

Testimony of the
U.S. Public Interest Research Group

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on Airline Service Improvements
and a Proposed
Airline Passenger Bill of Rights (S. 678: Boxer-Snowe)

Before the
Committee on Commerce, Science and Transportation
United States Senate

The Honorable Daniel Inouye, Chair

U.S. PIRG Testimony on Airline Service Improvements and a Proposed Airline Passenger Bill of Rights (S. 678: Boxer-Snowe)

Mr. Chairman Inouye, Senator Stevens, Senator Boxer and members of the committee: Thank you for the opportunity to present the views of the U.S. Public Interest Research Group,¹ which serves as the non-profit, non-partisan federation of state PIRGs. We are pleased today, on behalf of our one million members and all airline passengers, to support S. 678, a proposed Airline Passenger Bill of Rights, as introduced by Senators Boxer and Snowe, and to offer other comments on airline customer service.

The frustrations travelers generally have with airlines are widely-reported. Major newspapers have columns, such as the Wall Street Journal's "The Middle Seat," and the New York Times' "On the Road" and "Memo Pad" from Joe Sharkey. Frustrated consumers have created websites such as <http://www.untied.com/> (United), www.northworstair.org/ (Northwest) and www.dontflycontinentalairlines.com.² Travel sites and online newsletters provide tips to frequent travelers about a wide variety of problems air travelers face. Among the issues discussed are the following:

- flights that are chronically late,
- what to do if the airline loses your bags,
- the latest Transportation Security Administration issues,
- your incredibly shrinking airline miles (due to increased mileage requirements for "free flights," more blackout dates, and the threat of airline bankruptcy),
- shrinking seat sizes on some airlines, where you pay extra for a "real" seat,
- obnoxious fees and harsh restrictions for changing your flight for virtually any fare class, or new nuisance fees for all-of-a-sudden overweight or "too-many-pieces" of luggage, and even fees for so-called "snacks" or "meals" on board,
- the non-responsiveness of airlines to reasonable and legitimate service complaints, and
- numerous other problems.

But lately, the news has been about more than these hassles. It's about passengers being trapped on planes sitting on runways, in primitive non-hygienic conditions, or even left at airports to fend for themselves. The incidents appear to be getting worse:

- Hundreds of Jet Blue passengers were stranded for hours in planes on runways in mid-February, when weather incidents affecting some flights cascaded into a multi-day fiasco. While Jet Blue has made all the right promises, it is only one airline.
- Similarly, in late December, American Airlines passengers were stranded on runways in Austin, as my fellow witness Kate Hanni is more qualified to explain, since she was there for nine hours, stuck on one of those planes, without food, water or working toilets, or even helpful information other than airline propaganda announcements.

¹ www.uspirg.org

² Note that these are examples. Not all these sites are still active. Others exist.

- 220 passengers on two separate flights were left stranded in Cheyenne on 21 December by United Express after their diverted planes inexplicably took off without them.³ In February, two more planes, a United Express and an American Connection flight, similarly abandoned passengers in Nebraska.⁴

Whether these delays and significant hassles passengers face are due to the weather, the air traffic control system, increased security due to 9/11, carriers gaming the on-time takeoff data or airline cost-squeezing is not at issue here today.

What is at issue is simple: consumers should not be treated like cattle and should have rights and remedies when they are so treated.

It is important to note that these incidents are not new isolated one-off incidents. Similar runway problems – such as a well-publicized Detroit snowstorm that left passengers stranded for 8½ hours in 1999 -- as well as an increasing number of passenger complaints, led to Congressional consideration of an airline bill of rights in 1999-2000. As then-state attorney-general and current U.S. Senator Ken Salazar wrote to his Congressional delegation in 2000:

As you are aware, airline passengers in Colorado and throughout the country are experiencing a disturbing number of flight delays and cancellations. This is particularly true with United Airlines, the primary carrier serving Colorado. I am particularly concerned about the reported accounts of United's failure to provide its advertised air transportation services, and by allegations that United is providing false or misleading information to the traveling public. Additionally, there are accounts of United failing to accommodate its stranded customers pursuant to applicable airline regulations.⁵

Yet, following a series of largely-failed voluntary promises by the airlines, this promising airline bill of rights effort was delayed. In February 2001, DOT Inspector General Kenneth Mead had told this committee⁶ that delays and complaints were up, despite the voluntary commitment,⁷ which included a promise to **“Meet customers' essential needs during long on-aircraft delays.”**

³ “Airline officials say the jets flew without passengers to Kansas City and Indianapolis on Dec. 21 because the jets were needed for other routes.” See ‘Abandoned’ In Cheyenne, by Gary Stoller, USA Today, 20 February 2007, available at http://www.usatoday.com/travel/flights/2007-02-19-cheyenne-cover-usat_x.htm last visited 10 April 2007.

⁴ See “2 more flights abandoned fliers on way to Denver,” by Gary Stoller, USA Today, 21 February 2007, available at http://www.usatoday.com/travel/flights/2007-02-20-airport-abandoned-usat_x.htm Last visited 10 April 2007.

⁵ Letter of 9 Aug 2000 to Congressional delegation re “Deceptive Practices by Air Carriers” available at http://www.ago.state.co.us/press_detail.cfm?pressID=567 Last visited 10 April 2007.

⁶ Hearing on the DOT Inspector General's Final Report on Airline Customer Service, U.S. Senate Committee on Commerce, Science and Transportation, Statement of The Honorable Kenneth M. Mead, Inspector General, Department of Transportation, 13 February 2001, available at <http://commerce.senate.gov/hearings/0213mea.pdf> Last visited 10 April 2007.

⁷ From the Mead testimony: The Airlines Commit to: Offer the lowest fare available, Notify customers of known delays, cancellations, and diversions. On-time baggage delivery, Support an increase in the baggage

Then, any review of the airline promises was largely shelved after the tragic events of 9/11. As it should have, attention turned to safety and security. Yet, the decline in air travel that occurred may have masked the strains on the system that now is again at the breaking point. Now, six years after 9/11, with air travel volumes again at peak levels, the same customer service problems that were not addressed in 1999 have returned.

In our view, while safety and security must remain the top priorities of our air travel system, passengers still deserve an enforceable bill of rights. The market has failed to adequately provide customers with the minimum standards of civilization when they travel. Neither airlines nor federal regulators are adequately accountable.

The proposed legislation from Senators Boxer and Snowe should be enacted immediately. **S. 678, the Airline Passenger Bill of Rights**, addresses the worst of these problems in a well-thought-out and appropriate way. It simply states that passengers on planes that have left the gate have a federal right to adequate food, potable water and working toilets during delays, and importantly, also have a right to deplane if the delay lasts more than 3 hours.

We would urge you to extend these basic rights to include rights to adequate ventilation, reasonable temperatures and medical access if needed.

We would urge you to consider extension of appropriate rights to passengers of diverted flights as well.

In the 21st century, nearly one hundred years after scheduled passenger airline service began internationally and nearly forty years since men first walked on the moon, these are reasonable requests.

We also believe that any final legislation should make these rights enforceable. We would also urge the committee to review some of the other effects of the 1978 Airline Deregulation Act. For example, following concerns raised by state Attorneys General in the 1980s that the act had resulted in violations of state unfair practices acts, and a failure by federal regulators to protect passenger rights, the attorneys general proposed a set of standards, after finding in 1988 that:

Consumer dissatisfaction with the airline industry has reached crisis proportions. Federal agencies have focused their attention on airline scheduling problems, on time performance, safety, and other related issues, but have not addressed airline advertising and frequent flyer programs. Unchecked, the airlines have engaged in practices in these areas that are unfair and deceptive under state law.

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.

Yet, after the attorneys general attempted to negotiate with the airlines to treat consumers more fairly, the airlines successfully obtained a Supreme Court ruling sweepingly eliminating any state authority over airlines, even against deceptive advertising of their prices.

A 2000 letter⁸ to Congress by Iowa Attorney General Tom Miller explains:

Under a 1992 U.S. Supreme Court decision⁹, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992), State Attorneys General are blocked from enforcing their state consumer protection laws against airlines. The Court held that states are preempted under the Airline Deregulation Act of 1978 [PL 95-504] from taking action against airlines, even if the airlines have engaged in deceptive and unfair practices. The decision says states are preempted from taking action relating to advertisement of rates, services, and other matters.

Attorney General Miller's 2000 letter went on to support an amendment, which we support today.

We are asking Congress to eliminate the preemption...The amendment would simply state that the Airline Deregulation Act does not prevent State Attorneys General "from enforcing any state laws prohibiting unfair or deceptive business practices or unfair methods of competition with respect to air transportation or the advertisement and sale of air transportation services."

In addition to the rights enumerated in S. 678 and the reinstatement of attorney general authority, we urge that any final legislation adopt additional rights for airline passengers:

- 1) Make involuntary bumping and lost/damaged baggage rules subject to automatic inflationary increases. Require that bumping reimbursement, including for voluntary bumping, always be in cash or cash-equivalent flight coupons, not in what are often currently-provided -- future air travel coupons that are often impossible to redeem due to blackout dates and other limits.¹⁰
- 2) Give consumers greater private rights of action in contracts of carriage, which are currently merely contracts of adhesion that largely immunize airlines rather than provide a fair contract.

⁸ Letter of 15 September 2000 to U.S. Senator Tom Harkin, available at http://www.state.ia.us/government/ag/consumer/press_releases/airline-preemption-releasefor_web.html Last visited 10 April 2007.

⁹ The opinion of the Court, including the Attorney General Revised Guidelines as an appendix, is available here <http://www.law.cornell.edu/supct/html/90-1604.ZO.html> Last visited 10 April 2007.

¹⁰ Even the DOT acknowledges these deficiencies and warns passengers to ask: If the airline offers you a free ticket, ask about restrictions. How long is the ticket good for? Is it "blacked out" during holiday periods when you might want to use it? Can it be used for international flights? Most importantly, can you make a reservation, and if so, how far before departure are you permitted to make it? See <http://airconsumer.ost.dot.gov/publications/flyrights.htm> Last visited 10 April 2007.

- 3) Establish an independent airline consumer protection group with some small increment of currently-collected passenger and airline facility taxes. The group should have party-intervenor status to represent passengers in any administrative proceedings of the Department of Transportation, the right to file comments at the DOT and FAA, the capacity to publish an independent and passenger-friendly analysis of the on-time, complaint and other data now merely data-dumped by the FAA, to advise consumers on airline complaints, etc.
- 4) Whether or not such a passenger advocacy group is established, the committee should compel the FAA/DOT to more effectively use the power of the Internet to provide passengers with more and enhanced information about the cost of flights, chronically delayed flights and other airline quality indicators. The department's current websites are not helpful to consumers.
- 5) Airlines themselves should be required to post information about their own lowest-cost flights on their Internet sites, and should be required to inform prospective customers more clearly than in current murky codings about the on-time performance of chronically-delayed and cancelled flights. Airlines should be required to post the Airline Passenger Bill of Rights at gates in terminals as well as on ticket jackets and websites.
- 6) The Airline Passenger Bill of Rights disclosures should include clearer and better disclosure of other rights, such as the involuntary bumping and lost/damaged baggage compensation rules.
- 7) We also urge the committee to conduct additional oversight of the DOT's customer satisfaction and complaint handling effectiveness.

In addition, we would urge the committee to consider some of the larger issues about the U.S. transportation system that have led to some of the pressures that the airlines are under that may contribute to these on-time and runway stranding problems. We call your attention to prescient testimony by Mark Cooper of the Consumer Federation of America before this committee¹¹ immediately following 9/11:

In the longer term, building a survivable transportation network requires redundancy and diversity of transportation options, as well as air travel decentralization. Here are some ideas that should be considered and debated.

First, we should improve ground transportation, particularly high-speed rail in high density air corridors. This could relieve a substantial part of the load in the most densely traveled routes without imposing significant indirect costs (increased travel time) on the public. It would also ease runway overcrowding at some airports. It would probably require the airlines to cut back on some of their most densely traveled and profitable routes for the sake of the public interest.

Commercial operations that require plane changes by driving traffic through hub and spoke networks make economic sense for the air carriers, but they are heavy

¹¹ Hearings on the Financial Status of the Airline Industry, U.S. Senate Committee on Commerce, Science and Transportation, 20 September 2001, statement of Dr. Mark Cooper, Consumer Federation of America, available at <http://commerce.senate.gov/hearings/092001Cooper.pdf> Last visited 10 April 2007.

users of very scarce resources – take offs, landings and air traffic control. For consumers, however, the hub and spoke system has led to domination of routes in some regions by a single carrier, resulting in higher ticket prices. These networks also impose a transaction cost on the public that may increase substantially – boarding time. Concentrating traffic is profitable for the airlines and it may even be efficient, but it may not be in the public interest, given the new traveling reality.

We want to thank you for the opportunity to provide our views to the committee today. We look forward to assisting the committee as you move forward on this important legislation.