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PAL Airlines Submission to the Canadian Transportation Agency (CTA) Consultation on Proposed Changes to Canada's Air Passenger Protection Regulations.

About Us:

PAL Airlines is an independent regional airline based in St. John's Newfoundland and Labrador with over 45 years of experience in the aviation industry. The airline serves an extensive network of scheduled and charter destinations across Eastern Canada and Quebec and has steadily expanded its presence by executing on a strategy of maintaining close contacts in the communities we serve, by responsibly adding sustainable capacity to meet emerging market demands and by emphasizing safety, reliability, and exceptional customer service. In addition to its own established commercial network PAL Airlines has recently completed a commercial agreement with Air Canada that will see it acquire up to six additional aircraft to provide service to regional markets in eastern Canada on a capacity purchase basis, at Air Canada's direction.

PAL Airlines is also the managing partner of Air Borealis. A passenger airline providing scheduled airline services to coastal Labrador, medevac services across Labrador, charter services throughout Labrador and into Quebec and cargo services extensively within the region, Air Borealis is an indigenous business established as, and overseen by, a partnership between the Innu Nation of Labrador, the Nunatsiavut Inuit and PAL Airlines.

PAL Airlines is also a proud member of the Exchange Income Corporation (EIC) family of air operators, which collectively makes up the largest regional airline network in Canada. A registered Canadian corporation, EIC's holdings include Calm Air, Perimeter/Bearskin Airlines, Keewatin Air, Custom Helicopters and PAL Airlines as wholly owned subsidiaries and Wasaya Airways and Air Borealis which are owned and operated in partnership with First Nations. Together, the company connects over 100 individual markets across Canada and serves as the sole provider of vital aviation services to over 50 Northern and First Nations communities.

In developing the EIC airlines' extensive regional network, particularly in instances where the company's airlines provide vital aviation services for isolated First Nations communities, EIC operators have applied a business model emphasizing strong partnerships, open communication, and continual consultation with our customers. EIC family airlines actively identify opportunities to invest in community infrastructure beyond the airfield, encourage local hiring practices and make sure we are contributing meaningfully to the communities we serve. These mature relationships are unique to EIC and make the company an irreplaceable resource as government seeks to ensure viable, sustainable aviation service levels are rebuilt for Canada's most sensitive communities.

The company's combined experience in aviation provides a unique understanding of the challenges associated with building and maintaining regional air services in Canada. Across the EIC network, the company has developed unparalleled experience in the importance of commercial aviation as an economic enabler, the health of which has become demonstrably more important as Canada seeks to rebuild regional aviation networks following the COVID-19 pandemic.

With this important context in mind, PAL Airlines has both a significant interest in, and unique perspective on, the development and implementation of amendments to the Air Passenger Protection Regulations and broader changes to the Canadian Transportation Act that were contained in the Budget Implementation Act, Bill C-47. We feel strongly that it is vital that these legislative and regulatory changes be developed in an open and consultative manner that balances reasonable standards of passenger care and compensation with overall impact to industry, realities of the Canadian operating environment, and the need to support highly sensitive essential regional air services that connect millions of Canadians to vital services and economic opportunity.

Context and Cost Analysis:

As a regional airline generally serving smaller domestic markets with limited airport and community infrastructure, PAL Airlines will generally restrict our comments to the company's particular operating context. Generally, the company is deeply concerned that the proposed changes to Canada's APPR framework neglects the realities of regional and northern operations, will create significant financial challenges to the development and sustainability of existing and new regional services in Canada and are likely to produce significant unintended consequences for users of regional air services including increased costs and diminished services.

That said, especially in the context of Canada's strict adherence to the "user pay" principle for the development and sustainment of airport and aviation infrastructure across Canada, as a regional carrier PAL Airlines is deeply concerned by the financial implications of the proposed APPR not just on itself but also as it relates to national air carriers and by extension on the entirety of Canada's aviation infrastructure. As such, PAL Airlines strongly encourages the CTA reserve any final decision on APPR regulations, including consultations on the proposed "cost recovery" levy, until such time as the comprehensive cost analysis required by Treasury Board guidelines has been completed and publicly released. Any such analysis should include information on cost impacts on airfares paid by passengers.

Canada's current APPR framework was implemented in 2019, only a few months before the impacts of the COVID-19 pandemic decimated the aviation industry in Canada and severely impacted regional airline services across the country. As such, the current APPR is functionally untested in normal operating circumstances and, as it is currently constituted, may already be contributing to the limited reestablishment of regional air services across Canada as an unintended consequence. For instance, the current APPR makes it more difficult for regional airlines who serve multiple markets on a single flight number to protect passengers in an exceptional circumstance (such as a weather delay) as skipping the destination facing the delay in favour of moving other passengers on the flight is considered a commercial decision and triggers APPR obligations. The direct, unintended result of that policy is already less frequent, more expensive regional services.

Compounding cost burdens in the system without a responsibly developed understanding of the implications for the sustainability of regional services risks further degradation of those same services in Canada as a direct result.

EU261:

Frequently put forward by politicians and commentators as an effective passenger protection framework, the European Union's EU261 is both an improper comparison and a cautionary tale for regional air services in Canada.

Primarily, in the context of regional air services, Canadian and European operating environments are functionally incomparable. Bluntly, operating an airline in Canadian regional markets is significantly more challenging than in Europe, with the Canadian context defined by Canada's large geography, low population density, frequently severe weather challenges and relatively sparse infrastructure. It is an inescapable reality that flights between regional airports in Canada will be disrupted on a more frequent basis than flights between major metropolitan centres in Europe, that operations will be more difficult to recover, and, by extension, that financial implications will be more severe.

Moreover, since implementation EU261 has, by increasing the burden on airlines operating on low margins, led in whole or in part to airline insolvencies and route abandonments. These outcomes are particularly concerning in Canadian regional markets generally characterized by thin margins and significant hurdle costs.

Despite the clear challenges EU261 would pose for regional services in Canada, the APPR as currently contemplated proposes to actually exceed the compensation levels EU261 has established, making cost of compliance significantly higher and exacerbating as opposed to mitigating the risks described above. This will disproportionately and unfairly impact regional markets, leading inevitably to increased ticket costs and reduced services for Canada's most sensitive populations.

In brief, in moving ahead with amendments to the APPR, the CTA needs to carefully consider the implications of adopting an international model developed in a jurisdiction with significant operational and financial differences from our lived reality in Canada, particularly as relates regional services.

Shared Responsibility:

The proposed amendments to the APPR fail fundamentally in their inability or unwillingness to acknowledge the accountability and shared responsibility of all stakeholders in the air travel ecosystem, including but not limited to air carriers, airports, travel agents, CATSA, NAV Canada, CBSA, ground service providers and passengers. Failure to account for the vital role these service providers play through the development of a meaningful and shared accountability framework, then compounding that failure through the designation of airlines as the responsible party unless proven otherwise, can only result in turning airlines into a designated insurance provider for the stability of the entire aviation ecosystem. Rather than improving passenger experience, addressing the already elevated costs associated with aviation infrastructure in Canada or encouraging safe operation, the inevitable consequence of this approach is elevated costs to consumers and reduced service for communities with markets too small to absorb these increased costs.

To address this oversight PAL Airlines recommends the development and implementation, prior to the APPR amendments coming into force, of a shared accountability framework intended to develop better understanding of the causes of disruption and establish a fair process to adjudicate financial liability when a delay or disruption occurs.

Comments on the July 2023 CTA Discussion Paper:

As a general comment, PAL Airlines submits that several of the proposals and key concepts contained in the consultation paper are ambiguous and lack sufficient clarity. As an example, the proposed test for events deemed “inherent to normal exercise of the activities of an airline” is unclear and makes insufficient allowances for the paramount importance of safe airline operations in combination with the inherently unpredictable nature of mechanical deficiencies. Throughout its proposed regulations, it will be incumbent on the CTA to be as clear as possible in its intent, mitigating confusion for airlines and their passengers.

PAL Airlines would like to offer the following specific comments and recommendations as relates the proposals set out in the CTA Consultation Paper released on July 11, 2023.

Exceptional Circumstances:

As a fundamental principle, any regulation developed as relates exceptional circumstances should ensure that airlines cannot be penalized for complying with safety obligations. Certain situations, such as a mechanical failure, are not foreseeable and do force flight delays and cancellations. Airlines should not be penalized in these circumstances for prioritizing safe operation of the aircraft above all other considerations and following mandatory safety regulations until any mechanical defects are rectified.

With that in mind, the elimination of the “safety-related” category of exemptions in favour of a narrow list of “exceptional circumstances” is disconcerting. There remains a sound reasoning behind the safety exemption, namely that safety must always be the top priority for any airline and punitive consequences should not be associated with adherence to safety regulations, and in that respect APPR regulations should be consistent with existing (and planned) safety rules and practices that are applicable to airline regulated activities so that there are no overlaps and/or contradictions. To do otherwise undermines the intent of Canada’s robust aviation safety framework.

As such, PAL Airlines is proposing a robust, well defined and carefully considered delineation of “exceptional circumstances” to include:

- Security risks such as war, political instability, illegal acts, sabotage, terrorism, and unruly passengers.
- Weather or other atmospheric conditions, or natural disasters, that make it impossible to safely operate the flight.
- Airport operational issues for which the airline is not responsible.
- Manufacturing defects that reduce safety and identified by the manufacturer or by a competent authority including third-party platforms, such as software components or mechanical issues on board an aircraft.

- Health risks or medical emergencies
- Conflicts with wildfires
- Air traffic control instructions, restrictions, airspace closures, airport operational issues
- An official NOTAM as per the Canadian Aviation Regulations sub 101.01 (1)
- Orders or instructions from state, law enforcement, or airport security officials
- Labour disruption at the airline or by essential air service providers like airport managers, air navigation personnel, or ground handlers
- Technical defect(s) and/or problems, provided that all of the following criteria is fulfilled:
 - the maintenance has been executed in accordance with the approved maintenance program, including/taking into account Minimum Equipment List (MEL) and Configuration Deviation List (CDL)
 - the defect is related to the airworthiness of the aircraft, is not listed in the Minimum Equipment List (MEL) and results in the defect having to be fixed before the flight can operate or several defects occur which are listed in the MEL and/or CDL and in accordance with the Canadian Aviation Regulations the pilot decides that it is not safe to operate the aircraft with the combination of these defects.
 - A defect or concern discovered via the carrier's, a supplier, or a relevant 3rd party's safety management system or quality assurance program that requires immediate action to ensure the safety of further flight(s).
- System outage or infrastructure breakdown by governmental or essential service providers, essential to the operation of a flight.
- A delay, cancellation or denial of boarding that is directly attributable to earlier delay(s) or cancellation(s) which has occurred within the last 48 hours and that was due to exceptional circumstances, is considered to also be due to situations of exceptional circumstances if that carrier took all reasonable measures to mitigate the impact of the earlier flight delay or cancellation.
- Any other situation that cannot be reasonably foreseen if the carrier proves that it and its servants and agents took all measures that could reasonably be required to avoid the delay or cancellations or that it was impossible for it or them to take such measures.

Distinction Between Large and Small Airlines (Standards of Care):

The CTA's distinction between large and small carriers of two million passengers carried annually is arbitrary, binary, and fails to acknowledge in any meaningful way the operational reality of serving rural and remote destinations in Canada.

As a first step, the proposed amendments require amendment to acknowledge the reality that rebooking regulations can only practically be followed (or should only practically be applied) in instances

where viable alternative rebooking options exist. Across the majority of regional destinations in Canada, that is simply not the case.

The CTA guidance also lacks clarity as regards all other aspects addressed in standards of care and assistance including communication, accommodation, food, internet services and chain of effect delays. Again, there is a fundamental operational distinction between imposing those responsibilities at Pearson International Airport or Trudeau International Airport vs. trying to meet standards of care obligations in markets like Goose Bay, Nfld or Mont-Joli, Quebec. Assistance can only be an expectation if it is available, and airlines should not be held responsible where assistance does not exist or cannot be accessed for reasons beyond its direct control.

Situations Outside the Airline's Control:

The CTA's current proposal states:

"If a flight is cancelled or once a delay has reached 3 hours, the airline must provide the passenger with a confirmed reservation on the next available flight operated by them or a partner airline. The flight must depart within 48 hours after the departure time indicated on the passenger's original ticket. If the airline cannot rebook the passenger onto a flight that departs within 48 hours, the airline must, at the passenger's choice.

- *Provide a refund, or*
- *Make alternate travel arrangements for the passenger, free of charge..."*

Again, this proposal simply does not reflect the realities of regional service in Canada. Capacity constraints limit the ability to provide revenue protection without displacing additional paying passengers, the "impossible to operate the flight safely" test is ambiguous and lacks consideration for factors including runways contaminated by weather or the absence of vital infrastructure such as de-icing services and there is no consideration given for destinations where services may be less than daily and services are only provided with multiple days between scheduled flights.

Communications:

While the CTA's consultation paper proposes new regulations with respect to communication of information about flight delays or disruptions, PAL Airlines would again emphasize that these requirements need to include appropriate allowances for the challenges associated with service to regional destinations.

Such allowances should include:

- Ensuring regional carriers have access to reasonable infrastructure at airports that would be required to effectively confirm and relay a passenger's preferred means of communication at check-in.
- Limiting the list of preferred communication to electronic means including email and SMS text.
- Making a minimum allowance of 12-months following the initial introduction of regulations that allow carriers opportunity to develop and implement appropriate notification systems.
- Confirmation that communication can be limited to the "lead" passenger in instances of family or group bookings.

- Requiring third party travel booking organizations to accurately collect and share with airlines preferred means on communication and passenger contact information.
- The establishment of specific time milestones at which communications must be made, rather than the currently ambiguous “at the moment” wording proposed by the CTA.
- Removal of the requirement to provide the reason for a delay, as these evolve regularly and change rapidly, particularly at regional destinations, and undermines the intent of providing clarity to passengers.

Chain Reaction (Knock on Effects):

Canada’s current APPR regulations place no restrictions on the number of flights that can trace back to an original disruption as the reason for a delay or cancellation. This allowance is predicated on the recognition that one disrupted flight will invariably lead to subsequent disrupted flights given the displacement of crews, planes, or other equipment. This is a reasonable, logical allowance developed as the direct reflection of the interconnectedness of the air travel system in Canada.

The CTA’s proposed amendments to the APPR restrict this “knock-on effect” in the case of a delay caused by exceptional circumstances to two flights – the originally impacted flight and one additional flight.

This proposal reflects a fundamental lack of understanding for the interconnectedness of the air travel system and is a specific and punitive attack on regional air carriers in Canada who will, through the course of a given day, operate an aircraft on multiple legs serving multiple destinations where there is absolutely no opportunity to regain the time lost to the original delay.

Moreover, the proposal is reckless and runs counter to the basic tenets of aviation safety in Canada, encouraging maintenance personnel and flight crews to rush their work and recover flights quickly lest the airline be penalized for downline delays. Under no circumstance should safe behaviour of maintenance personnel or flight crew result in harm to their employer, yet that is exactly what the CTA’s proposed regulatory changes to knock on effects proposes to do.

To reflect the operational reality of serving regional destinations in Canada, PAL Airlines recommends that airlines be able to claim knock-on effects for a period no shorter than 48 hours after the occurrence of the original disruption.

Conclusion:

The proposed regulatory changes to the APPR put forward by the CTA will not enhance the efficiency of the air travel system in Canada. They will increase airfares for Canadians by driving costs for airlines ultimately reducing competition and degrading the competitive aviation market in Canada. Given the lack of meaningful consideration evident in these regulations for the realities of regional airline service in Canada, these consequences will be most directly felt by the Canadian citizens and communities who depend on reliable regional air services for access to economic opportunity, vital medical care, essential cargo delivery, education and training and a host of other essential services.

It is vital in this context that the CTA allow itself the time, study and broad-based consultation required to fully understand and quantify the implications of what it is proposing through these amendments to the APPR in Canada. Regulations should be fair, evidence-based, focused on meaningful improvements to passenger experience, properly reflect and prioritize the utmost importance of safety in aviation, minimize the significant cost increases the proposed regulations would impose on passengers and meaningfully account for the challenges inherent in servicing regional, rural, and remote destinations in Canada. Failure to undertake that work risks significant undue harms for Canada's most sensitive communities and citizens.