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Comments of the International Air Transport Association on Phase II of the Accessible Transportation for Persons with Disabilities Regulations

Dear Ms. Jones,

IATA appreciates the opportunity to participate in the Canadian Transportation Agency's (CTA) consultations on Phase II of the Accessible Transportation for Persons with Disabilities Regulations (ATPDR). IATA represents the interests of some 290 international airlines, many of whom fly to and from Canada or connect with carriers that do the same. As a result, IATA and our members have a significant interest in the outcome of this consultation.

As previously stated during the ATPDR Phase I consultation, the airline industry is committed to ensuring that safe, reliable and dignified air travel is equally accessible to all passengers. This commitment was further demonstrated at the 75th IATA AGM in June 2019 where it unanimously agreed on a Resolution on Passengers with Disabilities calling on governments to adopt IATA's core principles for accommodating passengers with disabilities. These principles aim to change the focus from disability to accessibility and inclusion by bringing the travel sector together with governments to harmonize regulations and provide the clarity and global consistency that passengers expect.

General Comments:

IATA advocates for policy principles that are consistent and coherent with existing rules and at the same time offer clarity and certainty. Regulations should be predictable and applied with clear oversight responsibility and without discrimination against those being regulated. In addition, audiences subject to regulatory compliance need to clearly understand the regulations that will apply, what is expected of them, and have enough time to be able to comply with new requirements.

The past two years have been the most aggressive transformative period in Canadian air transport regulation since the early 1990's. While we welcome the CTA's commitment to provide safe and dignified travel for passengers with disability and while we in principle support modernizing regulations, the pace of regulatory transformation and implementation amidst an array of competing priorities such as the ATPDR Phase I implementation, a review of the accompanying ATPDR Phase I guidance material, the APPR and corresponding Air Travel Data Performance Regulations, managing safety and operational realities due to the grounding of the 737 MAX combined with the impact of COVID-19, is clearly not sustainable.

As a result, we therefore respectfully request the CTA to defer the ATPDR Phase II until the ATPDR Phase I have been implemented and the industry has had sufficient time to assess the impact thereof and stabilize.

Below are our comments on the various sections of the ATPDR Phase II as well as our input in response to the CTA's cost benefit analysis (CBA).

One Person, One Fare for International Travel

1. **Should the 1P1F requirement apply to transportation to and from Canada? If so, should it apply to both Canadian and international transportation providers?**

IATA opposes 1P1F as an inappropriate burden on for-profit private corporations, either domestic or international. Airline seats are the primary asset being offered to the public by airlines and as such airline systems are designed to maximize the sale of those assets. The profitability of individual airline flights often comes down to the remaining 3-4 seats sold. Giving those seats away to accommodate Persons with Reduced Mobility (PRM) would have a significant impact on airline profits and could result in the increase in airline ticket prices which could impact passengers at large.

Extending 1P1F to international operations will, along with already existing high taxes and fees, serve as a further disincentive for airlines to serve Canada or Canadian hub airports. Any expansion of 1P1F beyond Canada also expands the opportunity for significant abuse by otherwise non-disabled passengers seeking more comfortable accommodations. IATA therefore strongly encourages the 1P1F consideration be reviewed and ideally rescinded as it remains a commercially offensive program that is well beyond any jurisdiction's current obligations for accommodation for PRMs.

This proposed rule for international travel also highlights the need to ensure that any regulatory requirement be justified from a cost-benefit basis. Loss of airline seats under 1P1F poses a significant cost to any airline subject to the rule. While we are sympathetic to persons with disabilities who may not have

the resources to purchase a second ticket for their attendant or service animal, no other industry in the world is required to give its product away for free. Such expropriation of airline property by governments is wholly inappropriate. If governments wish to adopt this social policy objective, it is our view that they should have the resources and mechanisms to be able to fund it. At no point should the cost of this social policy objective be borne solely by for-profit private corporations.

2. **Achieving consistent approaches to accessibility for international air travel requires discussions and cooperation among many jurisdictions. Given this, it may not be possible to achieve the goal of completely barrier-free international travel through the CTA's regulations. What strategies -- as a complement or an alternative to changes to CTA regulations -- could be pursued to help remove barriers to Canadians with disabilities when they fly to or from other countries?**

We believe that 1P1F would violate the pricing provisions in the Canada-US and Canada-EU Air Transport Agreements as well as other agreements to which Canada is a party. This is because 1P1F is a form of fare regulation that stands to be assessed for compatibility under the agreements Canada has signed with other countries for air services.

The Canada-EU Air Transport Agreement provides, under "Commercial Framework", that the *"Parties shall permit prices to be freely established by the airlines on the basis of free and fair competition. Neither Party shall take unilateral action against the introduction or continuation of a price for international transportation to or from its territory."* This principle is also reflected in the Canada-US Agreement.

1P1F either requires that an accompanying person be provided with a fare free of charge, or it provides that an additional seat be provided as part of the first person's fare. Regardless of interpretation on this point, such a requirement is clearly a form of pricing or fare regulation that derogates from the principle that prices are to be freely established in the marketplace. It is not merely a matter of regulating physical space next to the PRM. Moreover, Article 10 of the Canada-EU Agreement deals with "accessibility measures". It requires that such measures be "reasonable and proportionate" and that planned measures be the subject of consultation between the parties before these are introduced. To IATA's knowledge, the Government of Canada has not conducted this analysis nor held the appropriate consultations with other governments.

Extending these regulations to international carriers also raises the difficulty associated with different jurisdictions having different rules impacting PRMs on the same flight. In the likelihood that the CTA's regulations in this regard will be similar but not exact in scope to the US regulations under Part 382 of the US Rules on Nondiscrimination on the Basis of Disability in Air Travel, that will not be the case of other countries to which Canadian PRMs may fly. As such, extending the rules internationally will likely result in PRMs having certain accommodations when leaving Canada that would not be provided upon arrival at the connecting airport, and of PRMs having unreasonable or unmet expectations as a result. We therefore

urge the CTA to carefully consider how to address this possibility/likelihood before extending these rules to international flights and the importance of coordinating with other regulatory bodies internationally prior to imposing requirements that have little or no international equivalent. Due to the inherently international nature of the airline industry, such an approach must be a guiding principle in regulatory air law.

Emotional Support Animals and Service Animals Other than Dogs

IATA fully supports the right of individuals with disabilities who have a legitimate need to travel with a trained service dog to do so. IATA member airlines spend millions of USDs each year, not only to accommodate such passengers to the extent required by law, but also by ensuring that they have a safe and satisfying travel experience.

For airlines, it is vital that only dogs which are individually trained to do the work or perform tasks for the benefit of an individual with a disability be allowed on board. This therefore clearly excludes all other species of animals, whether wild or domestic, trained or untrained. This is a common-sense approach that recognises that dogs are the primary species that can be trained to assist an individual with a disability (and be trained to behave in a public setting).

IATA has worked tirelessly with other regulators and our partners in the disability community to overcome certain challenges inherent in air travel that serve to inhibit access to PRMs. For example, many individuals require the assistance of a trained service dog when traveling by plane. Airlines now have procedures in place to accommodate service dogs in the confines of an airline cabin in a manner that accommodates the needs and welfare of the trained service dog and all passengers on the plane.

IATA notes it is difficult to discuss service animals without also discussing the parallel issue of Emotional Support Animals (ESAs) for which IATA members support an explicit exclusion from regulations.

It is well documented that many requests for ESAs are fraudulent. Furthermore, ESAs are not trained to behave in an aircraft and can therefore pose a safety, security and health risk.

In the USA where ESAs are currently permitted on board, our member airlines regularly receive complaints from other passengers regarding the behaviour of ESAs attacking trained service animals or passengers, obstructing the aisle, and defecating or urinating either onboard the aircraft or in non-approved locations in the terminal. IATA has worked with other trade associations not only to provide a number of detailed submissions to the US Department of Transportation (DOT) but to get other regulators and animal welfare associations aligned to dissuade ESAs from being allowed on board in the interest of the welfare and the safety of PRMs who have a legitimate need to fly with trained service dogs, as well as other passengers and cabin crew.

Unfortunately, in the United States, a growing number of passengers who would otherwise not travel with their animals or who would follow airline policies on the carriage of pets, have taken advantage of a 2008 US Department of Transportation (DOT) regulation to claim that they need to bring their animal onboard as an "emotional support animal" or "ESA."[1] Under this regulation, airlines are required in most circumstances to accommodate ESAs on condition that the passenger can provide documentation from a licensed mental health professional indicating that they have a recognized mental or emotional disability and that they need the emotional support of an animal when traveling by air. The regulation only excludes reptiles, ferrets, rodents, sugar gliders, and spiders from the types of animals that the airline must accommodate as an ESA.

This broad regulation, along with the steady growth of online "licensed mental health professionals" willing to provide this documentation for a fee sight-unseen, has resulted in the exponential growth in the number of ESAs traveling on US aircraft. According to Airlines for America (A4A), the number of passengers traveling with ESAs increased from 540,000 to 1.13M in the past three years, far outpacing the growth in the number of passengers traveling with pets and with service animals. In addition to the lost revenue for airlines, these illegitimate service animals have created an unsafe situation for passengers, airline crew, and legitimate service animals, both at the gate and onboard the aircraft. This in turn has made it more difficult for passengers with trained service animals to fly with safety and certainty.

Over the past several years, the DOT has recognized that this fraud is having a serious negative impact on airlines, passengers, and the disabled community. In 2016, it convened a negotiated rulemaking to study the issue in depth.[2] After continuing consultation with all interested parties it issued a Notice of Proposed Rulemaking (NPRM) on February 5, 2020, that sets forth a new service animal definition that does not recognize ESAs and limits the species that qualify as service animals to dogs that are individually trained to support the needs of a qualified individual with a disability (physical, sensory, psychiatric, intellectual, mental).[3] IATA strongly supports the DOT NPRM and will be submitting comments by the April 6th, 2020 deadline.

It is important to note that the 2008 DOT regulation excluded foreign carriers from the requirement to carry ESAs and provided carriers, who would otherwise be required to support ESAs, to file for a conflict of law waiver when carrying such ESAs would violate the laws of other countries they serve. Since the United States is the only country that currently accommodates ESAs, this exclusion for international carriers is critical to maintaining the seamless travel network. IATA feels strongly that any inclusion of international carriers in any regulation accommodating ESAs or other animals that are not specifically and demonstrably trained as service animals would be a disservice to airlines, passengers, and the disability community.

[1] Nondiscrimination on the Basis of Disability in Air Travel, Final Rule, 73 Fed. Reg. 27613 (May 13, 2008) and Nondiscrimination on the Basis of Disability in Air Travel, Final Rule, 74 Fed. Reg. 11469 (March 18, 2009).
[2] https://www.transportation.gov/access-advisory-committee
[3] Traveling by Air With Service Animals, Notice of Proposed Rulemaking, 85 Fed. Reg. 24 (February 5, 2020).

Given the experience in the US, IATA would strongly oppose any CTA rule that includes ESAs as service animals for either domestic or international commercial air travel. In that regard, we offer the following answers to the questions posed in the Consultation paper:

1. We are opposed to any requirement to carry ESAs and do not believe that there are any conditions that would be acceptable.
2. If the CTA decides to require accommodation of ESAs, it should be limited to dogs that can fit onboard in a carrier and stored at the floor space of the passenger's feet, at all times, in order to avoid the safety risk that lap-held animals pose. Large dogs, as well as other animals, are too potentially disruptive in the cabin environment, particularly during an emergency, to be accommodated. In the likelihood that situations will arise whereby an ESA would not fit in a carrier on the floor space, it is important that passengers and airlines receive clarity on their respective rights and obligations. As such, IATA requests the CTA to recognize and clearly stipulate that airlines are under no obligation to provide additional space for free for any ESA that exceeds the floor space of the passenger's seat. In the event that the animal does not fit in the floor space and there is no available seating in the same class of service on the flight where the animal could be accommodated, that the airline be afforded the decision to deny travel to these passengers, without being constituted a case of denied boarding.
3. We do not support a criteria-based approach to the acceptance of ESAs. We do not believe that criteria can be effective in limiting animals that gnaw, pose a high allergen risk, or may exhibit unacceptable behaviour. Furthermore, such an approach places an undue burden on airline resources.
4. Any mandate that airlines accommodate ESAs must also be extended to rail, marine and bus. These other modes of transportation are better suited to support these animals than airlines.
5. It is difficult to accommodate ESAs in any type of aircraft. While smaller aircraft may have some unique limitations, any accommodation of ESAs on aircraft is problematic, particularly in emergency situations.
6. If ESAs are permitted, they should be limited to one small dog. Any additional requests should fall under the pet policies of the individual airlines.
7. If ESAs are permitted, the CTA should require passengers to produce documentation issued by the CTA that sets forth the condition that the animal is trained to address, the training the animal has received to perform a service function, and certification that the animal can handle itself properly while on an aircraft. The documentation should clearly state that any false statements are punishable under federal law. IATA has significant concerns that even strict documentation requirements will not prevent those who are determined to bring their pets on board the aircraft.
8. In the United States, airlines have struggled with passengers who only announce their intention to travel with an ESA upon arrival at the airport or at the gate. This puts an incredible strain on airline staff who have limited time and resources to validate the passengers' claims. IATA believes that airlines should be given 96 hours in advance of departure to verify the documentation being presented and there should be only limited circumstances when accommodation at the gate

should be required. The CTA should again specify that if advance notice is not provided, the airline may deny transportation to these passengers without it constituting denied boarding.

9. If ESAs are permitted, they should always be required to be in a carrier. We also note the challenge of having animals out of the carrier that nearby passengers may deem a threat or may be allergic to.
10. We recommend that service animals be restricted to dogs and that they be specifically trained to address PRMs particular needs.

Planning and Reporting Obligations under the Accessible Canada Act

In response to the CTA's requirement to put the above said obligations in place for transportation providers, IATA and our members support the rationale for accessibility plans. However, this should be implemented within an appropriate timeframe and in the least burdensome way.

As already highlighted, airlines are currently under a significant amount of regulatory and operational pressures – many of which are beyond their control. As a result, we propose that a minimum of 24 months be afforded to airlines in order to adequately consult, if and where appropriate, draft and publish their accessibility plans.

Cost Benefit Analysis

IATA understands that the CTA is required to conduct a Regulatory Impact Assessment of the proposed regulation, which in turn includes an evaluation of the benefits and costs of the proposed regulation to Canadians, businesses, governments and the environment.

Cost-benefit analysis (CBA) provides a decision-making framework for assessing the merits of a proposed policy initiative or regulation. It is applied to determine whether the proposed regulation will result in net benefits for the relevant stakeholders. A common principle governing most regulatory regimes around the world is that the government is required to demonstrate that the benefits to consumers must exceed the cost the regulated industry will bear in complying with those rules. To put it differently, regulations should only be imposed when necessity is demonstrated and should be proportional to the problems identified.

In the case of the ATPDR, the CBA should be carefully designed to take into consideration the benefits and costs for the affected stakeholders. On behalf of its member airlines, IATA proposes for the CTA's consideration a summary of probable cost impacts on airlines that should be taken into consideration – these include monetizable and non-monetizable impacts.

The regulation would impact all carriers offering service to, from and within Canada therefore impacts on Canadian carriers and foreign carriers subject to the proposed regulation should be considered. The

ATPDR would affect all carriers offering service to, from and within Canada, including connecting flights. For example, on routes between Canada and Europe, European carriers would also be subject to the conditions of the ATPDR, in addition to existing European rules. While there may be sound rationale for limiting the impact analysis to Canadian entities, this does not hold for an industry that is inherently international as is the case with air transport.

The regulation would entail administrative compliance costs, which should be taken into consideration. The CBA should quantify the administrative costs to carriers to comply with the ATPDR, which could be substantial. Such costs would include, but not limited to, investment in and training of staff; dispute resolution with passengers; software as well as digital and hard-copy material development, etc. There could also be an additional administrative cost to foreign carriers offering service to and from Canada associated with adjusting their ticket reservation and sales systems to comply with the requirements under the ATPDR. The Government of Canada should be ready to support airlines with these costs, and should take care not to underestimate the cost impact.

The regulation would mean a loss in revenue associated with those seats that carriers must provide to certain passengers with disabilities at no charge under the 1P1F requirement. Airlines may be required to accommodate certain passengers e.g. those disabled by obesity, by providing a seat at no charge under the 1P1F requirement. A loss associated with foregone revenue could be considerable especially in markets with higher average yields and higher load factors e.g. long-haul international routes to and from Canada. The proposed regulation would effectively impose a price restriction on airlines by setting the price for the additional seat at zero. Price controls imposed by the government in well-functioning competitive markets tend to reduce market efficiency. This expected negative economic impact and a loss due to foregone revenue for the airline industry should therefore be quantified as part of the CBA.

The regulation would mean a loss in revenue associated with those seats that carriers will be required to provide at no charge to accommodate ESA's. There will be an additional loss in revenue resulting from existing charges for the transportation of pets. The regulation will require carriers to provide domestic and international passengers with a second seat free of charge if the seat is needed to accommodate their ESA. This could translate into several impacts on airline revenue.

Firstly, airlines would forego the revenue associated with the sale of that seat to another passenger. In addition, the proposed regulation would require airlines to dedicate their staff and resources to accommodate passengers travelling with ESA's even if other passengers would prefer that airlines use those resources to provide other services.

Secondly, as airlines typically consider animals that do not meet the definition of a service animal as pets and charge fees to allow pets to travel in the cabin with the owners or in cargo, there could be a strong monetary incentive for passengers to abuse the proposed regulation by misrepresenting a pet as an ESA. The case of the United States is indicative. Airlines for America (A4A) estimated that airlines transported 751,000 ESAs in 2017, a 56.1% increase from 2016. This number nearly equals the 784,000 pets

transported in 2017. Airlines charged as much as $175 to transport pets on a one-way trip, giving passengers an incentive to misrepresent their pets as ESA's. All of these potential negative impacts should be considered as part of the CBA.

The requirement for airlines to transport all ESA's would entail significant cleaning costs for airlines and potentially pose a health or safety threat to cabin crew and passengers. ESAs without proper training could present problems for passengers and aircraft crew who may suffer from inconvenience and animal bites, among other negative impacts. The case of the United States is again indicative in this respect. Under the requirement to accommodate ESA's, airlines reported increased instances of animal misbehaviour onboard the aircraft, including biting, barking and defecation. Untrained animals placed in an unfamiliar environment and confined space for a prolonged period of time may change their behaviour unpredictably, potentially causing negative impacts on cabin crew and other passengers. These impacts range from minor inconvenience to serious health and safety threats. In addition, in order to address sanitary issues, airlines may be forced to divert an aircraft for cleaning, leading to additional costs associated with cleaning, delays in departures and negative knock-on effects across an airline's network. The cost of disturbances and additional cleaning costs should be considered as part of the CBA.

Airlines are at risk of reputational damage associated with the practical difficulties of implementing the proposed regulation. With respect to the requirement to accommodate passengers with ESA's, an untrained support animal may cause serious disturbances to passengers or create non-sanitary conditions onboard the aircraft. This would reflect negatively on the image and reputation of the airline performing the service, entailing reputational damage and potential loss of customers and in turn revenue. Other passengers who experience inconvenience as a result thereof would likely attribute the blame for disturbances or inadequate sanitary conditions onboard the aircraft to the airline performing the flight.

In conclusion, IATA strongly urges the CTA not to impose 1P1F to international air travel and to avoid introducing any requirements to carry ESA's.

Thank you once again for the opportunity to participate in this consultation. We hope that these comments as well as those from our member airlines and other industry associations will support the CTA's goal of implementing effective and rational protections for passengers with disabilities.

Sincerely,

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