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**U.S. DEPARTMENT OF TRANSPORTATION**  
  
**before the SUBCOMMITTEE ON AVIATION**  
  
**U.S. HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**  
  
**On AVIATION CONSUMER ISSUES**

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Chairman Costello, Congressman Petri, and Members of the Committee, thank you for inviting me to this hearing. I appreciate the opportunity to testify today on behalf of the Department of Transportation.

I want to emphasize to the Committee at the outset of my statement that the issue prompting this hearing today, which involves the treatment of consumers by airlines during extended on-ground flight delays, commonly referred to as tarmac delays, is being taken seriously by the Department, as evidenced by our prompt action following the recent incidents, which I will discuss shortly. Before I discuss that action, however, I would like to give you a broad overview of our authority to regulate in matters involving airline consumer protection, including tarmac delays, and our continuing efforts to ensure that passenger carriers meet their obligations to consumers.

Since deregulation of the airline industry nearly 30 years ago, the Department – as well as its predecessor, the Civil Aeronautics Board – has sought to balance the public interest in protecting consumers from unreasonable practices with our

statutory mandate to permit market forces to operate to the maximum extent possible in order to determine what services are best provided the public by airlines. When action has been required, we have tried, wherever possible, to implement measures to enhance the functioning of the marketplace, such as publishing carrier performance data, or requiring the airlines themselves to disclose data to consumers that may be of use in making their choices of which carriers to use. We continue to believe this approach to be the proper one.

The cornerstone provision for DOT's consumer protection program covering all economic regulatory matters, as opposed to those involving safety, is section 41712 of title 49 of the U.S. Code, which broadly prohibits unfair and deceptive practices and unfair methods of competition in air transportation. The Secretary's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) acts as the prosecuting office for aviation consumer enforcement cases, including those involving unfair and deceptive practices. That office may act on its own initiative, and it also reviews formal third-party complaints alleging violations of the statute or the Department's consumer protection rules and either dismisses them or pursues enforcement action. It also has the authority to enter into settlements relating to those cases. Section 41712 is enforceable in its own right, but violations can be difficult to demonstrate. Even if a prosecution is ultimately successful, such cases are resource intensive, time consuming, and of limited precedential value because

each is highly dependent on its own set of facts. That section is more important as the basis for DOT rulemaking and policy making, where the public interest dictates, to define the extent of its statutory reach. For example, section 41712 provides the statutory basis for our airline full fare advertising and oversales compensation rules.

The Aviation Consumer Protection Division, within the Enforcement Office, handles all consumer complaints and inquiries involving economic regulatory matters and works with airlines and other companies to resolve informal consumer complaints relating to air transportation. Complaints filed with that division are often helpful to us in reviewing specific problem areas or industry trends that may need to be addressed through administrative action. That division also investigates apparent violations of consumer protection requirements, refers matters to the Enforcement Office where appropriate, and performs consumer protection rulemaking functions. In addition, the Aviation Consumer Protection Division has significant public information, education, and outreach programs, including publications that provide general air travel consumer information, such as the Department's monthly *Air Travel Consumer Report*. That report summarizes data filed with DOT by carriers on flight delays, mishandled baggage, and denied boardings, and also lists by carrier the number of complaints registered in a variety of areas, including baggage, refunds, and flight irregularities. Complaints filed with the Department over the past several years have trended downward from a high of about 23,000 in calendar year

2000, with about 8,300 being filed with us last year. However, complaint numbers are starting to increase this year.

Let me now touch upon the incidents of this past winter involving airline passengers being trapped for many hours on aircraft on the ground. The most highly-publicized events included serious service disruptions and lengthy tarmac delays experienced by American Airlines in late December of last year after severe weather hit the Southwest. Also, more recently, JetBlue Airways experienced severe flight irregularities and lengthy on-ground delays on Valentine's Day and the days that followed during a period of adverse weather in the Northeast. Although American and JetBlue received extensive media attention, virtually all carriers have had problems related to customer service, including, on rare occasion, flights that experience long tarmac delays.

Secretary Peters and the Department were troubled by incidents like these, particularly to the extent that food, water, and other basic needs were not being met by the airlines. That is why we were pleased to see that the airlines involved in these specific incidents appeared to be taking substantial corrective actions. In response to its December incident, American Airlines reportedly instituted new guidelines, which included limiting tarmac delays to no more than 4 hours. JetBlue very publicly accepted responsibility for its shortcomings and took a number of steps to address its customers' concerns. Significantly, it adopted what it termed a "Customer Bill of Rights," by which it promises to (1) provide passengers on lengthy on-board delays with food, water, and medical care, if

necessary; (2) compensate passengers for extended tarmac delays; and (3) set a time limit of 5 hours on the maximum duration of any tarmac delay. This policy has been widely disseminated and made available to the public on the carrier's web site. Importantly, JetBlue incorporated its bill of rights into its contract of carriage, providing passengers a legally binding avenue of redress if the carrier fails to follow through on its promises.

Although extended tarmac delays are statistically rare (as I'll discuss in a moment), airlines must have adequate plans in place to deal with these situations as they arise. Clearly, stranding hundreds of passengers aboard aircraft sitting on tarmacs for as many as nine hours is not acceptable, and incidents like these raise serious concerns about planning for such events. Passenger carriers should do everything possible to ensure that situations like these do not occur again.

The Department strongly prefers that the airlines address customer service issues rather than the federal government, but sometimes outside action may be necessary. That is why Secretary Peters formally asked the Department's Inspector General (IG) to conduct an investigation into these incidents and further requested that the IG examine how all the major airlines are doing on the commitment they made nearly eight years ago to ensure that the basic needs of passengers are met during long ground delays. After the IG's review, we will consider what, if any, further action is appropriate. This review will also look at

whether any “best practices” exist that can afford an opportunity for all carriers to learn from these experiences and ensure they are not repeated.

It is important to keep the issue of tarmac delays in context. Our Aviation Consumer Protection Division records complaints concerning the number of unreasonable tarmac delays, which have ranged from 753 during the year 2000 to just over 100 last year. Tarmac delay complaints have not only generally decreased in absolute numbers over the years, but importantly, the number of such complaints as a percentage of total complaints has decreased from 3.2 percent in the year 2000 to only 1.3 percent last year.

Separately, the Bureau of Transportation Statistics collects data regarding taxi-out times for the 20 largest airlines. With regard to recent tarmac delays, our statistics show that in 2006, out of a total of more than 7.14 million flights, just under 1,300 (1,295) were delayed more than three hours in taking off after leaving the gate. Excluding flights that were diverted or ultimately canceled (our reporting requirements do not capture data on delays associated with such flights), this means that less than two hundredths of one percent (0.018 percent) of all these flights experienced tarmac delays in excess of three hours after leaving the gate. Last year, your chances of being on the tarmac for more than five hours after leaving the gate were about 1 in 200,000.

Of course, we recognize that statistics mean nothing to the passengers who are themselves the victims of unreasonable tarmac delays and therefore statistics cannot be the sole factor to consider in determining what, if anything, we should

do to address tarmac delays. Indeed, the Department is of the firm belief that each carrier should, at a minimum, make clear what passengers can expect with regard to extended ground delays and, in particular, should have in place comprehensive plans to ensure that efforts will be made to get passengers off an aircraft when ground delays, involving either departing or arriving flights, are expected to extend beyond a reasonable period of time.

What the Secretary has asked the Inspector General to do is a challenging task. I assure the Committee that the Department will review the report carefully and, if necessary, take appropriate actions to ensure that airlines are adequately protecting consumers in relation to the possibility of extended on-ground delays.

As policymakers consider these incidents, it is important to understand that airline networks in the 21st century are extremely complex operations involving myriad operational, mechanical, safety, regulatory, and other constraints. Unlike many other service industries and despite technological advances, air transportation is still a complicated process that requires close coordination among many different organizations, including various divisions of an airline, an airport, the Federal Aviation Administration's (FAA) Air Traffic Organization, and many ground service and maintenance providers. As we have seen, when complex airline operating systems are interrupted by weather or other irregularities, a breakdown in the business or operational practices anywhere in the system can have significant ripple effects from which it becomes increasingly difficult to recover.

Given this complexity, we believe the facts must be better understood before determining what, if any, action by the government is warranted. We empathize with passengers delayed on airplanes for long periods of time. We also empathize with passengers who want to get to their destinations and -- despite weather-induced delays -- would like airlines to make every effort to get them there as quickly as possible. We first need to understand better the root causes of extended tarmac delays and determine whether the causes are specific to an individual airline's business and operational procedures or more systemic in scope. That is why we asked the IG to investigate with a view toward not only understanding the issues, but also exploring industry best practices that may address them.

A discussion of what today's aviation passenger faces in our current system would not be complete without a discussion of our plans for transforming the system to the Next Generation Air Transportation System (NextGen). I know this Committee has scheduled a hearing for next week on the work of the Joint Planning and Development Office (JPDO), but it is worth a brief mention here because unless we lay the foundation today for NextGen, airline passengers will encounter untold delays and service disruptions in the future. If an overloaded system begins to grind to a halt, it will matter little how well airlines handle customer service.

We already see the impact of the effects of increased demand for service on the air transportation system. Last year stands as one of the worst on record for



delays, with about one in four flights of the 20 largest carriers arriving late. This year is looking no better. In February, only 67.3 percent of the domestic flights by those carriers arrived on time, making it the 5<sup>th</sup> worst month for on-time performance since 1995. Looking well down the road, we predict delays will increase 62 percent by 2014 without NextGen. There is simply no way we can overcome congestion of this magnitude without transforming the air traffic management system. Other issues, ranging from environmental concerns to the complexities of homeland security, are placing additional stress on the system. It's a sobering picture. Without NextGen, some parts of the system will "freeze" first. Then other areas will follow. The system will reach its absolute breaking point, and our customers, especially the passengers, will be the ones who suffer.

The people whom we serve—our customers—don't deserve to be mired in congestion. Investing now in NextGen systems will avoid that outcome. We must replace our outdated air traffic control architecture with a 21st Century automated satellite-based air transportation system. Such a system will safely handle dramatic increases in the number and type of aircraft using our skies, without being overwhelmed by congestion. The JPDO released the NextGen Concept of Operations for public comment on February 28<sup>th</sup>. It is now available on the JPDO website for review and comment by aviation stakeholders. The NextGen Enterprise Architecture and the Integrated Work Plan should be released within the next few months. These documents provide us with that picture of where we want to go and the plans for how to achieve it.

As you know, the Administration believes that the current funding system is out of step with critical future needs. Without a rational funding mechanism that is tied to costs and future infrastructure development needs, the best laid plans for the NextGen system could be wasted, and long delays, on the ground and in the air, will only get worse. In other words, passenger well-being in the future depends on what the federal government does now as much as what the airlines do. I know you have already held hearings on the specifics of our funding proposal, so I won't repeat them here. I would, however, like to emphasize the urgent need for a more equitable system of fees that more accurately reflects the true cost of services that various types of users actually consume.

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