

January 30, 2023

Canadian Transportation Agency
By email: secretariat@otc-cta.gc.ca

Re: Application by Autumn Evoy, Erin Maxwell, Hunter Troup, Lara Plokhaar, Kandi Smiley, Edwina Brooks against Air Canada, WestJet, Air Transat, K.L.M. Royal Dutch Airlines (KLM) and VIA Rail Canada Inc. (VIA), pursuant to the *Canada Transportation Act*

Case number: 22-41428

Position Statement of American Airlines on Letter Decision No. LET-AT-55-2022

American Airlines, Inc. (American) respectfully submits this position statement on the preliminary findings of the Canadian Transportation Agency (Agency) related to Emotional Support Animals (ESAs) and Emotional Support Dogs (ESDs) in Letter Decision No. LET-AT-55-2022 (Dec. 14, 2022). American appreciates the opportunity to explain why CTA should not finalize this preliminary decision. Allowing ESAs is a slippery slope, one which led to massive fraud and unsafe circumstances in the United States.

American supports the right of qualified individuals with a disability who have a legitimate need to travel with a trained service dog. American believes, however, that the Agency should not require air carriers to establish a separate standard for ESAs and should not distinguish them from pets for the purposes of air travel.

First, the preliminary decision does not justify deviating from the approach taken in the United States, which is to avoid requiring air carriers to treat ESAs differently than pets inasmuch as there is no recognized training of ESAs that makes them different. Regulatory alignment between Canada and the United States supports safe and effective service for all of American's customers, including individuals with disabilities. Canada's Accessible Transportation for Persons with Disability Regulations (ATPDR) state that most of its service provision regulations "reflect current requirements or practices in both the United States and the European Union (EU). This addresses the need for consistency, both for members of the disability community and industry, and for regulatory alignment." (Canada Gazette, Part 2, Volume 153, Number 14.) Following this rationale, the Agency should maintain alignment with the U.S. model of allowing airlines to classify ESAs (including ESDs) as pets. Alternatively, if the Agency finalizes the preliminary decision, it should not apply to U.S. carriers, who would face a distinct and undue hardship from the complexity and confusion caused by inconsistent Canadian and American requirements on this subject.

The Agency's proposed deviation from the U.S. approach is especially unfounded because the preliminary decision purports to create broadly applicable new requirements without engaging in a full regulatory process and without articulating a cost-benefit analysis. For example, the preliminary decision does not explore whether requiring

individuals with mental health disabilities to undertake the time and expense of obtaining legitimate documentation for an ESD accommodation is more economically advantageous than paying an airline pet fee—and that is before even considering the costs to air carriers of having to administer applications for ESD accommodations. By contrast, allowing air carriers to treat ESDs as pets is a simpler process that can be equitably administered and can streamline costs. Such points support why a full regulatory process would be more appropriate to consider the new policies that the Agency is exploring.

Second, the preliminary decision creates a two-tiered system for customers traveling with dogs that are not trained service dogs. The disparity of access and expense will encourage continuing pressure to further expand the proposed accommodation for ESDs. CTA should not yield to pressure to expand the accommodation by authorizing species other than dogs, allowing additional locations in the cabin, or reducing the required supporting documentation. Such relaxation of the conditions would only exacerbate the problems of the preliminary decision. The preliminary decision limits the accommodation to ESDs, the dog must remain under the seat in a pet carrier, and the passenger must submit documentation ahead of time. If the Agency finalizes its preliminary decision—which the Agency should not do—American urges that all these conditions should be strictly maintained.

To be clear, American disagrees with the Agency's finding that "appropriate conditions and safeguards" would allow air carriers to carry ESDs without undue hardship. For that reason, the Agency should not finalize its preliminary decision. But American concurs with the Agency's findings that it would pose an undue hardship on air carriers if the Agency were to require accepting species of ESAs other than dogs and require the unrestricted carriage of ESDs.

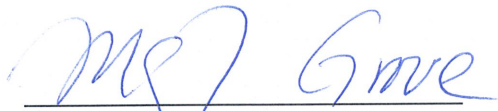
Third, experience shows that fraud and inequity result from the disparity created by tiered treatment of animals that are not trained service animals. Although the preliminary decision proposes documentation requirements for both the customer and the ESD, it is well-known that such documentation requirements could be and often were fraudulently circumvented during the period when the United States used to require air carriers to carry ESAs. The preliminary decision does not establish how that outcome will be averted here. Customers determined to avoid a pet fee and with the know-how to obtain this documentation fraudulently will do so. To the extent that obtaining fraudulent documentation can be cheaper and quicker than genuinely complying with the documentation requirements, honest customers seeking an ESD accommodation would, perversely, suffer a greater burden.

As the Agency's implicit solution to deter fraud and support equitable application, the preliminary decision forces air carriers to assess the validity of supporting documentation for ESD accommodation requests. This imposition of responsibility on air carriers is an undue hardship, burdening them with administrative complexity, customer

service challenges, and potential legal exposure. The preliminary decision does not solve these problems, but instead shifts them on to air carriers.

For all of these reasons, American respectfully submits that the Agency should not finalize the preliminary decision, and instead should allow air carriers to treat ESDs as pets. American thanks the Agency for considering these views.

Respectfully submitted,



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