



July 30, 2020

Marcia Jones  
Chief Strategy Officer  
Canadian Transportation Agency  
Ottawa, Ontario K1A 0N9  
*Via email: marcia.jones@otc-cta.gc.ca*

**RE: Airlines for America (A4A) and National Airlines Council of Canada (NACC)  
Request for Exemption from Section 62 of the Accessible Transportation  
for Persons with Disabilities Regulations (ATPDR)**

Dear Ms. Jones:

A4A and NACC, on behalf their members that operate scheduled passenger air transportation in or to Canada (“Members”),<sup>1</sup> respectfully request a conditional exemption to Section 62 of the Canadian Transportation Agency’s (“CTA”) ATPDR.<sup>2</sup> Our Members are committed to passenger accessibility, continually assess potential accessibility barriers, and implement accessibility best practices. To that end, our Members generally waive, whether by policy or practice, the liability limitations set forth in the Warsaw Convention and Montreal Convention (collectively, the “Conventions”) for claims of loss, damage, or delay of mobility aids in international transportation. In other words, our Members make their passengers whole. Because Section 62 of the ATPDR, which requires that air carriers advise passengers of the right to make special declarations of interest under the Conventions, is incongruent with such waivers of liability limitations, an exemption is requested pursuant to Sections 170(3) and (4) of the Canada Transportation Act, subject to the agreed-upon conditions herein.

Generally, the Conventions limit an air carrier’s liability for lost, damaged, or destroyed mobility aids in international transportation.<sup>3</sup> However, in advance of the transportation, a passenger may make a special declaration of interest when the mobility aid is handed over to the air carrier (subject to payment of an air carrier-imposed supplementary fee), making the air carrier liable up to the declared sum in the special declaration of interest.<sup>4</sup>

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<sup>1</sup> A4A members are Alaska Airlines, Inc.; American Airlines Group, Inc.; Delta Air Lines, Inc.; and United Airlines Holdings, Inc. NACC members are Air Canada; Air Transat A.T. Inc.; Jazz Aviation LP; and WestJet Airlines Ltd..

<sup>2</sup> SOR/2019-244 (Registration on June 25, 2019) (hereinafter “ATPDR”).

<sup>3</sup> See Article 22(2) of the Warsaw Convention and Article 22(2) of the Montreal Convention.

<sup>4</sup> *Id.*

Recognizing the special nature of mobility aids, other responsibilities with respect to mobility aids,<sup>5</sup> and the extraordinary interest in protecting passengers' mobility aids, Members typically waive liability limitations for mobility aid claims despite the limitations set forth in the Conventions, whether by policy or practice. Accordingly, a passenger does not have to make a special declaration or pay a supplemental fee to successfully make a claim regarding a mobility aid that exceeds the Conventions' liability limitations. In effect, an air carrier's waiver to the Convention's liability limits removes barriers.

We submit that advising the passenger of the right to make a special declaration of interest is not in a passenger's best interest and may, in fact, create barriers instead of removing them. First, a special declaration of interest serves no purpose when an air carrier waives the Conventions' limits because the passenger will be appropriately compensated including beyond the Conventions' liability limits; thus, a special declaration of interest may pose a barrier unto itself. Second, passengers may become confused by an air carrier advising them of the right to make a special declaration of interest, believing that they must do so and possibly pay additional fees, despite an air carrier waiving the Conventions' limitations. Third, a passenger may inadvertently make a special declaration of interest that is less than the replacement value of the mobility aid and only make a claim up to the special declaration of interest. In sum, we submit that advising a passenger of the right to a special declaration of interest under the Conventions serves no purpose and should not be required when an air carrier waives the liability limitations under the Conventions.

Our Members appreciate the need to keep passengers informed of their rights. To that end, we agree that this exemption be conditioned on the air carrier posting its waiver of the Conventions' liability limitations for mobility aids on its website.

To the extent that CTA does not grant this waiver and for those air carriers that are not subject to an exemption, we strongly urge the CTA to provide guidance regarding how air carriers should advise passengers of the special declaration of interest under the Conventions.

We appreciate the opportunity to submit this request and thank you for your consideration. If you have any questions, please contact Graham Keithley at [gkeithley@airlines.org](mailto:gkeithley@airlines.org) or Mike McNaney at [mmcnaney@airlinecouncil.ca](mailto:mmcnaney@airlinecouncil.ca).

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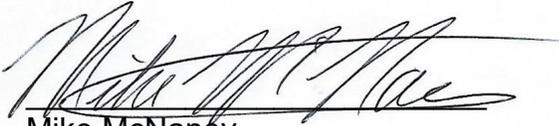
<sup>5</sup> See *e.g.*, *supra* note 2, ATPDR § 61 (requiring air carriers to provide a temporary replace mobility aid, reimbursement for any expenses incurred, repair of mobility aids, replace mobility aids, or reimburse passengers for the full replacement cost of mobility aids); 14 C.F.R. § 382.35 (prohibiting liability waivers for mobility aids); and 14 C.F.R. § 382.131 (removing liability limitations for mobility aids in domestic transportation).

A4A and NACC Request for Exemption of ATPDR Section 62  
July 30, 2020  
Page 3

Respectfully submitted,



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AIRLINES FOR AMERICA



Mike McNaney  
President and CEO  
NATIONAL AIRLINES COUNCIL OF CANADA