



Coalition for an Airline Passengers Bill of Rights

BRIEFING FOR TRANSPORTATION TRANSITION TEAM

December 2, 2008

BACKGROUND ON COALITION:

In 1999-2000, after a huge outpouring of airline customer service complaints about “tarmac delays” (up to nine hours), inaccurate or misleading airline information about delayed and cancelled flights, and misplaced baggage, the 106th Congress did not enact any of many introduced passenger rights legislation. Instead, that Congress accepted the airline industry’s voluntary agreement to observe a 12-point Airline Customer Service Commitment in lieu of Federal legislation. (See www.airlines.org/customerservice/passengers/CustomersFirst.)

Successive reports by Inspectors General of the Department of Transportation have documented that the airlines have not lived up to their commitments and that an aggressive regulatory and compliance program by DOT staff was and is needed.¹

Indeed, in the wake of widespread incidents such as December 29, 2006 (American Airlines) and February 14, 2007 (JetBlue et al), our grassroots Coalition for an Airline Passengers’ Bill of Rights (CAPBOR), a 501(c) (4) tax-exempt organization of volunteers, has grown to more than 24,000 supporters. The reason for this growth is simple: poor airline customer service, and thousands of dissatisfied airline passengers. Among many other activities, our organization operates a round-the-clock Hotline to talk with people – in real time – who are stranded on airline flights.

ISSUES FOR OBAMA ADMINISTRATION DURING FIRST SIX-MONTHS:

Central Issue: Through policy announcements, regulatory actions and Congressional authorization and appropriations legislation, assure that DOT sets minimum standards for airline contingency plans for extended tarmac strandings and makes them mandatory as to: **accurate updated information from the flight crew as to the likely duration of the stranding, adequate food and water, working lavatories, acceptable temperature in cabin, access to medical care when needed, and with the individual passenger having the option to deplane after three hours, provided deplaning can be accomplished safely and the pilot has not reasonably determined that the flight will depart within the next 30 minutes.**

Vice President Elect Biden had earlier indicated support for airline passenger protections (enclosure).

¹ OIG Testimony before House Committee on Transportation and Infrastructure, “Actions Needed To Improve Airline Customer Service,” April 20, 2007 (CC-2007-046); OIG Report Number AV-2007-012, “Follow-up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment,” November 21, 2006; OIG Report Number AV-2001-020, “Final Report on Airline Customer Service Commitment,” February 12, 2001.



ISSUE NO. 1: NPRM on Enhancing Airline Passenger Protections (Docket No. DOT-OST-2007-0022) [Issued November 17, 2008; Comments Due 60 Days after FR Publication (not yet) – Probably February 4, 2009]

Proposes each airline must adopt a contingency plan for lengthy tarmac delays, provide responses to consumer problems within sixty days, identify chronically delayed flights and other delay information on airline's website, develop a customer service plan and include it and the airline's contingency plan in its Contract of Carriage – for enforcement in state courts by aggrieved airline passengers.

Main problem with NPRM: "In adopting this approach, [DOT is] tentatively rejecting the suggestions of those consumers and groups who believe that the Department should set minimum standards for the contingency plans [to be adopted by individual airlines] rather than allow each carrier to set its own standards based on its particular circumstances." (NPRM at p. 21). In addition, DOT Secretary Peters is expected to release before January 20 the Report of National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays as approved by a majority of the Task Force. As indicated in the enclosed *New York Times* editorial, the Report allows each airline to establish its own plan for dealing with tarmac delays with no minimum protections for passengers.

Recommendation No. 1: New DOT Secretary should promptly indicate that airlines and airports should develop contingency plans consistent with the content of the recently issued Report, but that DOT will be proposing minimum standards in a Supplemental NPRM and that, once adopted, would make airline plans mandatory and enforceable through DOT's existing authority to prohibit unfair methods of competition. The supplemental NPRM should also include issues not within the ambit of the pending NPRM (including carrier submission of data on complaints received by it for inclusion in DOT monthly reports, and for monthly carrier submission to DOT of information on stranded flights); DOT would then issue a final regulation covering both NPRMs.

ISSUE NO. 2: Airline Passenger Measures in Not Enacted 110th Congress FAA Reauthorization Legislation That Could be Implemented by New DOT Without Congressional Legislation and Without Regulations

Both the House-passed H.R. 2881 and S. 1300 as reported by the Senate Commerce Committee contained airline passenger-supported provisions that could be implemented by the new DOT.

Recommendation No. 2: New DOT should consider and promptly implement administratively certain programs included in not-enacted 110th Congress legislation to indicate Administration interest and concern about airline passengers in the current environment: (1) establish airline passenger complaints hotline telephone number; (2) establish advisory committee for aviation consumer protection; (3) instruct DOT staff to conduct a study of European Union rules for passenger rights and to make recommendations as to the appropriateness of adopting any of them for protection of U.S. airline passengers; and (4) instruct



FAA to update its capacity benchmarks study of largest 35 U.S. airports and to determine whether (and where) published airline schedules exceed maximum departure and arrival rates.

ISSUE NO. 3: Passenger Protection Provisions in FAA Reauthorization Legislation to be Considered by New 111th Congress

The Bush Administration did not propose any passenger protection provisions in its 2007 draft FAA Reauthorization legislation. All such proposals included in H.R. 2881 as passed the House and S. 1300 as reported to the U.S. Senate were developed by the Congressional authorizing Committees, often with CAPBOR drafting help and support. Other helpful amendments to S. 1300 were pending when the U.S. Senate for many reasons decided not to take up that legislation.

Recommendation No. 3: New DOT should propose passenger protection provisions in any FAA Reauthorization Bill it submits to the 111th Congress or accompanying comments on last year's legislation that may be reintroduced.

For additional information, contact Kate Hanni
Founder-Spokesperson
Coalition for an Airline Passengers' Bill of Rights
www.flyersrights.org
159 Silverado Springs Drive
Napa, CA 94558
kate@flyersrights.com
(707) 337-0328

Enclosures



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Biden Campaign: Biden connects the dots on air travel

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CONTACT:

Olivia Alair / 515-440-2008
press@joebiden.com

Des Moines, IA (November 21, 2007): A record number of airline passengers are expected to travel this Thanksgiving holiday. Many of these Americans are expected to face delays and other problems. During peak holiday times over the summer delays were the worst on record.

Sen. Joe Biden today promised to tackle the toughest air travel issues during his first year in office, in an effort to make flying easier, more convenient and safer. Passengers should be made aware of their rights and more information should be provided to them regarding customer service.

Sen. Biden issued the following statement:

"Five years after the 9/11, more Americans than ever are traveling in our skies. However, because we have not modernized our air travel infrastructure, passengers still face delays and other problems on a daily basis. These troubles are compounded at peak times around holidays like this week.

"Overhauling our air travel infrastructure and improving passenger safety will be a priority during my first year in office. I will work with industry leaders, union representatives and passenger advocacy groups to modernize air traffic control and air space management, to improve consumer safety, and expand protections and rights for passengers.

"We must craft long-term solutions, not just patch together stop-gap measures like President Bush's decision last week to temporarily allow commercial planes to operate in military airspace during this upcoming holiday."

Joe Biden would:

- * Require carriers to provide food, water, and restroom facilities to passengers during delays - or give them the option to deplane.
- * Require carriers to publish customer service policies and post information about chronically delayed flights.
- * Expand inspections of health and safety conditions on planes.
- * Urge the air traffic controllers' union and the FAA to return to negotiations to provide incentives for controllers to postpone retirement and keep the US system moving. A record number of veteran air traffic controllers left the FAA last year - we cannot afford to lose



the expertise of experienced controllers.

- * Ask National Academy of Sciences to conduct an independent study of air traffic control staffing needs.
- * Create an interagency task force (including Department of Defense and Federal Aviation Administration) to speed the implementation of the Next Generation Air Traffic Control system which will use satellites and advanced communications to improve management of the nation's crowded air space and develop a national Air Traffic Congestion Management Plan to alleviate highly congested corridors.
- * Invest in airport infrastructure and modernization to build new runways and increase capacity of our nation's airports.
- * Require DOT to review and update carrier compliance with overbooking regulations.
- * Create an Aviation Consumer Protection Commission and expand DOT investigative authority into consumer complaints regarding cancellations, overbooking, lost baggage and overcharges.
- * Establish a national Travelers Complaint Hotline.



The New York Times

ARTHUR OCHS SULZBERGER JR., Publisher

The Tarmac's Maddening 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.