



NACC
National Airlines
Council of Canada

February 12, 2021

Secretariat
Canadian Transportation Agency
15 Eddy Street
Gatineau, Quebec J8X 4B3, Canada
secretariat@otc-cta.gc.ca

Re: Airlines for America and the National Airlines Council of Canada Response to Questions Posed in CTA Decision LET-C-A-72-2020 related to the *Air Passenger Protection Regulations*

Dear Secretariat,

On November 5, 2020, the Canadian Transportation Agency (“CTA”) issued letter decision LET-C-A-72-2020 (“Letter Decisions”), giving interested parties the opportunity to answer general questions of interpretation related to the *Air Passenger Protection Regulations* (“APPR”). Airlines for America (“A4A”) and the National Airlines Council of Canada (“NACC”) appreciate the opportunity to provide the following answers to CTA’s questions since CTA’s decision in this proceeding will have broad implications on A4A and NACC members.¹

First and foremost, A4A and NACC commend the CTA’s collaborative approach as it works to refine its APPR guidance. As the CTA rightly recognizes, flight disruptions are typically complex events that may involve multiple factors, such as weather, airport conditions and operations, security, customs and baggage management issues, cabin crew duty time limitations, air traffic and tarmac management, mechanical issues, passenger-related disruptions, flight connectivity, and geopolitical impacts. In many cases, flight disruptions are the result of a confluence of circumstances, most of which are out of the air carrier’s control.

Second, A4A and NACC hope that this proceeding will strengthen practical and balanced standards by which air carriers are measured in their efforts to comply with APPR’s requirements. At its core, the adequacy of detailed disclosures regarding flight disruptions is highly subjective, both from the perspective of the person conveying the information as well as the passenger hearing it. In addition, air carriers are generally unable to capture and program every possible cause of a flight disruption used in automated messages. Such a task is even more impossible when seeking to satisfy the highly subjective and varied standard of every passenger. What may be great information for some could be deemed insufficient by others. And, while some may want to receive detailed minutiae at constant intervals, others may simply want to know when their flight will depart. In fact, constant updates with excessive information during an evolving flight disruption will likely cause confusion and concern for some passengers, and inevitably exacerbate the frustration of affected passengers, thereby undermining CTA and air carriers’ shared goal of ensuring that affected passengers are informed of the reasons for the disruption.

¹ A4A is the principal trade and service organization of the U.S. scheduled airline industry. Members of the association are Alaska Airlines, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc., Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member. NACC members are Air Canada; Air Transat A.T. Inc.; Jazz Aviation LP; and WestJet Airlines Ltd.

1. How much detail regarding the reason for a flight disruption should be provided by carriers to passengers pursuant to paragraph 13(1)(a) of the APPR, including in situations that evolve, resulting in multiple reasons for delay over time?

Subsection 13(1)(a) of the APPR seeks to ensure that air carriers provide information to passengers affected by a travel disruption stating: “A carrier must provide the following information to the passengers who are affected by a cancellation, delay or a denial of boarding: (a) the reason for the delay, cancellation or denial of boarding” Importantly, even before APPR’s adoption, A4A and NACC members already provided their passengers with such updates and invested significant resources to develop ways to keep them informed of a flight’s status. A4A and NACC members continue to invest in resources to improve ways to provide such information, despite the inherent complexity of air carrier operations (domestic, transborder and international). These efforts allow air carriers to communicate with passengers by sending automated messages; by providing updates on their apps; and making announcements at the gate on a regular basis. These various ways of providing information, however, will (1) never meet 100% of the differing and subjective standards of every affected passenger; and (2) in the case of automated messages or app updates, never capture every conceivable cause of a flight disruption. Notably, texts and app updates not only have character limits but also are limited in the ability to summarize complex and/or multiple factors, especially in real time or as an issue evolves. Additionally, agents announcing constant, detailed updates of a flight disruption (whether new information is shared or a mere reiteration of already provided information) may not placate passengers nor satisfy some unquantifiable standard they have in their mind of what is a satisfactory reason for a flight disruption. In fact, this is already occurring and the cause of the very problem that the CTA is trying to revisit. As air carriers provide updates and/or new information to passengers, these disclosures cause passengers to doubt the information they previously received and/or have just received. As the CTA knows, and as was noted in the Inquiry Officer’s Report, delay reasons are often numerous, interlinked and evolve over time, particularly on multi-flight itineraries. The causes of delays must be investigated and analyzed for the air carrier to fully understand them, let alone communicate specific details consistently throughout its various communication channels.

If the CTA insists on maintaining the paragraph 13 communication obligation as it pertains to reasons of the disruption, which we do not recommend given the complexity and difficulty of accurately and consistently complying with this obligation, then the CTA should hold air carriers to a “reasonable effort” and reasonableness standard to communicate whatever limited information air carriers may have, as the disruption evolves, understanding such limited information does not provide a full or accurate picture. At the same time, the CTA should explicitly recognize and publicly emphasize to passengers that day-of or “on the spot” communications or updates may not capture the entirety of circumstances, which can only happen after a comprehensive review and investigation is completed.

If there is a simple and single obvious reason for a flight disruption, such as weather problems locally, on the route or at the destination; airport flight operation restrictions; mechanical issues with a brief descriptor (e.g., cabin furnishing, broken seat, engine issue); or a crew delay then air carriers might provide clear and consistent information regarding the reason for a flight disruption. However, often there are many reasons for which a brief description should not be given including the issue being unknown until it is investigated; the complexity of the issue; a multi-flight itinerary with cascading disruptive events; and undue customer concern over the safety of flight operations.

2. If a carrier refuses to pay on the basis that a flight disruption was required for safety or was outside its control, how much detail regarding the reason for the flight disruption should be included in the explanation given to the passenger pursuant to subsection 19(4) of the APPR? Should carriers have to explain multiple reasons for a delay when more than one exists?

A4A and NACC members are committed to providing transparency to their passengers and already comply with subsection 19(4) which states: “The carrier must, within 30 days after the day on which it

receives the request, provide the compensation or an explanation as to why compensation is not payable.”

Once a request for compensation is received, our members review all circumstances causing a flight disruption to determine whether such a disruption is compensable. In cases where a disruption is caused by multiple factors, the plain wording of subsection 19(4) does not require air carriers to address and/or outline each cause in its explanation for denying a compensation request. Instead, air carriers are to explain “why compensation” is denied. Thus, a response that centers on the most significant contributing factor of a flight disruption will be and should be sufficient.

For example, if a flight disruption was caused by a 30-minute delay due to the late arrival of the crew and a 1.5-hour mechanical, a detailed discussion of the crew delay would not be useful to the passenger nor would it alter any determination on compensability since the primary cause is the 1.5-hour mechanical event. A detailed narrative would generate discussion from some customers and unnecessary questions, considering the inherent complexity of our operations. Conversely, drafting explanations with a detailed analysis would impose a disproportionate burden on air carriers during claim handling, with no benefit to the customer.

3. *What criteria should be applied to determine the appropriate categorization of a flight disruption with multiple reasons for delay?*

The criteria to determine the appropriate categorization of a flight disruption with multiple reasons for delay should follow a two-step process: first, the carrier must determine if one disruption caused another disruption; and second, the carrier must determine whether the knock-on effect of the initial disruption(s) was the most significant contributing factor to the delayed flight or whether there was a disruption independent from the initial disruption that caused the longest delay of the multiple delays having different root causes. In other words, if there are multiple, unrelated delays on one flight, with different root causes, then ordinarily the only way to determine the most significant contributing factor is to look at the longest delay, comparing the total delay caused by each group of delays sharing the same root cause.

For example, if an inbound aircraft is caught in a lightning storm, and this subsequently requires the aircraft to pass a mandatory safety inspection (one hour delay), causing the aircraft to lose its parking spot at the gate (30-minute delay), this 1.5-hour delay has the same root cause. If there are subsequent delays with onboarding customers or baggage for reasons unrelated to the initial delay, causing an additional 45-minute delay, the root cause of the flight’s delay would be the first issue, as it is longest (1.5 hours vs. 45 minutes). If this series of events later causes crew members to time out under federally mandated duty maximums, the root cause of the disruption to the flight itinerary would also be the lightning strike as this specific disruption was overarching in impacting the whole flight.

4. *What criteria should be applied to determine the appropriate categorization of a flight disruption caused by a crew shortage? When, if ever, would a crew shortage be considered a safety-related reason for a flight disruption, rather than a matter within the carrier’s control?*

The criteria that should be applied to determine the appropriate categorization of a flight disruption caused by a crew shortage should be associated with the reason for which there was a crew shortage.

There are several reasons why a crew shortage would be considered a safety-related reason for a flight disruption or outside of the air carrier’s control, rather than a matter within the carrier’s control. These include unavailability of flight crew or cabin crew caused by labor disputes, or any circumstances that could not have been prevented by reasonable measures of the air carrier, including medical events, a flu epidemic or pandemic, road accident blocking airport access, a weather event (snowstorms or even thunderstorms in summer when the airport closes the runway and crews time out), etc. These types of

situations are clearly outside of a carrier's control. Most A4A members do not have crew bases in Canada and NACC members do not have crew bases at all airports they serve in Canada; if a crew member suddenly becomes sick, the flight may not be able to operate, resulting in a delay or cancellation until another crew member can be flown in. The same limitation exists for flights in smaller U.S. cities since A4A and NACC members do not have crew bases in every airport they serve. Regardless of where they occur, crew sick calls are always outside the control of the air carrier. Moreover, any crew shortage resulting from the expiry of legal duty is a safety-related issue. The rule behind crew duty times is to ensure crew is fit to safely operate the aircraft and is of fundamental importance.

The CTA also should consider that crew duty does not expire on its own, in absence of an underlying reason, and that this reason is the root cause of the legal duty expiry. For example, when a flight crew is at the airport ready to depart when a delay occurs, and that delay lasts longer than the buffer needed for the crew to operate the flight before exceeding legal duty duration, a flight cancellation may occur. The reason for the flight cancellation in these situations is the same as the reason for the original delay.

5. *What criteria should be applied to determine the appropriate categorization of a flight disruption caused by a computer issue or network outage?*

The criteria that should be applied to determine the appropriate categorization of a flight disruption caused by a computer issue or network outage ultimately relates to determining whether those events causing the flight disruption are within the air carrier's control or not. Computer issues or network outages—including, but not limited to, internet provider outages, malicious attacks, or unforeseeable software issues, as well as IT outages or other IT-related disruptions—are operation issues uncontrollable by the air carrier that the CTA rightly recognizes in subsection 10(1)(g) of the APPR. Every air carrier's operations—domestic, transborder and international—are inextricably linked with and heavily dependent on vast IT infrastructures and resources. Air carriers invest heavily in these systems, not only to ensure continuous innovation but also because these technology systems are critical to their operations and need maintenance, security updates, and back-up systems. Computer or network failures, even if brief, are extremely costly to air carriers and air carriers invest tremendous sums in those systems for upkeep and to improve them, and to preserve their operations. The vast majority of the time, IT failures are fully outside a carrier's control.

6. *How should flight disruptions be categorized when a passenger experiences flight disruptions on multiple flights on their way to their ticketed destination? Should events affecting replacement flights affect the categorization of a flight disruption? For example, should the flight disruption be categorized based on the reason for the initial flight disruption or the reason for the longest delay?*

As A4A and NACC have stated in previous answers, assigning a reason for flight disruptions on multiple flight itineraries is complex. Generally, there should be a two-step process to determine the categorization of a flight disruption. First, the carrier must determine if one delay caused another and then group those delays that have the same root cause; and second, the carrier must determine the longest delay of the various delays having different root causes.

A disruption on a replacement flight on which a passenger was rebooked because of an initial disruption on another flight would ordinarily be considered as resulting from the disruption on the initial flight, because the passenger would not have been on the rebooked flight if it were not for the initial disruption. Therefore, events affecting replacement flights typically would not affect the categorization of a flight disruption—instead, it would normally remain based on the reason for the initial flight disruption.

7. What should or should not be considered to be “further to scheduled maintenance” as defined in subsection 1(1) of the APPR? Should a new issue identified during the repair of another issue be considered to be found further to scheduled maintenance? Do post-flight maintenance or pre-flight maintenance checks constitute scheduled maintenance?

If an aircraft is maintained in accordance with the maintenance program prescribed by the manufacturer and a mechanical event still occurs, it could not have been foreseen, and should be deemed a safety-related event.

Safety is the number one priority of every A4A and NACC member. Therefore, aircraft maintenance is of utmost importance. The CTA must understand that scheduled aircraft maintenance is preventative, pre-planned maintenance that is performed at regular scheduled intervals based on the requirements of, in the case of A4A's US members, the FAA, the air carrier, and the aircraft manufacturer. There is a parallel requirement for NACC members in the context of Canadian regulations. This type of maintenance generally includes 100-hour inspections and annual inspections. Much of the maintenance that an aircraft receives is pre-planned scheduled (thus the term “scheduled maintenance”) and known to pilots, technicians, and a carrier's operations center because the aircraft must be removed from service for the scheduled maintenance to occur. Air carriers do not schedule the aircraft for flight until the required scheduled maintenance is completed.

In contrast, unscheduled maintenance (whether pre- or post-flight) occurs when there is an unexpected issue with the aircraft that is found on the day of operation which must be addressed immediately to ensure the safe operation of the aircraft. While work would be undertaken to fix the unexpected day-of-operation maintenance issue, such work is not “scheduled maintenance” much like fixing a flat tire for a car would not be deemed “scheduled maintenance”. The manner and speed in which unscheduled maintenance issues are addressed depends on the issue, the expertise at a particular station, and the available resources. For this reason, if a maintenance issue arises and cannot be fixed in a station (e.g., lack of replacement part), a carrier will need to substitute the aircraft and undergo any necessary new crew scheduling to operate the replacement flight.

Air carriers should not be responsible for an issue that arises following the premature failure of a part or system that had been maintained in accordance with the maintenance program. This would place an undue burden on air carriers. Not only would this unfairly attribute responsibility to the carrier, but it has the potential to affect safety.

Air carriers encourage all their employees, irrespective of their job function, to report any safety hazard they are aware of and the air carrier provides assurances that no harm or negative consequence will come to them as a result of reporting a safety issue. Non-punitive reporting is a fundamental principle of a carrier's Safety Management System (SMS). If repairs that are affected as a result of a reported issue subsequently cause the carrier to incur compensation costs, employees may not feel as encouraged to report issues. This dynamic would jeopardize safety by shaking the founding principles upon which a carrier's SMS rests.

If air carriers have the potential to be penalized for making safety-related decisions, the risk of the associated financial burden to pay out APPR compensation, which for some flights is substantial, may compromise safety-related decisions, which is exactly what the Government of Canada was intending to avoid.

8. In situations where a flight disruption is the result of a knock-on effect from a previous flight disruption, what factors should the Agency consider when considering whether the carrier took all reasonable measures to mitigate the impact of the initial disruption as required by subsections 10(2) and 11(2) of the APPR? For example, should the Agency consider:

- a. remoteness of the location;**
- b. the location being outside Canada;**
- c. other factors that may affect the carrier's ability to locate timely replacement aircraft; and**
- d. if the original flight disruption occurred more than one flight earlier in a chain of flight disruptions?**

Subsection 10(2) states: "A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is due to situations outside the carrier's control, is considered to also be due to situations outside that carrier's control if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation."

Subsection 11(2) states: "A delay, cancellation or denial of boarding that is directly attributable to an earlier delay or cancellation that is within that carrier's control but is required for safety purposes, is considered to also be within that carrier's control but required for safety purposes if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation."

We urge the CTA to keep in mind that air carriers intrinsically want to provide the best service and experience for their passengers. The CTA should presume that air carriers have done everything in their power to mitigate any disruptions to their schedules, as well as the impact from an initial delay. A carrier's whole system operation is built on the premise that flights operate on time according to flight schedules and air carriers work hard to minimize disruptions of any kind that are within their control. In addition, disruptions that originate or occur outside the operator's home country are a significant factor limiting recovery.

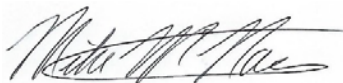
We strongly recommend that the CTA consider **all** factors offered by the air carrier when considering whether the carrier took all reasonable measures to mitigate the impact of the initial disruption. The non-operation of a particular aircraft can have a legitimate knock-on effect on other flight operations. Major disruptions to a program cannot be recovered within a short period, and it is not uncommon for operational recovery to take several days depending on the remoteness of the location, whether the location is inside or outside of Canada, availability and location of replacement aircraft or crew, and timing of the disruption in the schedule of flights. Limiting consideration of circumstances of disrupted flights to the affected flight and to the flight immediately preceding it, would create an intolerable and unjust burden on air carriers, especially because air carriers are simply trying to recover from a situation that has been externally imposed upon them.

Thank you for your consideration of these comments.

Respectfully submitted,



Keith Glatz
Vice President, International Affairs
AIRLINES FOR AMERICA



Mike McNaney
President and CEO
NATIONAL AIRLINES COUNCIL OF CANADA

cc: Scott Streiner, Chair and CEO of the Canadian Transportation Agency
Marcia Jones, Chief Strategy Officer, Canadian Transportation Agency
Tom Oommen, Inquiry Officer, Canadian Transportation Agency