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Resources, Community, and
Economic Development Division

B-283477

September 10, 1999

The Honorable Ron Wyden
United States Senate

Subject: Aviation: Comparison of Airline "Customer Service Commitment" With Contracts of Carriage and Federal Law

Dear Senator Wyden:

Airlines transport their passengers in accordance with various terms and conditions as well as federal statutes and regulations. These terms and conditions are referred to as conditions of contracts or more commonly as contracts of carriage. A contract of carriage is the agreement between the passenger and the airline that encompasses all contractual rights, liabilities, and duties of the two parties. For example, contracts of carriage include such provisions as airline liability limits for lost baggage and passenger entitlements when flights are delayed or canceled. Any term or condition of this contract is legally binding on the airline and the passenger and may be enforced in state court.¹ Federal regulations² require that airlines retain a copy of their contracts of carriage at each of their ticket offices for review by passengers requesting to do so.³

In addition to being able to sue an airline for breach of contract, a passenger could file a complaint with the Department of Transportation (DOT) alleging that an airline has violated a federal statute or regulation. For example, a passenger could claim that an airline engaged in an unfair or deceptive practice. As a result of such a complaint, DOT could bring an enforcement action against the airline.

In June 1999, the Air Transport Association⁴ (ATA), responding to Congress's interest in ensuring that airlines make every effort to provide passengers with the best service available, announced its "Customer Service Commitment." The Commitment, developed in consultation with congressional leaders and DOT, consisted of several general measures designed to improve customer service. According to ATA officials, each of its member airlines will develop detailed customer service plans on the basis of the ATA proposal by September 15, 1999, and implement them by December 15, 1999.

¹American Airlines v. Wolens, 513 U.S. 219 (1995).

²14 C.F.R. § 253.4.

³The full text of contracts of carriage for the airlines we reviewed varied from 25 to 45 pages and can be obtained from an airline upon written request to the airline's headquarters.

⁴The Association is a trade organization representing the principal U.S. airlines.

167 738

You requested that we compare the airlines' existing contracts of carriage with ATA's Customer Service Commitment. We performed this comparison for the 10 major U.S. passenger airlines. We also compared the airlines' contracts of carriage and the Customer Service Commitment with the federal statutes and regulations to determine what provisions, if any, are required by statutes or regulations.

Summary of Comparisons

ATA's Customer Service Commitment extends the airlines' commitment beyond the current contracts of carriage by either adding new provisions or augmenting existing terms. The Customer Service Commitment includes new provisions concerning reservations; offering the lowest fare available over the telephone, refunds, and on-time baggage delivery; meeting customers' needs during on-aircraft extended delays; and handling customer complaints. For example, airlines are to allow passengers to hold a reservation for 24 hours or cancel a reservation within 24 hours without penalty.

Several other measures in the Customer Service Commitment (notifying customers about known delays, cancellations, and diversions; petitioning DOT for an increase in the minimum baggage liability limits; disclosing information on various airline policies; and ensuring customer service for code-share partners⁵) augment terms provided for in the contracts of carriage. The remaining measures (accommodating special needs passengers and fairly handling "bumped" passengers) are currently included in the contracts of carriage. Enclosure I summarizes our comparison of the measures contained in the Customer Service Commitment.

The officials at the 10 major airlines that we contacted⁶ indicated that they were considering revisions to their contracts of carriage to reflect at least some aspects of their customer service plans. However, these officials said that the decision about what specific changes to make would involve a side-by-side comparison of their current contracts of carriage and their final customer service plan. Because the plans are still being developed, the officials could not say to what extent the contracts would be revised. One airline official, however, did say that the minimum baggage liability limit would certainly be changed to reflect the anticipated regulatory change in the baggage liability minimum.⁷ Most of these officials believed that any revisions to their airline's contracts of carriage would be made by the end of 1999.

Federal statutes and regulations have a significant impact on a number of the measures in the Customer Service Commitment, such as the following: providing baggage liability, providing prompt ticket refunds, accommodating special needs passengers, handling bumped passengers, notifying customers about aircraft changes and aircraft type and configuration, and ensuring customer service from an airline's code-sharing partners. Several of these measures (fairly handling bumped passengers, ensuring customer service from an airline's code-sharing partners, providing prompt ticket refunds, accommodating special needs

⁵Code-sharing allows an airline to sell seats on another airline's airplanes, as if they were its own. This enables the airlines that have partnered to expand their route networks without adding any airplanes.

⁶The 10 major passenger airlines, each with more than a billion dollars in annual revenues, are Alaska, American, America West, Continental, Delta, Northwest, Southwest, Trans World, United, and U.S. Airways.

⁷DOT has proposed that the minimum baggage liability be increased from \$1,250 to \$2,500, 64 Fed. Reg. 34592, June 28, 1999.

passengers, and providing passengers with information on airline policies and aircraft configuration) reflect what is in the statutes and regulations.

In addition, the Customer Service Commitment seeks to change the current minimum baggage liability limit regulation. In June of 1999, DOT issued a supplemental notice proposing to raise the minimum baggage liability limit from \$1,250 to \$2,500. DOT has yet to finalize this proposed rule. One of the ATA measures calls for airline officials to petition DOT to increase its minimum baggage liability limit.

DOT officials said that under federal law, DOT could bring an enforcement action against an airline that engages in what it considers an unfair and deceptive trade practice.⁸ As examples of unfair and deceptive trade practices, DOT cited an airline's failure to (1) follow through on promises that would be made in an airline's customer service plan; (2) provide the lowest fare available over the telephone to a passenger who requests it; (3) adhere to promised flight schedules that have been changed as a result of flight cancellations due to economic considerations; and (4) provide passengers with cash refunds within 20 days of receiving complete claim information.

Scope and Methodology

We interviewed ATA officials to better understand the context in which the Customer Service Commitment was developed. We also interviewed officials from the 10 major passenger airlines to determine if they intended to incorporate their customer service plans into their contracts of carriage. We did not determine the extent to which existing contracts of carriage reflect actual airline practices. In addition, we interviewed DOT officials to determine the Department's interpretation of the pertinent federal statutes and regulations. However, we did not review all federal involvement in airline operations such as DOT enforcement decisions and federal law outside of DOT's and the Federal Aviation Administration's statutes and regulations.

We discussed the information in this report with DOT and ATA officials. They provided technical corrections, which we incorporated into the report as appropriate.

Our work was performed from July through August 1999 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Honorable Rodney E. Slater, Secretary of Transportation; appropriate congressional committees; and other interested parties. We will make copies available to others upon request.

⁸49 U.S.C. § 41712.

B-283477

If you have any further questions, please contact me at (202) 512-3650. Major contributors to this report were David Hooper, Paul Lacey, Richard Scott, and Robert White.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gerald Dillingham", with a long horizontal flourish extending to the right.

Gerald L. Dillingham
Associate Director,
Transportation Issues

**Comparison of Customer Service Commitment
With Contracts of Carriage and Federal Law**

Each airline has its own contract of carriage, which sets out the terms and conditions of the agreement between the passenger and the airline when a passenger purchases an airline ticket. Because of the similarity among the contracts, we have summarized them and indicate major differences in the notes to table I.1.

Table I.1: Comparison of Customer Service Commitment With Airlines' Domestic Contracts of Carriage and Pertinent Federal Statutes and Regulations

Customer Service Commitment	Airlines' domestic contracts of carriage	Pertinent federal statutes and regulations
The lowest fare that a customer is entitled to will be offered through the telephone reservations system.	Service not addressed. ^a	According to DOT officials, it would be an unfair and deceptive trade practice under 49 U.S.C. § 41712 for an airline to provide other than the lowest fare available by telephone to a customer if requested to do so.
Customers will be informed about delays, cancellations, and diversions in a timely manner.	Service not addressed.	According to DOT officials, it would be an unfair and deceptive trade practice under 49 U.S.C. § 41712 for an airline to inform passengers that cancellations were due to weather, mechanical reasons, etc., when, in fact, the cancellations were due to economic reasons.
Clear and concise policies regarding accommodations for passengers delayed overnight will be established and made available to them.	The airlines will provide amenities (including overnight accommodations) for passengers whose flight has been diverted to an unscheduled point. Hotel accommodations are provided if the delay exceeds 4 hours during the period of 10 p.m. to 6 a.m. ^b	Service not addressed.
Every reasonable effort will be made to return checked baggage to passengers within 24 hours and to contact any passenger whose unclaimed checked luggage contains a name and address or telephone number.	Service not addressed.	Service not addressed.
Airlines will petition DOT to increase the current minimum baggage liability. ^c	Contracts reflect federal regulation's minimum liability limit of \$1,250. ^d	Federal regulations currently set the minimum amounts for the airlines liability limits at \$1,250 for each passenger. ^e The airlines are required to provide passengers with written notice (included on or with a ticket) of such monetary limits on baggage liability.
Airlines will issue credit card refunds within 7 days and cash refunds within 20 days.	Service not addressed. ^f	Under federal regulations, ^g a creditor (in this case the airline) has 7 business days to provide a refund for tickets purchased with a credit card. In addition, DOT has taken

Enclosure I

Customer Service Commitment	Airlines' domestic contracts of carriage	Pertinent federal statutes and regulations
		enforcement actions against airlines for failure to provide refunds for tickets purchased with cash or check within 20 business days. DOT officials consider any period longer than 20 days to be an unfair and deceptive trade practice under 49 U.S.C. § 41712.
Airlines will disclose policies and procedures for accommodating unaccompanied minors.	Contracts specify the age that an unaccompanied child will be accepted for travel and address the requirements for such travel on both nonstop and connecting flights.	Service not addressed.
Airlines will disclose policies and procedures for accommodating disabled persons.	Contracts reflect federal regulations requiring airlines to provide specific services and facilities for passengers with disabilities. Contracts include former legal liability limit for assistive devices such as wheelchairs.	Federal regulations require airlines to provide specific services and facilities to accommodate passengers with disabilities both in the airport and on the aircraft. Airlines are required to make available, on request, information on facilities and services. Currently, airlines may not limit liability for assistive devices. ^h
Airlines will make reasonable efforts to provide food, water, restroom facilities, and access to medical treatment for passengers aboard an aircraft that is grounded for an extended period of time without access to the terminal consistent with passenger and employee safety and security concerns. Each airline will prepare contingency plans to address such circumstances.	Service not addressed.	Service not addressed.
Airlines will establish and disclose to customers the policies and procedures, including applicable requirements such as check-in deadlines, for managing their inability to board all passengers with confirmed reservations.	Under federal regulations, all airlines have established policies (and incorporated such policies into the contracts of carriage) for managing their inability to board all passengers with confirmed reservations. The provisions in each airline's conditions of contract, with respect to bumped passengers, are virtually identical and mirror the requirements and procedures found in the regulations.	Federal regulations specify policies for handling passengers who are denied boarding because of overbooking by the airline. Each airline must <ul style="list-style-type: none"> • request volunteers who will agree not to board an airplane before using any other boarding priority;ⁱ • establish criteria for determining which passengers shall be denied boarding; • compensate qualified passengers' who are involuntarily denied boarding;^h • display a sign located so as to

Enclosure I

Customer Service Commitment	Airlines' domestic contracts of carriage	Pertinent federal statutes and regulations
		<p>be clearly visible and readable to the traveling public, describing the airline's deliberate overbooking policy; and</p> <ul style="list-style-type: none"> • furnish passengers with a written statement explaining the terms, conditions, and limitations of compensation for denied boarding.
Each airline will disclose to the customer any change of aircraft on a single flight with the same flight number.	Service not addressed.	Federal regulations require that a change of aircraft on a single flight number be disclosed directly to passengers. ¹
Each airline will disclose its cancellation policies due to passengers' failure to use flight segment coupons.	Some airlines ^m specifically prohibit "hidden city" ticketing ⁿ in their contracts of carriage. All airlines prohibit "back-to-back" ticketing. ^o If the passenger fails to comply with these restrictions, the airline has the right to cancel or confiscate the unused portion of the passenger's ticket. ^p	Federal regulations require airlines to make copies of the contracts of carriage available at airports and ticket offices so that passengers may view the full text of the contracts upon request. ^q Many contracts of carriage include airlines' rules with regard to unused flight segments. In addition, according to DOT officials, misrepresentations regarding airline policies would be prohibited as unfair and deceptive practices under 49 U.S.C. § 41712.
Rules, restrictions, and an annual report on frequent flyer program redemptions.	Service not addressed.	According to DOT officials, misrepresentations regarding airline policies would be prohibited as unfair and deceptive practices under 49 U.S.C. § 41712.
Information regarding aircraft configuration, including seat size and pitch.	Service not addressed.	For international flights, each tariff ^r must include the type of aircraft and the seating configuration for each class of passenger service, including the number of seats abreast, the seat pitch, and the number of lounge seats. ^s In addition, according to DOT officials, misrepresentations regarding airline policies would be prohibited as unfair and deceptive practices under 49 U.S.C. § 41712.
Each airline will ensure that domestic code-share partners make a commitment to provide comparable consumer plans and policies.	Airlines limit their responsibility to transportation over their own lines. ^t When an airline issues a ticket, checks baggage, or makes other arrangements for transportation over the lines of another carrier, it will act only as an agent for the other and will not assume responsibility for the acts or omissions of the other carrier.	Service not addressed.

Enclosure I

Customer Service Commitment	Airlines' domestic contracts of carriage	Pertinent federal statutes and regulations
<p>Each airline will</p> <ul style="list-style-type: none"> • assign a customer service representative to handle passenger complaints and ensure a response to written complaints within 60 days; • develop and implement a customer service plan within 6 months; • publish and make the customer service plans available on the Internet, at airports, at ticket offices, and with travel agents; and • respond fully to Congress's request for the periodic review of compliance with the Customer Service Commitment. 	<p>Service not addressed.</p>	<p>Federal regulations require that a carrier respond to a disability complaint within 30 days of its receipt.^u</p> <p>According to DOT officials, it would be an unfair and deceptive practice under 49 U.S.C. § 41712 for an airline to engage in a practice of providing false or deceptive responses to complaints.</p>

Legend

DOT = Department of Transportation

^aAll airlines (except Southwest and U.S. Airways) state that if, after purchasing a ticket, the fare decreases, the passenger will be reimbursed the difference upon request.

^bNeither American Airlines nor Southwest Airlines includes provisions for overnight accommodations for passengers with flights that are diverted to unscheduled points.

^c The \$1,250 amount in the DOT rule is a minimum limit that sets the floor for an airline's liability.

^dThe Airline Transportation Association filed a petition with DOT on August 27, 1999, supporting the Department in raising the current domestic baggage minimum liability limit. Docket OST-1996-1340-38.

^eThe current liability limitation is found in 14 C.F.R. Part 254; however, DOT has proposed increasing the airlines' liability limit from \$1,250 to \$2,500. (See 64 Fed. Reg. 34592 (1999).)

^fThe airlines specify the circumstances in which refunds are permitted but do not address the promptness with which the passenger will receive the refund.

^g12 C.F.R., Part 226.12(c) and 14 C.F.R. Part 374.

^h DOT recently lifted the \$2,500 liability limit for mobility aids making liability unlimited (64 Fed. Reg. 41781, Aug. 2, 1999). This regulation became effective Sept. 1, 1999 (14 C.F.R. § 382.43).

ⁱ 4 C.F.R. § 250.2b.

^jThe federal regulations require compensation only for those passengers who comply with the terms in the carrier's contract of carriage regarding ticketing, reconfirmation, and check-in times. Compensation is also not required if comparable transportation permits the passenger to arrive within 1 hour of the original arrival time. (See 14 C.F.R. § 250.6.)

^kIf the carrier arranges for comparable transportation that arrives within 2 hours of the original arrival time (4 hours on an international flight), the maximum compensation is \$200; otherwise, the maximum compensation is \$400. (See 14 C.F.R. § 250.5.)

^l14 C.F.R. Part 258.5(b) and (c).

^mDelta, Trans World, American, Continental, and U.S. Airways specifically prohibit hidden city ticketing in the contracts of carriage.

ⁿHidden city ticketing occurs when a passenger purchases a ticket with a stopover/connecting flight at a specific destination, intending only to begin or end his travel at this destination and not continue or use the remaining segments of the purchased flight.

^oBack-to-back ticketing occurs when a passenger purchases two roundtrip tickets, intending to use only one segment of each ticket to circumvent minimum stay requirements.

^pIn addition to specifically addressing "back-to-back" ticketing, all airlines assert a general right to dishonor any or all portions of the ticket if a passenger fails to occupy space that has been reserved.

^q14 C.F.R. § 253.5.

Enclosure I

¹A tariff is a public document that sets forth rates and charges with respect to international services and governing rules and regulations and practices relating to those services.

²14 C.F.R. § 221.38.

³Southwest Airlines does not have a provision in its contracts of carriage concerning responsibility/liability for a passenger's travel with another carrier. Southwest also does not currently code-share with any other airline.

⁴14 C.F.R. § 382.65.

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