We understand the Department wants to make sure carriers are planning ahead and consumers are aware of carrier planning. Because each carrier is unique in terms of its facilities, equipment, operating procedures and network, contingency plans must be tailored to fit within each carrier's situation. Therefore, by nature, contingency plans are carrier specific and contain lengthy, technical, and detailed operational procedures. Any workable regulatory requirement must reflect the technical nature of these plans.

#### ***Contingency Plan Flexibility***

ATA supports the Department's suggestion to permit carriers to create the details of their contingency plans, instead of DOT prescribing their terms. Allowing each carrier

the flexibility to determine what contingency terms fit its particular operational parameters will benefit passengers; on the other hand, forcing a carrier to implement terms that do not fit within a carrier's operational scope may cause it to limit terms that would otherwise go beyond DOT minimum requirements. This is a clear case where a "one size fits all" approach will not work.

ATA supports the Department's initial decision (as stated in the third column at 72 FR 65234) not to set a time limit by which an aircraft must return to a gate. If the Department were to prescribe an inflexible time period or force a carrier to choose a time period, it could force operational changes that would not benefit passengers. For example, carriers may choose to cancel flights earlier or more often at congested airports or during weather delays.

An unqualified, absolute time limit for return to the gate that does not allow for safety considerations, passenger preferences, operational realities (there might not be a gate available) and ignores circumstances unique to the flight (for example, if the flight would be the next in line to take off) is an enormous carrier concern. A DOT requirement that carriers set and adhere to an unqualified, hard time limit to return to the gate has potential to be counterproductive to safety and customer service. For example, recent planning by the US Department of Health and Human Services for potential pandemics indicates the government may order carriers to keep passengers on airplanes under certain circumstances.<sup>2</sup> It also could prove to be very costly for both airlines and passengers by encouraging carriers to make conservative decisions to avoid the risk of

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<sup>2</sup> See for example, HHS Pandemic Influenza Plan, Supplement 9, Managing Travel-Related Risk of Disease Transmission (<http://www.hhs.gov/pandemicflu/plan/sup9.html#III.A.3>).

non-compliance, with the predictable effect of wasting passenger, aircraft and crew time, and with adverse downstream effects on connecting passengers.

Another benefit of avoiding a hard time limit to return to the gate is that such a requirement stifles creativity and competition. The salient point for passengers and DOT is to ensure that carriers have a plan and a process to address lengthy tarmac delays when they occur so that the public can make an informed choice about purchasing air transportation. There is more than one way to address the competing passenger interests and needs when a lengthy tarmac delay occurs. Limiting carriers to just one option – return to gate after a specified period of time – will stifle the creativity and competition that Congress intended by airline deregulation.

### ***Contingency Plan Notice***

ATA recommends that DOT allow for flexibility in the methods carriers choose to notify passengers of their general<sup>3</sup> contingency plans, in order to reach the greatest population of consumers. For ease of access, most carriers would post a contingency plan on their websites, much like the Department has done for relevant consumer information on the Aviation Consumer Protection Division website. Passengers interested in reviewing a carrier's contingency plan would be able to find the plan on its website.

### ***Contracts of Carriage***

ATA does not support the proposed inclusion of contingency plans in carrier contracts of carriage; whether to do so is uniquely and exclusively a commercial decision for carriers. DOT's authority to require carriers to have contingency plans to deal with

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<sup>3</sup> In addition, there are airport specific contingency plans that carriers do not intend to publish, nor did we read the ANPRM to suggest publishing these documents.

long tarmac delays does not extend to altering the terms of carrier contracts of carriage by mandating they be included in them.<sup>4</sup> Attempts to control the terms and conditions of a contract of carriage fly in the face of the Airline Deregulation Act of 1978, whose purpose was to remove commercial aviation from government control and subject the airline industry to market forces. This point is best illustrated by the decision to eliminate the government authority to determine domestic tariffs - the detailed body of rates and conditions that each airline was required to maintain for the way it dealt with passengers. Given Congress' decision to remove such review authority from the CAB and the Department, it is unclear what authority the Department has today to control the content of airline contracts of carriage.

In addition, if contingency plans were included in a contract of carriage, many of the specific and technical operational terms would have to be removed, because such terms are not conditions of carriage, but are carrier operational instructions that do not belong in a contract. Also, contingency plans would also have to be changed to include many qualifying statements in order for carriers to retain operational decision-making flexibility when reacting to many different scenarios and extraordinary circumstances.

Setting aside the question of authority, from a practical perspective, if DOT were to compel carriers to include contingency plans in contracts of carriage and fulfill the Department's goal of creating a private right of action, carriers would face not only litigation in 50 different states, with 50 different standards applied by each state court

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<sup>4</sup> For example, see *American Airlines v. Wolens*, 513 U.S. 219, 232 (1995) ("The United States maintains that the DOT has neither the authority nor the apparatus required to superintend a contract dispute resolution regime. See Brief for United States as *Amicus Curiae* 22. Prior to airline deregulation, the CAB set rates, routes, and services through a cumbersome administrative process of applications and approvals. 72 Stat. 731. When Congress dismantled that regime, the United States emphasizes, the lawmakers indicated no intention to establish, simultaneously, a new administrative process for DOT adjudication of private contract disputes. See Brief for United States as *Amicus Curiae* 22. We agree.").

system to a single contingency plan, but also litigation concerns worldwide. Such a situation, necessarily confusing and inconsistent, would not be in the public interest. Moreover, the standards would not remain static, as carriers would naturally respond to adverse rulings to minimize their exposure over time as much as possible..

### ***Record Keeping Requirements***

The Department also sought comment on requiring carriers to retain for two years certain information for every ground delay of four or more hours. ATA questions why the Department included this provision, which relates to the gate reporting requirements of the Bureau of Transportation Statistics (BTS) (*see* 14 CFR part 234), when there is a separate BTS NPRM proposing additional gate reporting requirements (*see* Docket OST-2007-28522). Based on the Department's gate reporting NPRM and ATA suggestions, the Department would be able to determine the length and nature of ground delays, not just ground delays of more than four hours. Today, consumers can visit BTS' website and view detailed charts for varying time periods (i.e. monthly, yearly, year to date) and for different delay causes, such as weather delay, national aviation system delay, or air carrier delay, etc. The recording keeping requirement suggested here is redundant to what is required today and to what the Department proposed in the BTS NPRM. It is unnecessary, burdensome and would not provide a meaningful benefit to the public. ATA also questions the benefit of the ANPRM proposal to coordinate contingency plans with airports. It is unclear to us what type of further coordination DOT would expect. We note that airlines and airports already coordinate on such matters.

## **2. Require Carriers To Respond to Consumer Problems**

### ***Complaint Response***

ATA supports the Department's suggestion to require carriers to respond to consumer problems. As the DOT is aware, air carrier customer commitments in place for a number of years now already include voluntary commitments regarding response to customer complaints. ATA members agree that a consumer should receive a response to a complaint within thirty days. Having said that, we recommend that the Department add an exception to the 30 days for extenuating circumstances, such as delivery of mail to an incorrect or unclear address, needing to get additional information from a customer, contacting customers that reside outside the U.S., or if a carrier or consumer has problems sending or receiving email (possible due to a server malfunction). Also the Department should confirm that a "response" in this context means that a consumer received notification from a carrier that the complaint was received and is being reviewed. It would be extremely difficult, if not impossible, for carriers to resolve complaints in 30 days given the need to investigate claims and gather pertinent information from staff who are not always immediately available (especially if the carrier needs to get additional information from a passenger). The Department also should clarify that the definition of "complaint" in this context means a passenger's complaint raising customer service concerns submitted to the airline's customer relations department.

### ***Designated Employee – System Operations Center***

ATA supports the Department's suggestion to have a designated employee at a systems operation center to monitor the effects of flight delays and flight cancellations.

This designee should be a current carrier employee who would be engaged with other carrier duties. A centrally located designee makes sense because any major irregularity will be handled centrally at a systems operation center.

The Department's suggestion concerning a designated employee to monitor and make suggestions for delaying and cancelling flights at each airport dispatch center, however, does not appear to make sense and likely would duplicate unnecessarily existing carrier procedures to monitor and address delay situations. Dispatch personnel, station managers and system operations center staff already work together on an ongoing basis to manage operations and address delays and cancellations as they develop in order to minimize operational disruptions and maximize flight completion. Carrier self-interests are served by completing their schedules on time to the greatest extent possible, and many economic factors provide a strong incentive to avoid delays, cancellations and diversions. Existing passenger service commitments and regulations add to those incentives. Mandating certain staffing at airport dispatch centers will not improve the existing coordination systems or commercial incentives to respond to irregular operations situations. We also note that many stations have limited resources, and for this reason major disruptions are going to be handled centrally. For all of these reasons we oppose this suggestion.

***Method of Receipt and Response***

ATA strongly supports continuing to permit carriers the freedom to receive and respond to complaints in the manner designated by each airline. This is the most efficient manner for both parties. Leaving the method to each carrier ensures flexibility and a

carrier can choose the best method for its operational needs, which should provide the best response time and reliability for that carrier.

### ***Contact Information***

ATA supports the Departments' suggestion to require complaint contact information on carrier websites. This provides easy access for consumers who are interested in this information. On the other hand, we do not believe that complaint contact information should be required on e-tickets. Passengers using e-tickets already must visit carrier websites, which have complaint contact information. Also, e-tickets are specifically designed to provide only pertinent travel information (flight number, departure times, board times, gate assignments, etc). Adding additional information would require changing the printing format, could cause confusion for passengers and result in unnecessary expense. E-ticket space is limited and has a commercial value. Any DOT final rule that requires using this scarce space on millions of e-tickets imposes a high opportunity cost on airlines but only a limited benefit, at best, to the public, who can obtain this information easily from other sources. Thus, the benefit would be far outweighed by the cost. Finally, there is no indication from the Department, the Inspector General or customers that finding complaint contact information is a problem, especially for users of e-tickets. Therefore, ATA recommends the Department only require complaint contact information on a carriers' website.

### **3. Declare Chronically Delayed Flights To Be an Unfair and Deceptive Practice and an Unfair Method of Competition**

ATA can support a rebuttable presumption that when a "chronically delayed flight" (see discussion of definition below) continues to operate two quarters after first being

identified, that flight constitutes an unfair and deceptive practice. We believe a rebuttable presumption strikes an important and appropriate balance between passenger needs and recognizing that some circumstances affecting operations are beyond the control of a carrier. A rebuttable presumption rather than an absolute rule is important here because in some circumstances a carrier may have legitimate, extraordinary reasons for why a flight remains delayed. A rebuttable presumption would provide a carrier an opportunity to explain extraordinary circumstances. For example, a carrier may make several schedule changes during the two quarters in a good faith effort to address a chronically delayed flight or set of flights, but it may take some time to determine that even further schedule adjustments are required to solve the delay problems.

ATA also agrees with the DOT position that chronically delayed flights should be defined as those flights arriving more than 15 minutes late, 70% of the time, when operating 45 times in a calendar quarter. However, we note the ANPRM definition differs from other DOT definition sources. For example, letters from the Department to carriers last year defined chronically delayed flights as those operating 30 times in a calendar quarter (versus the ANPRM standard of 45 times in a calendar quarter). In addition, the Department's Inspector General has suggested using a standard of 30 minutes late 40% of the time, instead of the ANPRM definition above. ATA urges the DOT to adopt the proposed definition in the ANPRM, because it captures flights with a higher frequency of operation, giving the DOT a more accurate picture of chronically delayed flights.

Finally, as discussed in paragraph six below, ATA does not believe that the definition of chronically delayed flights should be expanded to include international flights, conducted by either U.S. or foreign carriers.

#### **4. Require Carriers To Publish Delay Data on Their Web Sites**

ATA agrees with the Department that carriers should be required to provide “the percentage of arrivals that were on time” by a method of their choice, in order to allow carriers the greatest flexibility for compliance. While many airlines would publish on-time performance information on their own websites, some carriers may choose to take advantage of technology that allows them to link passengers to other sources, such as the BTS website, for this information. This would extend and be consistent with the current rule regarding information carrier employees must provide to potential passengers when asked over the telephone.<sup>5</sup> As discussed below, however, we do not support the Department’s suggestion to require carriers to provide additional information<sup>6</sup> or for a carrier to provide on time percentage over the phone without being asked by a customer. Extensive information is readily available to consumers from other sources, including BTS, and the NPRM does not provide any basis for concluding that consumers cannot find that information.

#### ***Delay Data Besides On-time Performance***

While the ANPRM contemplates a number of new reporting criteria, DOT does not currently require carriers to report the share of arrivals more than 30 minutes late, nor has DOT enshrined the concept of 50 percent as a particular breakpoint of concern for

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<sup>5</sup> See 14 CFR 234.11.

<sup>6</sup> The Department suggests requiring carriers to provide “The percentage of arrivals that were more than 30 minutes late, special highlighting if the flight was late more than 50 percent of the time, and the percentage of cancellations” See 72 FR 65235.

flight delays. These implied new performance standards contradicts current agreed-upon BTS reporting criteria. As the Department is aware, existing DOT metrics and reporting requirements that were established in consultation with the industry and that have been in place for a number of years and were established through the Air Carrier On-Time Reporting Advisory Committee and associated rulemaking at docket number DOT-OST 2000-8164. Variations even within DOT of the definition of ‘delay’ impede an effective carrier or industry response to DOT benchmarks.

Providing additional delay information does not account for operational variations. By way of example, disclosing detailed average August on-time data for a particular flight for a passenger who books in September and flies in January is quite unlikely to inform the passenger of her or his likely delay on any given day. There are a host of reasons that the average August data is likely to be of little value in predicting the future travel delays or in allowing the traveler to make a better-informed decision: 1) August and January average on-time data are likely very different, especially depending on the market; 2) the actual on-time experience of the passenger is quite unlikely to replicate the averages calculated over a month, especially averages potentially in other seasons; 3) average data masks day of week variations; 4) significant changes, including aircraft and routing may take place over time on any flight number; 5) chronic delays cluster around geographic areas; even given perfect information, the traveler may not have ideal options to avoid delays; and 6) DOT is seeking to have carriers report far more data than consumers are likely to want or to be able to compare across carriers.

In the ANPRM, DOT asks if the proposal for additional on-time data disclosure would increase carrier incentives to “correct problem flights” through ops or schedule

adjustments. The short answer is no. Even DOT data shows that a large share of delays and cancellations are due to weather. We believe consumers are unlikely access this data, or base decisions on it because market data shows that consumers are most motivated by fare and schedule (convenience). Equally importantly, as DOT knows, carriers have very few options to “correct” flights, especially those whose performance has been temporarily affected by weather.

### ***Flexible Data Disclosure***

ATA supports disclosing delay information on a carrier website or by link to a third-party website when that information is requested. However, for the reasons discussed below, we believe disclosure should be made only when a passenger requests that information. Carriers already have commercial incentives to provide information of interest to consumers and many carriers publish on-time data on their Internet sites today. Displaying data that DOT believes is of interest to consumers and therefore requires to be displayed, but that consumers demand only on occasion, would waste resources by driving programming costs and consuming valuable screen space. The opportunity cost of the screen space that would be consumed and lost in terms of carrier benefit is a significant cost imbedded in this proposal. DOT should also bear in mind that mandating disclosure of delay information without a request also would impose a cost on passengers because of the time spent reviewing this information or determining it is information that can be ignored.

In addition, if the Department were to require certain specific items, it may present passengers with unwanted information and extend the time consumers need to complete online transactions. Such delay would be unnecessary because, under ATA’s approach,

the information will be available on airline or third-party websites for those who actually want it.

### ***Carrier Reservations Agents***

We object strongly to any DOT requirement that airline reservations agents disclose on-time information without being asked. Such a requirement would be exceptionally expensive relative to the speculative benefit it would provide, particularly if the information is available online. Airlines strive to keep reservation calls as short as possible because lengthier calls generate significantly greater costs and from a time-value stand-point customers also are benefited by keeping calls brief.

Mandating carrier reservations agents to provide this information but not travel agents also would create a competitive imbalance by imposing costs on carriers but not on other distribution channels. ATA carriers note that reservations agents, like essentially every travel intermediary, have on-time information readily available to them through their principal GDS display and that these agents are subject to internal and vendor monitoring to ensure that they accurately report this data when asked during the booking process.

Regarding telephone reservations system costs, one ATA member, which is a major U.S. carrier, estimates that each minute of reservations agent “talk time” is approximately \$1.00. Even if this data disclosure took just 30 seconds per applicable transaction, the average cost per inquiry would be \$0.50. The cost per flown ticket would be higher since not every reservations inquiry results in a flown ticket. A carrier that receives 54 million annual reservations center calls, which an ATA member received in one year, would incur costs as high as \$25 million annually (not every call involves a booking so not every call would trigger the \$0.50 data disclosure cost). These cost estimates include

only incremental time and are understated as they ignore reservations agent training and programming costs.

Technical reasons also argue against any possible DOT requirement that might require airline reservations agents to proactively provide data and to expand the on-time data they provide prospective passengers. For example, there is no space on the Apollo display to show several additional lines of on-time data. Following is an example of an Apollo display where the indicator is highlighted. This is intended to represent the percent of time the flight was on-time (8=80%, 7=70%, etc)

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UA 265 F9 Y9 B9 M9 E7 U7 H2 Q0 V0 W0$ORDDEN 600A 735A 752 8 0
UA 243 F4 C9 Y6 B6 M6 E6 U6 H3 Q2 V0$ORDDEN 800A 935A 763 8 0
UA 972 F3 Y9 B9 M9 E7 U6 H0 Q0 V0 W0$ORDDEN 908A 1055A 733 8 0
UA 909 F6 C6 Y0 B0 M0 E0 U0 H0 Q0 V0$ORDDEN 305P 443P 752 7 0
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To proactively provide this information to customers will present the similar space challenges as existing DOT code-share disclosure obligations. For air carriers (which also ultimately pay for modifications to GDS displays), screen space is money.

As DOT is aware, airline reservations centers accept roughly 20 percent of bookings industry-wide. Carriers would bear high costs were the DOT to mandate extensive on-time data provision to those booking travel while still informing only a minority of passengers who, significantly, never asked for such information about on-time data. As noted, passengers who seek such information already can get it today from reservations agents and carrier websites, as well as numerous independent sources.

Any requirement that carriers proactively inform consumers of on-time data will also impose costs on air travelers, by requiring them to spend time listening to information that may be of no interest to them. At the FAA's valuation of passenger time at approximately \$30 per hour (depending on itinerary and purpose of the journey), using

the figures above, the cost of passenger time from this proposal (for airline res center calls only) would be in the tens of millions to perhaps over \$100 million of dollars annually.

### ***Additional Concerns***

Requiring “special highlighting” of certain information on a carrier’s website would require exceptional time and cost. Such measures would require extensive reprogramming of internal carrier software and extensive changes to carrier websites. The basis for this provision and the benefit to public is unclear to ATA, especially given all of the time, effort and cost carriers would incur to accomplish these changes and since the on-time information will be readily available on airline or third-party websites. We do not believe specific delay items beyond what is carrier employees currently must provide would help consumers make better informed choices or give passengers better notice because, as discussed above, delay data would be for past time periods and would not necessarily be indicative of future operations.

### **5. Require Carriers To Publish Complaint Data on Their Web Sites**

ATA cannot support the Department’s suggestion for carriers to publish complaint data on their websites. This information is already available from the Department and other online sources and we do not believe this proposal would provide meaningful information to consumers for purposes of making purchase decisions. DOT provides no support for the implicit proposition that complaint data reflects actual airline performance. Complaints are highly personal, subjective and simply reflect one person’s view of a set of circumstances. Some complaints are legitimate; some are not.

Therefore, posting gross complaint data will not aid consumers because it does not provide reliable, predictive information.

Several other factors weigh against this proposal. The most important and obvious factor is that complaint data is readily available from DOT, which spends considerable time and effort analyzing that data and displaying it in ways that may have meaning for customers with particular concerns. The ANPRM does not suggest that consumers are unable to find or use its monthly complaint reports. Perhaps not surprisingly, there is no indication in the ANPRM or elsewhere that consumers want this additional information from carriers. On the other hand raw complaint data may paint an unfairly negative picture of service quality, especially since the validity of any consumer complaint will not be considered. In addition, such data is costly, highly intrusive and may involve double counting of complaints both among the subject areas suggested by DOT and those complaints submitted to a carrier and the DOT. As DOT is aware, current regulations require air carriers to report previous month's on-time performance to DOT and to GDSs which in turn make that data available to virtually every distribution channel."<sup>7</sup> No other mode of transportation or industry is required to publish such data and DOT already publishes this data on its website. We do not think it is appropriate or within the Department's authority to require negative complaint statements on a carriers' website, impacting a carriers' marketing message, which may raise First Amendment issues.<sup>8</sup>

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<sup>7</sup> Required by 14 CFR § 234.9.

<sup>8</sup> See e.g. *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980) protecting commercial speech.

## **6. Require Carriers To Report On-Time Performance of International Flights**

ATA does not agree with the Department's suggestion to require on-time performance reporting for international flights.<sup>9</sup> International operations present a unique and different dynamic than domestic operations. For example, it is not unusual for carriers to purposefully hold an international flight for passengers who are delayed on an inbound connecting flight. Carriers do this as a positive customer service because such a flight may be the only operation to an international point for the day or even the week. With fewer flights on international segments, purposeful delays are important because leaving a passenger behind may result in stranding a passenger at an airport in a foreign country for an entire day or overnight. Carriers should not be penalized by having to report such delays. In addition, as wind speeds tend to be stronger over the oceans, carriers can face significant delays in travel when flying against prevailing winds. The result of international on-time reporting most likely would be for carriers to not wait for connecting passengers, stranding them in a foreign country for long periods of time. Therefore, ATA does not see a benefit to the public for international on-time reporting.

Furthermore, equity and fairness would require DOT to require foreign carriers to report on-time performance and adhere to the same on-time disclosure regulations as U.S. airlines. However, even with the Department requiring reporting and disclosure requirements to apply to foreign airlines, U.S. airlines would remain at a competitive disadvantage. While U.S. airlines would report all of their domestic flights as well as international flights, resulting in reports for thousands of daily flights, the vast majority of foreign airlines would report only a small handful of flights daily or, in the case of the

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<sup>9</sup> We note the information in this section addresses the elements of a Paperwork Reduction Act analysis (49 U.S.C. 3501 *et seq.*) and would expect the Department to provide further justification if any form of reporting on-time performance of international flights were to be included in a NPRM.

largest foreign airlines, a relatively small number of flights daily. This severe disparity in the data would result in skewed and misleading information to consumers. Inherently, the Department would impose a competitive disadvantage to U.S. airlines by requiring international flight reporting because the data pool is fundamentally different between U.S. and foreign airlines. Moreover, such additional regulatory burden on foreign carriers could subject U.S. carriers to additional country-by-country regulation that is not applied to U.S. carriers today.

It would be fair to say that bringing a large number of foreign carriers into DOT's reporting scheme for the first time, some of which have very few flights to the United States, might constitute a burden well in excess of any theoretical benefit. A final rule that would extend data reporting requirements to international flights would drive unique programming, data collection and reporting costs, including for international carriers not currently subject to BTS reporting requirements. As such it is incumbent upon the DOT to state and support the specific value it believes will flow from such delay reporting.

Finally, should DOT decide to require on-time performance for international flights despite ATA's objections, DOT should require separate reports from carriers for domestic and international operations because of the differing nature and circumstances of domestic and international operations. Furthermore, DOT should separate domestic and international operations in its own analyses and reports, as some U.S. carriers do not operate internationally. At a minimum, the Department should require a strict separation in reporting and disclosure between domestic and international flights and should not combine these data, which would create misleading information to consumers and fail to supply reliable information to customers on on-time performance among airlines.

## **7. Require Carriers To Audit Their Adherence to Their Customer Service Plans**

ATA agrees with the Department's objective, implicit in the ANPRM, that carriers review and monitor adherence to their customer service plans. However, because many aspects of a customer service plan do not easily fit within the normal scope of what is considered subject to audit by auditing firms, we propose that a different means to accomplish the Department's goal. ATA recommends internal carrier auditors and/or quality assurance specialists be responsible for this task. This would be more effective and economical than the ANPRM's proposal.

### ***Audit Defined***

A review of a customer service plan technically is not an "audit" and requiring an outside audit firm to conduct a review would create problems. "Audit" is a defined term within the accounting profession and refers to a specific set of processes and standards that culminate in an opinion provided by the external audit firm that the financial statements are presented in accordance with Generally Accepted Accounting Principles (GAAP) in all material respects. The concept of an audit of this program is not covered by GAAP and therefore, the best thing an external audit firm would be able to do with regards to a program like this is to perform an "agreed upon procedures letter." This differs from an audit in that there is no overall independent opinion provided by the external audit firm. Rather, the firm performs a series of steps that are negotiated in advance (in this case between the airline and the DOT) and the external audit firm would simply state what they did with regards to the steps and what they found. For example, if hypothetically a customer service plan required a flight crew to make an announcement for a tarmac delay, how exactly would an audit of a carrier's program reveal whether a

crew made this announcement? Against this backdrop, the value of using an auditing firm seems misplaced.

Carrier internal auditors would already be familiar with aviation industry processes and would have a certain level of experience and knowledge that would reduce errors due to inexperience and communications problems. In addition, use of carrier employees would save time and training costs that outside auditors would create. Any requirement to use external auditors may discourage carriers from adding additional elements to their customer service plans, due to possible cost, errors, and increase complexity of an outside audit

Finally, we believe all carriers should have customer service plans, not just ATA-member airlines, and that the Department is within its authority to require such plans. We do not believe it is in passenger's best interests for the Department to require certain elements in a customer service plan. Carriers are interested in providing passengers with protections, but doing so under a prescriptive regime will discourage protections beyond Department requirements, particularly if DOT requirements are not flexible and will require substantial time and resources to adopt.

In response to the question in the notice asking if customer service plans should incorporate customer service plans into their contracts of carriage. Similar to the statements we made above concerning contingency plans, we do not think the Department should seek to control a private contract for carriage between a carrier and passenger, nor do we believe the Department has the authority to do so.<sup>10</sup>

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<sup>10</sup> However we note that many ATA members have voluntarily incorporated customer service plans into contracts of carriage.

### **III. Additional Comments**

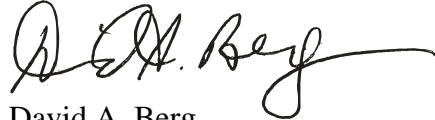
ATA recommends that each of the topics raised in this ANPRM be addressed by the Department's National Task Force to develop model contingency plans to deal with lengthy airline on-board ground delays (see 72 FR 72435, December 20, 2007). As stated throughout our comments, the basis of several ANPRM ideas are not clear; the task force could help carriers and the public understand the reasoning behind some of the provisions. In addition, ATA recommends a significant implementation period (more than six months) after a final rule because many of the provisions suggested in this ANPRM would require substantial software programming or operational changes,

### **IV. Conclusion**

As stated in the ANRPM, the Department has an important responsibility to strike the proper balance between protecting consumers and affording carriers flexibility to respond to rapid developments in the marketplace. As with any other service industry, airlines recognize that good customer service is critical to commercial success. Airline success at delivering consistently good customer service has been impacted by an ATC system that is incapable of handling reasonable and expected growth by all aviation sectors. No one cares more about completing scheduled flights on time than the airlines and their employees. After safety, on-time service and customer care are critical for success in the airline business. Good service and on-time performance ensure repeat business, and that is the goal for all airlines because it leads to commercial success. We encourage the Department to work with ATA and its members to identify those initiatives that will truly enhance a consumer's experience.

ATA appreciates the opportunity to comment on this ANPRM and looks forward to working with the Department in the future.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. A. Berg". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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