



## MEMORANDUM

TO: Government Affairs Steering Group  
Government Affairs Committee

FROM: ACI-NA Government Affairs

DATE: April 9, 2008

SUBJECT: 1) House Aviation Subcommittee Hearing on Delays and Consumer Issues  
2) Senate Environment and Public Works Hearing on Clean Water  
Restoration Act  
3) Coalition Letter Supporting FAA Contract Tower Program

GA MEMO NO: 2008-26

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### **1) House Aviation Subcommittee Hearing on “*Delays and Consumer Issues*”**

This afternoon, the House Aviation Subcommittee held a hearing reading regarding “*Aviation Delays and Consumer Issues.*” Today’s hearing, in which ACI-NA President Greg Principato testified, is in response to a previous held hearing where House Aviation Subcommittee Chairman Jerry Costello (D-IL) requested that the Department of Transportation-Office of the Inspector General (DOT-OIG) prepare an “after action” report on airline delays during the summer of 2007, as well as review progress by the DOT, FAA, airlines and airports to implement the consumer service actions outlined in the September 25, 2007 DOT OIG report entitled, “*Actions Needed to Minimize Long, On-Board Flight Delays.*”

Members in attendance included: Committee Chairman James Oberstar (D-MN), Subcommittee Chairman Jerry Costello (D-IL), Ranking Member John Mica (R-FL), Subcommittee Ranking Member Tom Petri (R-WI), Peter DeFazio (D-OR), Howard Coble (R-NC), Sam Graves (R-MO), Eddie Bernice-Johnson (D-TX), Leonard Boswell (D-IA), John Salazar (D-CO), Jimmy Duncan (R-TN), John Hall (D-NY), Shelly Moore-Capito (R-WV), John Boozman (R-AR), Daniel Lipinski (D-IL), Vernon Ehlers (R-MI), Stephen Cohen (D-TN), Lynn Westmoreland (R-GA), Mazie Hirono (D-HI), Jerry Moran (R-KS), Steve Kagen (D-WI) and Laura Richardson (D-CA).

## **Opening Statements:**

Aviation Subcommittee Chairman Jerry Costello (D-IL) began the hearing by stating that, “In 2007, the traveling public saw first hand the serious problems our current system has with congestion and delays, which at times led to a breakdown in customer service.” Specifically, he cited statistics which show that delayed flights affected 20 percent more passengers during the summer of 2007 compared to 2006. In addition, Chairman Costello noted that the number of airports with arrival delay rates greater than 30 percent increased 189 percent, from 9 in the summer of 2006 to 26 in summer 2007. Furthermore, the average delay lasted 60 minutes, an increase of seven percent, so he was very interested to learn what the DOT IG had to say about progress that has been made in recent months. Chairman Costello then noted that H.R. 2881, the FAA Reauthorization Act of 2007, “addresses consumer protections and congestion and delay reduction, including: a mandate that air carriers and airports create emergency contingency plans that are approved and enforced by DOT; schedule reduction meetings if aircraft operations exceed hourly rates and are adversely affecting national or regional airspace; and an Advisory Committee for Aviation Consumer Protection at DOT.” He expressed his disappointment in the lack of progress on an FAA reauthorization bill and that he continues to urge the Senate to pass its bill so a Conference Committee can commence. Costello concluded by saying, “While the airlines and airports have made some progress in terms of coordinating efforts, more needs to be done, as customers are still experiencing long on-board delays. In 2007, there was a 41 percent increase in on-board tarmac delays of five hours or more, compared with 2006. I have said time and again communication is key to improving an airline’s customer service system, and airlines must make customer service a top priority.”

Aviation Subcommittee Ranking Member Tom Petri (R-WI) said that he believes 2007 was a “rough year” for travelers and that 2008 doesn’t seem to be providing much relief. He noted the rising costs of jet fuel, safety audits, weather and not enough capacity to meet demand as reasons for continuing aviation delays. Petri also stated that a major culprit is an outdated air traffic system, which needs a lot of refining. He expressed his dismay that it looks like Next Gen won’t occur for another 15 years and that passengers cannot wait that long for improvements to be made. Petri was also disappointed that there has not been any FAA Reauthorization progress in the Senate and thus it’s very difficult for airports to undertake important projects when Congress continues to provide short-term FAA extensions which only provide 75 percent of the allocated appropriation for Fiscal Year 2008. He followed up by stressing the time, planning, and monetary commitment that these projects require and that the current state of affairs is not satisfactory. Petri concluded by urging the industry and the Administration to work together and thanked the Chairman for his efforts on the bi-partisan passenger rights provisions in H.R. 2881.

Full Transportation and Infrastructure Committee Ranking Member John Mica (R-FL) expressed his belief that the current situation regarding delays will not get any better, only worse. He backed this up by mentioning fuel prices, the lack of an FAA

Reauthorization bill, no confirmed FAA Administrator, not enough capacity or airspace, and the timetable regarding Next Gen (“many years for only 5-6 percent overall benefit”) as primary reasons. Mica then discussed the New York airspace and the “ripple effect” that delays there have across the country. He continued by saying that airspace redesign has been talked about for many years, and that there is a need for a confirmed Administrator at the FAA to move forward on this and many other important issues. Mica concluded by reiterating his frustration regarding aviation delays and his belief that it will only get worse unless there is significant progress made with a multi-year FAA Reauthorization bill, as well as the FAA Administrator confirmation process.

Full Transportation and Infrastructure Committee Chairman James Oberstar (D-MN) stated that the first eight months of 2007 accounted for the worst delays on record when 29.5 percent (a total of 1.7 million flights ) were delayed or cancelled. In addition, long on-board delays of one hour or more increased by 69 percent from 2000 and air travel complaints at the DOT Office for Aviation Enforcement and Proceedings increased by 70 percent compared with 2006. Following these statistics, Chairman Oberstar stated that there is considerable “outrage and patience is running short” among the traveling public as well as in Congress regarding airline delays and how customers are being treated. He then noted that in 1999, the Transportation and Infrastructure Committee considered implementing a passengers’ bill of rights, but held off on “sweeping legislative changes” after receiving a commitment from the airlines that they would implement internal quality assurance and performance measurement systems for consumer protection. Oberstar followed this by saying, “The airlines’ failure to adequately implement the DOT IG’s recommendations forced the House to step in last year and legislate specific customer service provisions through H.R. 2881, the FAA Reauthorization Act of 2007.” He then urged the Senate to address the FAA Reauthorization issue and speculated that a Conference Report could include stronger passenger protection language than H.R. 2881. Oberstar concluded by saying that he recently received a call from a former airline executive who urged him to re-regulate the airline industry and that, “this is a cautionary note, you should know your leash is short.”

A number of other Aviation Subcommittee Members (Kagen, Bernice-Johnson, Coble, Cohen, Hirono, Boswell, Richardson, and Lipinski) made opening statements expressing their frustration regarding this issue and their expectation that it be addressed quickly and adequately.

**Witnesses:**

- The Honorable Calvin L. Scovel, III, Inspector General, U.S Department of Transportation
- Mr. D.J. Gribbin, General Counsel, Office of the U.S. Department of Transportation
- Mr. Gregory Principato, President, Airports Council International-North America
- Mr. James May, President and CEO, Air Transport Association
- Ms. Kate Hanni, Executive Director, Coalition for Airline Passengers’ Rights, Health, and Safety

## **Testimony:**

Calvin Scovel, Inspector General, U.S. Department of Transportation, presented the DOT-OIG “after action” report on airline delays. Scovel indicated that a number of factors contributed to last summer’s delays and cancellations, including extreme weather; airspace bottlenecks; the National Airspace System; late arriving aircraft; airline scheduling; and spacing of aircraft on final approach.

Scovel indicated that airline, airports and the DOT are making progress on passenger care and comfort during extraordinary events, but noted more still needs to be done. He reiterated that as passenger traffic continues to grow, airports will need to become more responsive in dealing with contingency planning for extraordinary flight disruptions. Scovel outlined current airport initiatives to address delays and passenger inconveniences, including ACI-NA’s January irregular operations workshop, and noted these initiatives have merit and should help to improve airline customer service.

D.J. Gribbin, General Counsel, Office of the U.S. Department of Transportation, focused on DOT’s recently proposed rules to enhance passenger rights and protections, including increased compensation for involuntarily denied boardings; improving on-time airline performance reporting data; and enhancing consumer protections. Additionally, Gribbin noted DOT’s recent effort to establish a “National Contingency Plan Task Force” which is coordinating and developing model contingency plans to deal with lengthy on-board ground delays. Gribbin also noted that expansion capacity projects, like Chicago, will help to improve delays and congestion. However, Gribbin added that capacity increases, both physical and operational, take extensive time to implement and reiterated that market-based solutions will reduce inefficiencies and contribute to an improved flying experience for air travelers.

Greg Principato, President, Airports Council International-North America, noted that airports are working aggressively to enhance air travel by improving the airport customer experience during lengthy airline delays. In his remarks, Principato described the results of an industry-wide workshop, convened by ACI-NA in January 2008, which detailed immediate and longer-term actions currently being undertaken by airports to better enhance and strengthen airport contingency plans. Principato said these action plans and “best practices” were provided to DOT’s National Contingency Plan Task Force, on which ACI-NA and several airport representatives are participating.

Principato also reiterated that the best solution to decreasing congestion and delays is to add additional capacity. However, in those situations where existing capacity is infeasible, congestion management tools should be available to airports operators. He then expressed support for DOT’s proposed rule regarding airport rates and charges and reiterated there is no ‘one-size fits all’ solution and because of unique circumstances at each airport, proprietors of congested airports need the ability to develop programs that are custom-fit to specific local circumstances. He added that DOT should permit

congested airports to build reasonable exemptions to their rates and charges to preserve small community access.

Principato also expressed support for DOT proposed measures that would increase compensation for involuntarily denied boardings and lost luggage, as well as enhance consumer protection from chronically delayed flights. He also noted that lengthy delays and high cancellation rates at small airports continue to have a pronounced effect on passengers' abilities to make connections at large hubs.

For a copy of Principato's testimony, please contact ACI-NA's Paul Eubanks.

Jim May, President and CEO, Air Transport Association, reiterated that the majority of flight delays are attributed to both weather and an aging air traffic control system and noted that delays cost the airline industry \$9 billion annually. May reiterated that airlines do care about customer service and are responding to flight delays by de-peak scheduling and more thoroughly monitoring operations in order to minimize lengthy delays. Additionally, May outlined steps airlines are taking to enhance customer service, including: developing more detailed contingency plans; enabling greater cooperation and communication with airports and government; and ensuring quicker decisions when delayed planes are sitting idle on the tarmac. While May noted airline progress, he acknowledged that airlines need to do more to enhance passenger needs during extended delays. May concluded his remarks by calling upon Congress to modernize the air traffic control system and ensure that all users are paying their share of the costs.

Ms. Kate Hanni, Executive Director, Coalition for Airline Passengers' Rights, Health and Safety, commended the Secretary of Transportation for beginning several initiatives to address airline delays and consumer issues, including instituting flight caps at Newark and JFK; creating a DOT Task Force to examine long tarmac delays; scheduling upcoming regional consumer forums on passenger air travel; as well as proposing administrative rulemaking procedures intended to address long tarmac delays and airline performance statistics. Additionally, Hanni reiterated support for the House passed FAA Reauthorization bill (H.R. 2881) and its passenger bill of rights provisions but expressed concern that "passengers across the country will be stuck again this summer and fall on airport tarmacs—totally powerless" unless these provisions are enacted into law this year.

### **Questions:**

Aviation Subcommittee Chairman Jerry Costello began by asking Calvin Scovel what steps DOT has taken to improve customer service oversight. Scovel responded by saying that the DOT has been active on this issue for 10 years and that he has never seen industry (besides the aftermath of 9/11) work so closely on an issue. He then noted swift DOT action on rule-makings regarding flight performance information being posted to airline websites and audits of customer service plans. Scovel concluded that he had more mixed reviews for airlines and airports.

Chairman Costello brought up the fact that Northwest Airlines had recently scheduled 56 departures in a 15 minute window at Minneapolis-St.Paul airport, which is triple the available capacity. He said that this was a recipe for people sitting on the tarmac for hours and asked DJ Gribbin what was being done about this situation. Gribbin responded that last year, the DOT issued a rule regarding chronically delayed flights and the penalties that are given to airlines that do not comply. He also discussed DOT's Rates and Charges policy which gives airports the ability to help combat congestion during peak times and airline over-scheduling. Calvin Scovel stated that he believed that an informed customer is a happy customer and commended the DOT on its push for airlines to provide arrival information on their websites. However, he also said that he thinks their chronically delayed flights approach is problematic, as the definition isn't wide enough to encompass many of the problems in the system. Scovel advocated that the DOT reduce its "basement" for chronically delayed flight criteria and also suggested that it proceed with legal action against airlines that do not comply repeatedly with their scheduling practices.

Chairman Costello followed this up by asking if the DOT had pursued legal action on an airline that engaged in "deceptive scheduling practices." Calvin Scovel reiterated that he has been encouraged by the recent DOT rule-makings which will improve customer service, but that (to his knowledge) since the IG's office made the legal action recommendation in 2001, none have been undertaken.

Chairman Costello asked Jim May why an airline would schedule 56 departures in 15 minutes and expressed his concern that this is going on when the DOT and the airlines are supposed to be working to combat delays and improve upon customer service issues. May stated that he can't answer why an airline would do that, as there is "no good answer." He then said that there are "active enforcement provisions" being implemented by the DOT and that he would like to submit documents for the record elaborating on this.

Aviation Subcommittee Ranking Member Tom Petri asked the panelists to expand on the idea of market-based pricing and if it would prevent over-scheduling as well as help airports expand capacity. DJ Gribbin said that it would do both and that something needs to be done regarding airline over-scheduling. He then spoke about why the Rates and Charges policy would benefit passengers including the fact that any adjustment in the landing fees would have to be revenue neutral. Gribbin compared this to how a cell-phone bill is prepared in that it costs more to use it during peak times and less during non-peak times. Jim May disagreed with Gribbin by saying that he questions whether or not the DOT has the statutory authority to pursue the Rates and Charges policy and that Next Gen is the answer. He also said it has never been tried in another network outside of electricity and that it amounts to a tax on passengers. Greg Principato responded that these fees would have to be revenue neutral and that airports currently have the ability to undertake 2-tier pricing, so the DOT policy is essentially a clarification. He also noted that no amount of Next Gen gets 56 flights out in 15 minutes and that more capacity on the ground is key. Principato concluded by saying that the policy would give airports the option of whether or not to implement it. Some airports would do so, but certainly not

all, as there are many who work closely with their airlines on this issue and would not need to change their peak-hour pricing procedures.

Representative Peter DeFazio (D-OR) and DJ Gribbin had a lengthy debate regarding Rates and Charges, with the Congressman pushing against and the Administration official supporting the policy.

Representative Steve Cohen (D-TN) asked Jim May how long airlines expect passengers to sit in a plane on a tarmac during a delay before returning to the gate. May responded by saying that each corporate policy is different but that he believes the average would be 4-5 hours. He also said that the airlines do everything within their power to reduce and eliminate these situations, as it costs them a lot of money.

Representative Laura Richardson (D-CA) asked Greg Principato what airports are doing for passengers that are dealing with lengthy delays. Principato noted a number of things including; airport and airline communication collaboration, working with concessions to stay open late, working with concessions to carry things like diapers and baby towels, and working with the Red Cross and local pharmacies for prescription as well as other medicines. He also discussed how Dallas Forth Worth and Fresno airports had solid contingency plans in place that were recently implemented and proven to be very successful. Richardson then asked Principato why airports do not notify travelers via email or phone call prior to arriving at the airport. Principato responded that this is an airline responsibility, but that airports and airlines try to communicate as best they can when dealing with irregular operations situations.

Representative Dan Lipinski (D-IL) cited his concern regarding a possible Delta-Northwest merger and asked the panel for their thoughts. Greg Principato said that the airport industry would be generally agnostic. However, he said that he was concerned about the impact on small communities and the airports that serve them. Principato urged that when looking at this issue, you really have to take into account the small airport impact. He also said that small airports are very much affected by delays and congestion, as almost all seats at these facilities tend to be sold out, so if something is amiss, a real problem can ensue. Principato closed by mentioning Madison, Lincoln, Asheville, and Burlington airports as examples where there is concern and implored the Committee to remember the small airport impact when looking at aviation issues.

Chairman Costello concluded the hearing by asking Kate Hanni about the Passenger Rights Task Force and whether or not she thinks it is effective. Hanni responded that she and Jim Crites from Dallas Forth-Worth airport work well together, but that she'd like to see more engagement from other members.

## **2) Senate Environment and Public Works Committee Hearing on Clean Water Restoration Act**

This afternoon, the Senate Environment and Public Works Committee held a hearing on S. 1870, the “*Clean Water Restoration Act.*” The legislation, introduced by Senator Russ Feingold (D-WI) would expand authority of the original Clean Water Act by replacing “navigable waters of the United States” with “waters of the United States.” As you may recall from previous memos and environmental seminars, House Transportation and Infrastructure Committee Chairman James Oberstar has introduced companion legislation, H.R. 2421.

During today’s hearing, there was no discussion about S. 1870’s impact on airports or aviation. Although there was little discussion in the way of transportation infrastructure, the National Association of Counties (NACO) spoke briefly of the bill’s potential effect on roads and drainage improvements outside of public right of ways.

In addition to today’s Senate hearing, the House Transportation Committee will hold a full committee hearing on H.R. 2421 on Wednesday, April 16, 2008. ACI-NA will provide a detailed hearing report shortly thereafter.

### **3) Joint Organizational Letter Supporting FAA Contract Tower Program**

This afternoon, ACI-NA participated in a joint-organizational letter to House Appropriations Chairman David Obey (D-WI), urging the Committee to support funding of \$110 million for the regular FAA Contract Tower Program, as well as an additional \$9 million to be used exclusively for the continuation of the contract tower cost-sharing program.

Participants included the American Association of Airport Executives; Regional Airline Association; National Association of State Aviation Officials; General Aviation Manufacturers Association; Air Traffic Control Association; National Air Transportation Association; Cargo Airline Association; and the Air Carrier Association of America.

For a copy of the letter, please contact ACI-NA’s Paul Eubanks

**Please contact ACI-NA’s Scott Weaver ([sweaver@aci-na.org](mailto:sweaver@aci-na.org)) or Paul Eubanks ([peubanks@aci-na.org](mailto:peubanks@aci-na.org)) with any additional questions or concerns.**