

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

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In the matter of :
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PETITION FOR EMERGENCY : **Docket No. OST-2000-7797**
RULEMAKING OF THE AVIATION :
CONSUMER ACTION PROJECT :
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**ANSWER OF THE
AIR TRANSPORT ASSOCIATION OF AMERICA, INC.**

The Air Transport Association of America, Inc. (“ATA”) submits this answer to the rulemaking petition that the Aviation Consumer Action Project (“ACAP”) submitted to the Department of Transportation on August 11, 2000.¹ ACAP in that document urges the Department to respond to the current flight delay predicament with regulatory intervention directed at the airline industry. It proposes new reporting requirements and advocates the imposition of penalties for certain categories of delayed flights.

Such a response would be wrong. It would do nothing to increase airway and airport system capacity, the limitations of which are the root causes of so many delays. Consequently, it would mislead the public into believing that genuine improvement is being undertaken. ACAP’s proposal thus would be a

¹ ATA’s members are Airborne Express, Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Atlas Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide, Evergreen International, Federal Express, Hawaiian Airlines, Midwest Express, Northwest Airlines, Polar Air Cargo, Reeve Aleutian Airlines, Southwest Airlines, Trans World Airlines, United Airlines, United Parcel Service, and US Airways. ATA’s associate members are Aeromexico, Air Canada, Canadian Airlines International, KLM—Royal Dutch Airlines, and Mexicana Airlines.

misguided response to the problem. The real task at hand is to improve airway and airport capacity to meet the needs of the traveling and shipping public.

I. ACAP'S PETITION IS BASED ON ERRONEOUS ASSUMPTIONS

ACAP's petition proceeds from two basic, erroneous assumptions. The first is that air carriers benefit from the current situation in which they, and their customers, experience operational delays. The second is that airlines thoughtlessly schedule their flights. Both of these assumptions are incorrect.

These mistaken assumptions produce a regulatory proposal that is not designed to respond directly and effectively to the delays that have plagued consumers and airlines. Instead, the petition offers a serpentine construct designed to penalize airlines as they are confronted with burgeoning air travel demand and capacity shortcomings. No reason exists to believe that what the petition seeks could relieve that basic problem. ACAP's proposal is hardly the stuff of a solution to what confronts consumers, the government and the airline industry.

A. Airlines, Like Consumers, Suffer from Delays beyond Their Control

Airlines are utterly dependent on the ATC and airport systems to perform services without which air transportation cannot be provided. Inadequate capacity results in delays that undermine the air transportation networks that airlines have spent decades building up. Delays produce well-known cascading harm to airline operations by disrupting flight schedules, crew scheduling and availability, and aircraft positioning. Those who ultimately suffer because of these problems are passengers and shippers.

Delays have worsened over the last several years. The following table indicates in broad terms what has occurred during that period.

**FAA Reported ATC System Delays²
Daily Average Percent Change
January – July Period**

<u>2000 v. 1999</u>	<u>2000 v. 1998</u>	<u>2000 v. 1997</u>
+10.6%	+31.8%	+79.4%

These data reveal a delay problem that has become very serious. A variety of reasons can be assigned for this pronounced deterioration. One point, however, is crystal clear: growth in airline operations is a minor portion of the cause. Scheduled air carrier departures increased only 3.9 percent between 1998 and 1999, and a mere 1.2 percent between 1997 and 1998.

The economic cost of delays is staggering. The estimated cost of these delays for passengers and airlines in 1999 was \$5.4 billion. Delays cost the airline industry alone an estimated \$2.2 billion last year. Additional fuel and crew expenses are the most obvious sources of that cost. Disrupted operations also mean lengthier flight times that lead to less efficient utilization of aircraft and less productive schedules.

Airlines, like their customers, want reliability not unpredictability. Reliability means that airlines can effectively and economically serve their customers; unpredictability produces costs measured in both dollars and customer good will that penalize airlines.

² Delays of 15 minutes or greater.

B. Airlines Schedule to Meet Consumer Demand

Airlines schedule flights to meet consumer demand, not because of whimsy. Air carrier aircraft are scarce resources: fewer than 4,000 aircraft are available to ATA's passenger-carrying members to serve the 665 million customers that U.S. airlines will transport this year. The economics of scarcity thus disciplines carriers and impels them to optimize service frequency and equipment size decisions. This has resulted in the systemwide load factor for U.S. airlines reaching 77.5 percent in August of this year. By contrast, the systemwide load factor in 1977, the last full year before the deregulation of the industry, was only 55.9 percent. Moreover, although the U.S. airline industry's passenger traffic grew 5.4 percent in 1999, its scheduled service departures increased only 3.9 percent last year. This reflects the industry's long-term pattern of increasing efficiency in serving its customers. Passengers enplaned on U.S. airlines increased by 93 percent between 1979 and 1999 but departures only grew by 54 percent during that period.

These data clearly indicate that the industry has worked hard to meet efficiently the growth in consumer demand for air transportation. These data do not indicate an industry that is making frivolous decisions about how aircraft are utilized.

The ACAP petition's recitation of data about flight delays and cancellations does not substantiate the regulatory action proposed in it. Delays are not broken down by category. No sense of scale—and, thus perspective—is provided . For

instance, the petition does not mention that on average weather accounts for 70 percent of delays. See generally petition at 2.

More instructive than that discussion in the petition is an examination of the Department of Transportation's Air Travel Consumer Report. Data from Table 5 of the monthly Reports are particularly pertinent because the ACAP petition's request for regulatory action focuses in part on flights that experience less than 20 percent on-time performance. Table 5 of the July 2000 Report lists 33 regularly scheduled flights that were late 80 percent of the time or more during May. Department of Transportation, Air Travel Consumer Report at 10 (Table 5) (July 2000). That experience is hardly of a magnitude to warrant a rulemaking proceeding and this is a pattern that emerges from examining previous Reports.³ The following table lists the Table 5 data for covered operations in the months of June 1999 through May 2000.⁴

June 99	July 99	Aug. 99	Sept. 99	Oct. 99	Nov. 99
67	99	37	30	22	24
Dec. 99	Jan. 00	Feb. 00	March 00	April 00	May 00
15	N/A	18	22	11	33

The foregoing data do not remotely support the regulatory action advocated in ACAP's petition. Obviously, the U.S. airline industry would prefer

³ The July Report is cited because results in subsequent Reports were skewed as a result of unusual operational circumstances affecting one carrier. That carrier's operations have returned to normal.

⁴ Data are from Table 5 of the August 1999 through July 2000 Air Travel Consumer Reports.

not to have any chronically late flights. Nevertheless, considering that it operates more than 22,000 flights per day, these data clearly do not support the assertions in the petition.

Furthermore, airline scheduling is more dynamic and responsive than the petition appears to assume. Flights are continually added and dropped from a carrier's schedules because of service changes. Moreover, carriers change their schedules in the fall and spring. They do so to reflect seasonal changes in demand and winds aloft and consequently flight times. In addition, carriers have been lengthening their published schedules for a number of flights and modifying their connecting complexes at hubs because of delays. These actions indicate a more dynamic scheduling environment than the petition seems to suppose and an airline industry responsiveness that it does not acknowledge.

Consumers—the ultimate customers of the system—in ever-increasing numbers want to use commercial air transportation. Airlines provide services that respond to that demand. (Had airlines not met that demand, presumably they would be accused of creating self-aggrandizing service shortages.) The reality, of course, is that airlines are not only meeting consumer needs, they are doing so far more judiciously than ACAP's petition intimates. Yet, in a remarkable inversion, responding to the service needs of consumers is characterized as over-scheduling.

Reacting to the current delay situation by heedlessly embracing the notion of over-scheduling will have obvious and unpleasant implications for consumers. Reducing schedules means reducing capacity available to customers.

Diminishing capacity when demand for air transportation is at an all-time high will clearly inconvenience customers—both with respect to flight availability and in other ways. This, obviously, is not a prescription for enhancing consumer welfare.

II. CONSUMERS CURRENTLY HAVE ACCESS TO PERFORMANCE DATA THAT ENABLE THEM TO MAKE WELL-INFORMED JUDGMENTS

ACAP's petition states that the action that it seeks will provide the public with "timely information." Petition at 2. The public already has timely access to flight-by-flight performance information and has had such access since 1987.

Part 234 of the Department's Economic Regulations establishes the airline service quality performance-reporting program. 14 C.F.R. Part 234 (2000). (This program generates much of the information contained in the Department's monthly Air Travel Consumer Report.) The regulation requires covered air carriers to collect and forward monthly to the Department and computer reservation systems their on-time performance data. Id. §§234.4 (on-time performance information), 234.9 (on-time performance code). Timeliness of this information is assured because the carrier must submit it within 15 days of the month for which the data are reported. Id. §§234.5 (DOT reports), 234.9 (CRS reports). Covered carriers must disclose this information to consumers "upon reasonable request", thus assuring access to the data to those who are interested in it. Id. §234.11. Equally important is the breadth of the time in which a carrier is obligated to respond to such inquiries. The regulation states that such a disclosure must be made at any time "[d]uring the course of reservations or ticketing discussions or transactions, or inquiries about flights...." Id. §234.11.

ACAP's petition does not discuss Part 234. It consequently contains no explanation or even assertion of why the current regulatory arrangement fails to provide pertinent information to the consumer who desires such information. A passenger who wants to know about the on-time performance of a covered flight has the absolute right to receive that information—and has had that right for 13 years. The fact that the petition articulates no shortcomings in Part 234 underscores that the regulation is functioning properly.

Furthermore, the Department's Air Travel Consumer Report is available to the public on the Internet. Tables 1 through 7 of the Report contain detailed flight delay information, some of which is at the individual flight, individual city-pair market, and individual airport level. Interested consumers therefore have a wealth of easily accessible and timely information by which to make their air travel decisions.

Finally, ACAP's petition is also silent about ATA's July 19, 1999 petition to amend Part 234 to reflect the effect of air traffic control system delays upon air carrier on-time performance. The change to the rule that we proposed would more fully disclose to the public the nature and source of delays that air travelers experience. That more complete disclosure of information would better fulfil the on-time performance rule's purpose.

On-time flight performance information is readily available to consumers who are interested in receiving it. Given the existence of this long-standing consumer information program, there is no justification for erecting an additional regulatory structure.

III. THE ACAP PETITION DOES NOT PROPOSE MEANINGFUL IMPROVEMENTS FOR CONSUMERS

Every year the government forecasts increased aviation activity and therefore greater demand on the air traffic control and airport systems. It has been doing so for over four decades. For example, the Federal Aviation Administration forecast in 1993 that 676-million passengers would be enplaned in 1999. Federal Aviation Administration, Aviation Forecasts Fiscal Years 1993-2004 (1993) at IX-12 (Table 10). Six-hundred thirty-five million passengers were actually enplaned last year. Traffic growth thus should not have surprised anyone⁵

The crucial public policy issue now is determining how this nation will supply the necessary ATC system and airport capacity to meet the future needs of the traveling and shipping public. This is a matter that the ACAP petition avoids. Yet, it is precisely what must be focused upon if customers are to experience service improvements.

IV. THE DEPARTMENT OF TRANSPORTATION IS ADDRESSING CONSUMER INFORMATION ISSUES

Secretary of Transportation Slater announced on August 21st that the Department would proceed with three projects responding to delay issues. They are:

- Establish a task force to examine possible changes to the consumer information that airlines report to the Department

⁵ Even with that lower-than-forecast growth, calendar year 1999 delays of 15 minutes or greater were 22 percent higher than in 1998.

- Establish a task force to identify “best practices” to improve the flight information provided to air travelers.
- Expedite investment in infrastructure

Department of Transportation Press Release 152-00 at 1 (August 21, 2000).

These projects will directly focus upon consumer-related issues associated with the ACAP petition. The initiation of these Departmental undertakings means that there is no need to proceed with the petition.

CONCLUSION

ACAP’s petition does not justify the regulatory intervention it seeks. Most notably, it makes no effort to persuade the Department that currently available information reported under Part 234 is insufficient.

Consumers’ greatest concern is the uncertainty that delays produce. Nothing in the ACAP petition would address that concern.

For these reasons, we respectfully urge that the Department not pursue the regulatory action that the ACAP petition advocates.

Respectfully submitted,

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Certificate of Service

I certify that a copy of these comments was sent today by first-class mail to:

Mr. Paul Hudson
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James L. Casey

Verification

Pursuant to section 1001 of title 18 of the United States Code, I, James L. Casey, in my individual capacity and as the authorized representative of the pleader, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the pleading. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined or imprisoned not more than five years or both.

James L. Casey