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Passenger Bill of Rights

While regulatory bodies call for strict laws to protect passengers impacted by flight delays, the laws need to be clear, concise and fair to both airlines and their customers.

■ By Michael Clarke | *Ascend* Contributor

The global airline industry is driven in part by the economic and geopolitical conditions across the world's markets. From many perspectives, it's considered a highly cyclical industry varying from record periods of profitability to times of very poor financial conditions. This is associated with wide variations in capital expenditure (such as aircraft acquisitions) and challenging labor relationships between management and rank and file trade unions.

During the last two decades, market liberalization has been the key focus of many governing bodies around the world with an emphasis on relaxing market access restrictions and control over what airlines can do on a daily basis. As passenger traffic has soared as a by-product of liberalization, the necessary infrastructure to support such growth in passenger levels has often been lacking, and this

has resulted in the deterioration of passenger services and the anticipated level of comfort in some markets.

During the economic boom associated with the Internet revolution, U.S. domestic passenger traffic exploded in the late 1990s with average passenger load factors exceeding 80 percent on a regular basis. The number of passenger complaints to the U.S. Department of Transportation skyrocketed, and the U.S. Congress started to pay closer attention to the airline industry, which had been deregulated two decades prior. Around the same time, deregulation had taken hold in Europe, and there was a rapid growth in passenger traffic as a result of new value-based carriers such as Ryanair, easyJet and Air Berlin.

In the aftermath of the industry downturn in the early 2000s, world passenger traffic plunged, and airlines were faced with the



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The number of cancelled and delayed flights in the United States has reached a record high this year due to U.S. carriers reporting average load factors that often surpass 85 percent.

challenge of sustaining profitability, containing costs and maintaining viable operations. With the sudden decrease in passenger levels, airlines had some breathing room to support their remaining passengers, and the legislative "interest" in the airline industry subsided. As passenger traffic levels have returned, if not surpassed, the record level of the late '90s, concerns about the supporting infrastructure (airports, air traffic control systems) have resurfaced as well as the number of consumer complaints to regulatory bodies.

In the European Union, legislation became law in 2004 that establishes common rules on compensation and assistance to passengers in the event of denied boarding and cancellation or prolonged delays of flights. This law covers not only regularly scheduled passenger flights, but it also includes charters and all flights operated by E.U.-registered airlines.

This year, a similar bill of law was introduced in the U.S. Congress — heavily influenced by the prevailing market conditions in the U.S. domestic market. Carriers are reporting average load factors in excess of 85 percent, and the number of cancelled and delayed flights are the highest ever recorded. In parallel, the number of passengers involuntarily bumped and denied boarding has increased significantly and is the highest since



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When passenger traffic shot up during the late '90s with passenger load factors averaging more than 80 percent, customer complaints to the U.S. Department of Transportation were also on the rise, causing the U.S. Congress to focus more closely on the airline industry.



Three years ago, the European Union passed a law through legislation that requires airlines to compensate and assist passengers if boarding is denied, a flight is cancelled or a long delay occurs.



The reduction of “unnecessary slack” in some airlines’ operations in an effort to cut costs and increase productivity can leave very little room for effective recovery when there’s an unexpected schedule disruption.

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Preliminary numbers for 2006 show that on average 23 percent of all scheduled U.S. domestic flights were delayed in excess of 15 minutes of their scheduled departure and/or arrival times. In addition, 2 percent, or one in 50 flights, were cancelled, and one out of every 450 scheduled flights was diverted as a result of schedule disruption.

A similar situation exists in Europe where one out of three flights is delayed and one out of 70 is cancelled. A study produced for the Eurocontrol estimated that airborne and/or ground delays cost European airlines up to €5 billion (US\$6.9 billion) in 2002.

In June, it is estimated that U.S. domestic airlines cancelled nearly 100,000 scheduled flights, more than double the number reported last year. This record number is not unique for the early summer period, as flight cancellations are up 50 percent for the first half of the calendar year. Some constituencies within the industry, particularly pilot unions, argue that this increased number of cancellations is being driven by a shortage in crews as a result of the severe cost cutting during the last five years.

At one major network airline, there were 2,100 flights cancelled in June alone, representing almost six percent of its scheduled operations. This corresponded to seven times the number of cancellations experienced by the carrier in June 2006. Whatever the case may be, U.S. carriers have been hit hard by major disruptions during the first half of the year, ranging from complete airport closures spanning multiple days as a result of severe snowstorms to spontaneous afternoon thunderstorm activities that result in large numbers of diversions to alternate airports.

In many situations, the alternate airports are overwhelmed by the additional aircraft movement and, in some cases, are also impacted by the same weather system that causes the diversions from the major hub airports. In some cases, passengers were forced to wait onboard stranded aircraft in excess of seven hours as airlines tried feverishly to recover their operations while observing the prevailing safety guidelines. As active crewmembers became illegal from duty limitations, airlines had no choice but to cancel flights and attempt to rebook the disrupted passengers.

The current state of the U.S. domestic airline industry has led to the introduction of the Airline Passenger Bill of Rights Act of 2007 in the U.S. Congress. Unlike previous attempts in the late 1990s, there is a growing level of support within the legislative body to pass the bill and put it into law. Earlier attempts to pass such a law were derailed by the Air Transport Association — the primary Washington, D.C.-based lobbying group for U.S. airlines. The ATA and its member airlines established voluntary guidelines for handling passengers in the aftermath of schedule disruptions. These guidelines were clear and concise and, at the time, were

1997. Airline operations are susceptible to unexpected weather patterns and other types of irregularities. In their drive to reduce costs and improve productivity, many carriers have reduced what was considered unnecessary slack in their operations, and when something goes awry, there is very little room for effective recovery. As a result, passengers disrupted by a major afternoon thunderstorm or an extensive snowstorm may end up waiting hours, if not days, to get to their final destination.

The majority of flight delays in the United States result from network effects across the system driven by problems in the national airspace and aircraft routings. When

a weather pattern develops, air traffic control authorities introduce a traffic management program depending on the severity of the disruption. This includes, for example, a ground delay program where all scheduled flights are metered into an impacted airport and given a specified arrival time to reduce the demand on the airport. Alternately, ATC authorities would prohibit any flights from departing to a given airport until a prescribed time and/or restrict a flight from departing until a required airspace sector is available.

In 2005, an estimated 94 million minutes of system delays drove more than US\$5.9 billion in direct operating costs for U.S. airlines.

satisfactory to regulatory agencies. However, in light of how airline passengers were treated in some high-profile incidents in December 2006, and again in February, the U.S. Congress decided to revisit the legislation of passenger rights in the domestic airline industry.

One of the airlines severely impacted by a schedule disruption decided on its own accord to introduce its own passenger bill of rights, and the carrier now compensates passengers for flight delays, cancellations and other disruptions that can be attributed to it. To date, no other airline has taken this approach, and they still point to their pre-existing customer service plans established in the late '90s.

The language of the recently introduced bill draws on the established European legislation and calls for airlines to better handle passengers and address their needs in the wake of a schedule disruption. The bill mandates that all American air carriers shall abide by several standards to ensure the safety, security and comfort of their passengers, including:

- Establish procedures to respond to all passenger complaints within 24 hours and with appropriate resolution within two weeks;
- Notify passengers within 10 minutes of known diversions, delays and cancellations via overhead announcements in the airport and on aircraft as well as posting on airport television monitors;
- Establish procedures for returning passengers to the terminal gate when delays occur so no plane sits on the tarmac for more than three hours without connecting to a gate;
- Provide for the essential needs of passengers during air- or ground-based delays of longer than three hours, including food, water, sanitary facilities and access to medical attention;
- Provide for the needs of disabled, elderly and special-needs passengers by establishing procedures for assisting with retrieving baggage and moving passengers from one area of the airport to another;
- Publish and update a list of seriously delayed flights — those delayed 30 minutes or more at least 40 percent of the time during a single month — on the carrier's Web site;
- Compensate bumped passengers or those delayed due to flight cancellations or postponements of more than 12 hours by a refund of 150 percent of the ticket price;
- Implement a passenger review committee made up of passengers and consumers who would have the formal ability to review and investigate complaints;
- Make lowest fare information, schedules and itineraries, cancellation policies, and frequent flyer program requirements avail-



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The number of passengers who have been involuntarily bumped and denied boarding due to unexpected irregularities has increased substantially and is at the highest in 10 years. Some passengers have been stranded for hours, sometimes days, as a result of irregular operations.



able in an easily accessed location and updated in real time;

- Ensure that baggage is handled without delay or injury; if baggage is lost or misplaced, the airline shall notify the customer of baggage status within 12 hours and provide compensation equal to current market value of the baggage and its contents;
- Require that these rights apply equally to all airline codeshare partners including international partners.

The potential impact of the proposed legislation is unclear in the United States, but take a look across the pond in the European Union. Since its introduction in 2004, the E.U. passenger rights law has been challenged by both established network carriers and value-based carriers in several courts and multiple countries. While the bill has survived all challenges to date, the effectiveness of the legislation is still unclear. On the surface, the E.U. legislation calls for airlines to look after their disrupted passengers and arrange alternate means of transportation for them, and if the airline is at fault, they may be required by law to pay compensation to affected passengers. These rules apply to all airlines — scheduled, charter, full-service or low-cost — and to all flights departing from airports in the European Union as well as those arriving within the E.U. and operated by airlines registered in the E.U.

Passengers who find their flight has been delayed by more than a few hours, cancelled completely without prior notice or who have been denied boarding because the airline has too many passengers for the seats available must be given immediate assistance by the airline.

Since the passing of the law, the number of involuntary denied passenger boardings has decreased in the European Union. As part of the legislation, airlines were required to solicit volunteers from overbooked flights, similar to the established procedures in the United States. It is likely that the decrease in overbooking has resulted from carriers being more conservative in their overbooking levels.

At the same time, there's an increase in the number of passengers missing their scheduled flights. With the enhanced level of security at airports, passengers sometimes arrive for check in with inappropriate travel documents or experience delays waiting in long security lines. In addition, with the increased levels of delays, connecting passengers often miss their scheduled flight connection due to a late inbound arrival. If a passenger misses his connecting flight, the carrier is not required to pay compensation to the customer but is mandated to provide the next available online flight to his destination. The airline is not required to offer passengers reroute options via other carriers and/or by surface transportation if there are no alternate flights available on its own aircraft. But with prevailing high load factors, passengers often end up waiting an extended period of time for their connecting flights.

When a flight is delayed in excess of two hours, European airlines are required to compensate the affected passengers and provide the appropriate level of assistance. In some cases, carriers are



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While irregular operations are responsible for delays and missed flights, numerous passengers miss their scheduled flights because they check in with incorrect documentation or experience delays waiting in long security lines.

unable to provide the required assistance because of limited resources and/or available accommodation options, especially at smaller regional or secondary airports. In a few instances, the required assistance is not spontaneous or not given at all by the impacted airline. Airlines often try to invoke force majeure although the regulation does not provide for such exemptions for flight delays. Under the E.U. regulation, there is no definition of delay, and there is no differentiation between the various causes of disruptions (meteorological conditions, labor unrest/strike, reduced airport and/or auxiliary services, etc.).

There is, however, some ambiguity in the law concerning airlines' obligations for passengers during prolonged flight delays (beyond 24 hours), and this has been a major source of consumer complaints and confusion over the regulation. Since the level of compensation for prolonged delays is less than that for a cancelled flight, airlines often try to designate a cancelled flight as a prolonged delay so as to reduce the amount of compensation. The substantially high level of compensation for cancellations has also motivated carriers to often attempt to invoke extraordinary circumstances in an effort to be waived from their obligations. Within the regulatory framework, such circumstances include political instability, meteorological conditions incompatible with the safe operation of the flight, security threats, unexpected flight safety considerations, labor unrest and the downstream impact of prevailing flight delays resulting from air traffic management restrictions earlier in the day.

By late 2005, the regulatory body cited this observed abuse of the law and openly warned airlines not to abuse this component of the legislation and self regulate the number of times they cite exceptional circumstances as the cause of the flight cancellation.

In the event of denied boarding and cancellations, the regulation obliges airlines to offer passengers a choice between a refund and alternate rerouting. In practice, when airlines are unable to re-accommodate disrupted passengers on their own and/or partner aircraft, they simply offer the passenger a refund and sometimes leave the passenger

stranded in a remote location away from home. Since the regulation has been introduced, there has been better and more effective passenger assistance and services within the European Union, but substantial improvement is required for more consistent application of the rules by airlines as well as more consistent enforcement of the rules by the various national enforcement bodies in the member states.

Based on external audits sponsored by the E.U. commission, the limited effectiveness of the E.U. regulation can be attributed to two main factors:

- The text of the regulation is unclear in many areas, which has enabled carriers to find loopholes in the requirements and interpret the rules in a way that minimized their obligation.
- Enforcement of the regulation has been ineffective in many member states as airlines challenge compensation allotments and regulatory bodies are overwhelmed by the large volume of passenger complaints.

The effectiveness of the proposed passenger bill of rights in the U.S. Congress will depend on the final bill's composition. As seen from the European experience, it is essential for the necessary definitions to be clearly outlined in the document. These include but are not limited to the definition and scope of a flight delay, flight cancellation, flight misconnection, extraordinary circumstances, rerouting alternatives, and the corresponding levels of compensation and passenger notification for each situation. Another aspect that is equally important is the establishment of an enforcement body responsible for administering and championing the enacted legislation. Without such an entity, the passenger bill of rights may simply end up being yet another law that does not live up to its high expectations. **F**

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