

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

)	
In the Matter of)	
Enhancing Airline Passenger Protections)	Docket DOT-OST-2007-0022
14 C.F.R. Parts 234, 253, 259, and 399)	
)	
)	
)	
)	

**COMMENTS OF DELTA AIR LINES, INC. ON ADVANCE NOTICE OF
PROPOSED RULEMAKING AMENDING 14 CFR PARTS 234, 253, 259 AND 399**

Communications with respect to this document should be addressed to:

D. Scott Yohe
Senior Vice President –
Government Affairs
Sametta C. Barnett
Director – Government Affairs
DELTA AIR LINES, INC.
1275 K Street, N.W.
Washington, D.C. 2005
(202) 216-0700

J. Scott McClain
Assistant General Counsel
David A. Seiler
Senior Attorney
DELTA AIR LINES, INC.
Law Department #981
1030 Delta Boulevard
Atlanta, Georgia 30320
(404) 773-6514

January 22, 2008

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.
January 22, 2008**

In the Matter of)	
)	
)	
Enhancing Airline Passenger Protections)	Docket DOT-OST-2007-0022
)	
14 C.F.R. Parts 234, 253, 259, and 399)	
)	
)	
)	

**COMMENTS OF DELTA AIR LINES, INC. ON ADVANCED NOTICE OF
PROPOSED RULEMAKING AMENDING 14 CFR PARTS 234, 253, 259 AND 399**

Delta Air Lines, Inc. (“Delta”) hereby respectfully submits the following comments in reference to the Advance Notice of Proposed Rulemaking pertaining to 14 C.F.R. Parts 234, 253, 259 and 399 published in the Federal Register on November 20, 2007.

INTRODUCTION

Delta appreciates the opportunity to provide comments on the Department’s proposed revisions to 14 C.F.R. Parts 234, 253, 259 and 399, Enhancing Airline Passenger Protections. In addition to the comments submitted by the Airline Transport Association (ATA), which Delta supports and incorporates by reference, Delta has a number of specific concerns with the proposed initiatives, as set forth in more detail below.

TABLE OF CONTENTS

INTRODUCTION..... 2

TABLE OF CONTENTS 3

COMMENTS..... 4

Proposed Initiative No. 1: Require Contingency Plans for Lengthy Tarmac Delays and Incorporate Them in Their Contracts of Carriage. 4

Proposed Initiative No. 2: Require Carriers to Respond to Consumer Problems 9

Proposed Initiative No. 3: Declare the Operation of Flights That Remain Chronically Delayed To Be an Unfair and Deceptive Practice and an Unfair Method of Competition 11

Proposed Initiative No. 4: Require Carriers to Publish Delay Data on Their Web Sites 14

Proposed Initiative No. 5: Require Carriers to Publish Complaint Data on Their Web Sites..... 20

Proposed Initiative No. 6: Require Carriers to Report On-Time Performance of International Flights 23

Proposed Initiative No. 7: Require Carriers to Audit Their Adherence to Their Customer Service Plans 24

CONCLUSION 25

COMMENTS

This ANPRM sets forth eight regulatory initiatives which DOT proposes as “potential solutions” to consumer concerns relating to flight delays. Several of the proposals raise significant concerns, and in many cases they are likely to cause more harm than good if implemented in a final rule. Delta’s comments and concerns are set forth below in the order the initiatives appear in the ANPRM.

Proposed Initiative No. 1: Require Contingency Plans for Lengthy Tarmac Delays and Incorporate Them in Their Contracts of Carriage.

This initiative proposes to require commercial air carriers operating aircraft with more than 30 passenger seats to develop contingency plans for long ground delays on the tarmac for all their flights and to incorporate these plans into their contracts of carriage. The initiative proposes minimum requirements for contingency plans, and suggests establishing information retention requirements when contingency plans are triggered.

Delta agrees that having a plan consisting of policies and procedures for the handling of extended ground delays is both reasonable and necessary to ensure a carrier is prepared to react when unforeseen circumstances give rise to long delays. Delta’s Operations Control Center and Airport Customer Service business units have detailed policies and procedures (“contingency plans”) in place to respond to extended ground delays. These contingency plans establish specific trigger points after which certain steps are taken to ensure our passengers’ safety and comfort. These steps include the provision of food and water, servicing of lavatories, and medical assistance if needed. A summary

of the elements of our contingency plans is contained in the Delta Customer Commitment as Commitment 9, On-board Delays.¹

Our Customer Commitment sets forth specific times after which certain steps will be taken to ensure the safety and comfort of our customers. For example, after one hour for an arriving flight and two hours for a departing flight, Delta will provide snacks and beverages to customers when reasonable and safe to do so. Delta has elected not to establish a specific time after which we must return an aircraft to the gate or otherwise allow passengers to disembark because we do not believe a “hard stop” is an effective way to manage customer or operational concerns associated with extended tarmac delays. Operational flexibility is critical to managing extended ground delays in the safest and most efficient manner. A gate return will often result in more extensive disruptions of airport operations and/or a cancellation of the flight, resulting in greater inconvenience to passengers than an additional extension of the tarmac delay.

Delta’s contingency plans ensure that personnel from our Operations Control Center and the impacted station are in direct contact with the crews of any aircraft subject to ground delays after no more than two hours. The purpose of this communication is to evaluate the specifics of each situation and determine the best solution as quickly as possible. In some circumstances, this will be a prompt return to the gate. However, situations exist where a gate return or remote passenger removal is not the best solution, and a captain must not be placed in the position of having to decide between the safety

¹ Delta’s Customer Commitment is published on delta.com at http://www.delta.com/legal/delta_customer_commitment/index.jsp and is incorporated into Rule 200 of Delta’s Domestic Contract of Carriage. The summary contained in Delta’s customer commitment does not contain the detailed operational information and instructions intended for use by Delta personnel in carrying out our response; rather, it provides a summary that we believe is useful and informative to our customers.

and welfare of his or her passengers² and exposure to potential liability stemming from the violation of an arbitrary deadline established by regulation or a term of the contract of carriage dictated by regulation. The specifics of a given ground delay (i.e. the specific airport or flights impacted) will often dictate what constitutes a reasonable “hard stop” for a gate return or remote removal of passengers.

Gate returns often increase the likelihood of a flight cancellation due to Air Traffic Control (“ATC”) planning and sequencing issues. If a departure window opens and the aircraft is no longer in position to accept the departure clearance (e.g. the aircraft has moved out of sequence on the taxiway or returned to the gate), the flight will experience a further, unnecessary departure delay and will often have to be canceled. In many instances, passengers will be far less inconvenienced by an extended tarmac delay than by the alternative. For example, if Delta reasonably expects based upon all available information that a flight will be able to depart after an additional half an hour delay on the tarmac but would be cancelled if it returns to the gate, it may be reasonable for Delta to conclude that its passengers are best served by continuing to wait for clearance rather than cancelling the flight, particularly if reaccommodation on other flights may be impossible for several days. This assessment must inherently be made by the operational team on a case-by-case basis in light of all available information, and not based upon arbitrary and inflexible deadlines.

Defining a “reasonable” time period after which gate returns are mandated cannot be accomplished by regulation because it inherently depends upon the specific facts of each situation. It varies widely from airport to airport and often depends upon alternative

² For example, during severe thunderstorms it is unsafe to return an aircraft to the gate if lightning is reported in the area.

transportation options for reaccommodation of passengers if the gate return will result in cancellation of the flight. For example, while a gate return after two hours may be reasonable in Augusta, Georgia, it would not be reasonable in JFK where average taxi times exceed 75 minutes. Similarly, a gate return after one hour may make sense on a Delta Shuttle flight from Washington, D.C. to LaGuardia, where Delta operates flights every hour, but not make sense on a flight from Atlanta to Rio de Janeiro, where: the delay is a much smaller percentage of total travel time, Delta operates only one flight per day, and a gate return leading to cancellation would substantially impact passenger travel plans. A one-size-fits-all approach is simply not the best answer, and is not in the best interests of the traveling public. Maximum flexibility for reasoned decision-making based upon the best available information in each situation must be maintained.

DOT asks whether carriers should be required to have contingency plans that contain assurances that the plans have been coordinated with airport authorities at medium and large hub airports. In Delta's view, mandating coordination with airport authorities in the preparation of a contingency plan is unnecessary and potentially unmanageable. Delta's contingency plans are designed to support our response to extended ground delays at all airports where Delta has mainline operations. Any mandate to coordinate the development of our plans with multiple airport authorities will likely interfere with our ability to create a single, concise plan that will be effective system-wide. That said, our plans do highlight the important role airport authorities play in managing tarmac delays and include provisions for incorporating airport authority personnel in the delay resolution process. Further, our contingency plans anticipate

regular and ongoing coordination between station and airport authority personnel with respect to local traffic management and delay management strategies.

In this first proposed initiative, DOT also suggests requiring that carriers retain for two years documents identifying the length of the delay, the cause of the delay, and actions taken to minimize hardships for passengers in any ground delays that either trigger their contingency plans or last at least four hours. Generally, Delta does not object to retaining such information relating to the handling of ground delays. However, Delta suggests retention of these records for six months is adequate and believes a two year retention period is unnecessary given the priority Delta and the DOT place on investigating long ground delays and identifying corrective measures.

If the DOT elects to pursue a data retention requirement, we recommend that the requirement be triggered by a delay period set by DOT, and not by the terms of the individual carrier contingency plans. Delta believes, and DOT's comments in the ANPRM suggest, that carriers should be permitted and encouraged to develop contingency plans that best suit their own operational and customer service goals. Basing data collection requirements on the specific triggering mechanisms of each carrier's contingency plans will result in varying burdens among the carriers, penalizing those who trigger preliminary stages of their contingency plans at an earlier point in time. In other words, the regulation would create disincentive for proactive responses by carriers, potentially driving all the carriers to a standard set of triggering mechanisms, most probably a lowest common denominator set. Thus, in order to encourage carriers to create contingency plans that best fit their goals, Delta recommends the data retention

trigger be uniformly set by DOT. Delta believes off-gate, tarmac delays exceeding four hours is a reasonable data collection trigger point.

Proposed Initiative No. 2: Require Carriers to Respond to Consumer Problems

This initiative proposes to require that commercial air carriers operating aircraft with more than 30 passenger seats: (1) designate employees at their operations centers and each airport dispatch center who are responsible for monitoring delays and cancellations and who have input on decisions concerning cancelled flights and long delays; (2) make contact information available for filing complaints with the carriers on their web site, all e-ticket confirmations and, upon request, at gates and ticket counters; and (3) respond to consumer complaints within 30 days.

Delta does not believe it is necessary for DOT to mandate by regulation the designation of carrier employees or the location of employees who will have responsibility for responding to and managing extended ground delays and flight cancellations. The mandating of contingency plans implicitly creates a requirement that carriers identify persons with the authority and responsibility to respond in these scenarios. Further, promulgation of a regulation that mandates certain managerial positions or specifies where such employees should be located may limit a carrier's ability to establish processes and a management hierarchy that effectively ensure compliance with that carrier's contingency plans within its organizational structure. Carriers should be allowed to design their delay response programs to maximize efficiency and ensure the best results within their operational structures.

With respect to the publication of methods for submitting consumer complaints to Delta, and the means by which such consumer complaints can be submitted, Delta is

committed to providing multiple customer-friendly channels to allow our customers to contact us. We currently respond to complaints received by regular mail, facsimile, e-mail through delta.com, telephone, in person at the airport, and we are currently testing a “chat” product. However, because new communication channels are emerging and evolving, Delta believes we should retain the ability to decide what channels work best for our customers and provide an efficient method for Delta to handle customer complaints in a cost-effective manner. Mandating the specific complaint channels that carriers must offer ignores the fact that communication technologies are rapidly developing and that new and more efficient technologies may render traditional channels obsolete over time. It will also interfere with our competitive ability to select customer friendly and efficient communication products. Similarly, mandating the specific channels by which carriers must publish the methods for submitting complaints is unnecessary and intrusive.

Delta does not support mandating a 30 day requirement for responding to consumer complaints. The current industry standard for responding to all customer complaints is within 60 days. This standard was acknowledged and tacitly approved by the DOT, Office of the Inspector General in its Final Report On Airline Customer Service Commitment, dated February 12, 2001.³ While Delta tries to exceed this floor, Delta believes the current floor is a reasonable standard for responding to extended delay complaints, and it will provide consistency with current response standards for all other customer complaints.

³ Final Report On Airline Customer Service Commitment, Report AV-2001-020, February 12, 2001, pg. 33.

Further, with domestic carrier expansion to more remote international destinations, as well as the trend toward increased codesharing and reliance on regional partners, coordinating the best solution for the customer may require more than 30 days, especially if a detailed investigation is needed.

Finally, seasonal surges in volume or unexpected events could create financial hardship for carriers if they are required to temporarily increase staffing to meet a 30-day response time.

Proposed Initiative No. 3: Declare the Operation of Flights That Remain Chronically Delayed To Be an Unfair and Deceptive Practice and an Unfair Method of Competition

Under this initiative, DOT proposes to formally set forth its enforcement posture on chronically delayed flights. Delta does not take issue with the premise that a flight which remains chronically delayed as defined by DOT for three consecutive calendar quarters may create a rebuttable presumption that the continued publication of the schedule for that flight may rise to the level of an unfair and deceptive practice or unfair method of competition within the meaning of 49 U.S.C. 41712. Whether it does in fact constitute such a practice, however, depends upon whether the carrier intends to deceive the public or unfairly compete by continuing to publish an unrealistic schedule. This may or may not be the case. Thus, if any policy statement on this issue is adopted, it should explicitly recognize that it creates a rebuttable presumption and not an inflexible rule.

There are many unpredictable reasons why a flight may fail to operate on time for an extended period of time, most of which are beyond the control of the carrier to fix on its own. For Delta, the process of improving a flight's on-time performance may require an extended effort by a number of different operational groups within Delta and its

connection carrier partners over multiple calendar quarters, involving a complex combination of schedule and operational adjustments. When a flight is performing erratically due to unpredictable delays caused by problems in the national air traffic system, carriers cannot simply extend the block time to make the flight operate on time more consistently. That would result in the flight arriving early at its destination when the air traffic control system is functioning properly, which itself can lead to disruptions and extended tarmac delays at the arrival airport.

Significantly, a carrier may believe that it has fixed the problems affecting a chronically late flight, only to have its efforts undermined near the end of the reporting period with an extended period of harsh and unexpected weather incidents which cause the flight to fail the regulatory test. Establishing an inflexible standard for enforcement actions may lead carriers to cancel flights or arbitrarily retime them outside the 30 minute window (so as to create a “new” flight for reporting purposes) solely to avoid failing the inflexible regulatory test, even when the carrier believes it has solved the flights’ problems. Cancelling flights or significantly retiming them is likely to create greater passenger inconvenience than allowing a carrier to continue its efforts to address the real issues affecting the flight’s performance. This is particularly so given that the actual individual delays affecting a chronically late flight may be relatively small. A flight that regularly arrives 16 minutes after its scheduled arrival time is, by DOT definition, “chronically late” but causes far less inconvenience to its passengers than the cancellation of the flight altogether.

Delta also urges DOT not to expand the definition of a chronically delayed flight to include international flights to and from the United States. One recognized corrective

measure for a chronically delayed flight is to adjust the flight schedule to avoid peak traffic periods. Due to significant time zone issues and the desire of consumers to arrive in foreign destinations at particular times during the day, the ability of carriers to adjust schedules for international flights may be limited, thereby limiting the corrective steps available to carriers to address chronically delayed flights. Further, the ability to adjust schedules or address other operational factors affecting on-schedule operations may be limited in foreign jurisdictions due to governing law, local airport authorities not subject to DOT regulation, labor issues, etc.

DOT has asked for comments concerning whether setting the enforcement standards proposed in this initiative will result in an improvement of on-time performance. In Delta's opinion, it will not. Customer satisfaction is critical to success in today's commercial aviation business. Second only to the cost of tickets in the minds of consumers is on-time operation. Simply put, meeting our schedules is good business. Delta devotes substantial manpower and capital to identify poor performing flights and fix the underlying problems. Delta has invested tens of millions of dollars annually in bonuses paid monthly to almost every Delta employee when specific on-time performance targets are met, and the compensation of management employees is also specifically tied to on-time performance metrics. Delta has invested hundreds of millions of dollars each year in additional block time in its schedule in an effort to improve on-time performance. The possibility of enforcement actions based on the premise that it is an unfair and deceptive trade practice for a flight to remain on the "chronically delayed" list for three consecutive quarters will not materially effect Delta's desire to improve and maintain the on time performance of its entire network. This is already a top operational

priority for the company, and it will remain so with or without such an enforcement initiative.

Unfortunately, the majority of flight delays are caused by factors outside Delta's control. An antiquated air traffic control system and inadequate infrastructure serving an ever increasing market give rise to the majority of flight delays. This fact suggests that enforcement authority over chronically delayed flights will do little to address the systemic problems that drive the majority of delays. The government's resources would be better spent fixing the air traffic control problems that are causing these delays, rather than targeting carriers who, like the traveling public, are the victims of this costly failure to efficiently manage the air traffic system. At a minimum, given the impact these extrinsic factors have on on-time operations, Delta contends that any regulatory framework designed to provide enforcement authority over chronically delayed flights must except from sanction those flights where a carrier has done all it reasonably can to resolve the problem, but the underlying, primary cause is outside the carrier's control.

Proposed Initiative No. 4: Require Carriers to Publish Delay Data on Their Web Sites

This initiative proposes to require commercial air carriers that account for at least 1% of the domestic scheduled passenger revenue to include on their web sites, at a point before the passenger selects a flight for purchase, the following information for each listed flight about its performance during the previous month: (1) the percentage of arrivals that were on time; (2) the percentage of arrivals that were more than 30 minutes late; (3) special highlighting if the flight was late more than 50 percent of the time, and (4) the percentage of cancellations.

Delta agrees that it is good customer service to make historical on-time performance information available to customers who believe this statistic is relevant to their choice of flights. Delta strongly objects, however, to any attempt by DOT to regulate in detail the manner in which this information should be provided. Carriers should be free to communicate with their customers in the manner and format they choose, free from intrusive regulations dictating the nature and format of their communications.

Because Delta agrees that it is good customer service to make on time performance information available to those customers who want it, Delta currently makes available on its website the percentage of flights that were on time for any flight required by DOT to report on-time performance data as reflected in Table 1, below. Once a customer has selected his or her desired date(s) and route(s) of travel on Delta's website, the flight availability and pricing screen allows the passenger to obtain additional information about any flight he or she is interested in by simply clicking on the flight number. The information provided includes equipment type, flight duration and distance, and on-time performance percentage for the previous month. Delta's method of displaying on-time data is intuitive, easy to access, and meets DOT's stated goal of making the information available to customers who want it prior to making their ticket purchase decision.



Atlanta, GA to Orlando, FL

Carrier Flight #	Departs		Arrives		Equipment Type	Flight Duration	Miles	On-time (%)
	From	Time	To	Time				
Delta 1800	Atlanta (ATL)	7:20am	Orlando (MCO)	8:42am	Boeing 767-300	1:22	402	90-99

Total miles: 402

Miles shown are between the origin and final destination city and are not used for the calculation of SkyMiles.

Table 1. Source: www.delta.com.

Delta respectfully submits that this is more than adequate to meet any reasonable customer desire for access to the recent historical on time performance information of a given flight during his or her delta.com shopping experience. It also fully satisfies the first of the proposed regulatory initiatives on this issue. The three remaining categories of information that DOT proposes to require under this initiative are unnecessary. A regulation requiring carriers to modify their websites to provide them would be an unwarranted intrusion into the manner in which carrier's communicate with their customers, and would not generate any customer benefit that could possibly offset the substantial cost to the industry to gather, store, and transmit the information, not to mention the cost of wholesale reprogramming of carrier websites to conform them to the specified format. Unlike on-time performance data, the information needed to deliver these three data sets is not currently collected. Delta's current software does not support collection or delivery of these data and therefore new code will need to be developed and tested. The highlighting and display formatting DOT proposes to dictate is also not currently supported and would require substantial reprogramming of the shopping and

fare display processes on delta.com. The cost of this effort will be significant. On the other hand, our information and experience suggests that our customers are generally not interested in historical on time performance information of a particular flight. This information is of limited relevance to the customer purchase decision for several reasons.

First, a one month snap shot of a given flight's performance does little to predict that flight's performance today, tomorrow or three months from now. Delay drivers are often seasonal and even more often vary from week to week or day to day. Weather, special events, infrastructure problems (ATC system failures, runway or taxiway closures, etc.) regularly cause one month's performance to vary significantly from the next, or six months down the road. Further, Delta is constantly working to identify poor performing flights and take measures to improve their performance. We adjust schedules and block times, crew rotations, maintenance schedules, and many other components of the operation that impact flight performance. The result is that a flight which performs poorly one month rarely performs poorly the following month, and it is even more unlikely it will still perform poorly three or six months down the road. Simply put, the prior month's on-time performance is not a particularly good predictor of a flight's likely performance on any given day in the future in the vast majority of cases. A consumer purchasing a ticket in late September, 2007 for a flight departing JFK in February, 2008 will be provided on-time performance information for that flight as it operated in August, 2007. It is a safe bet that the actual performance of the February flight will not be reflected, not even remotely, in the on-time performance data viewed by the customer when he or she purchased the ticket.

Second, our experience indicates our customers are far more interested in useful information concerning their actual ticketed flight than obtaining information concerning the operation of the same flight over the past month. Current DOT regulations require reservation and ticket agents to provide on-time performance information to customers upon request. Real-time audits of customer calls performed by Delta's Quality Assurance Monitors, at a rate of approximately 5,000 calls per month, did not observe a single request by a customer for on-time performance information between March and September of 2007.

It is therefore far more beneficial to consumers to allow carriers to use their limited resources to focus on communicating information to customers that they really care about. For example, in October 2006 Delta launched its Delta Messenger product. It is part of a suite of applications that help keep the customer informed, giving them real time information, where and when they want it. Delta Messenger includes an online feature for customers to give specific contact information based on their desired type of notification. Delta Messenger will send emails, as well as call the customer to advise them of time changes, departure gate information, and rebooking options. In addition, if flight times continue to fluctuate, the system will continue to contact customers to keep them informed.

Delta Messenger can place up to 20,000 calls an hour and send up to half a million emails/text messages in the same day. This feature complements other customer-focused notification products we offer today for cancelled flights and schedule changes. Delta Messenger has notified about 2 million customers impacted by schedule changes -

over 1 million last year alone. Delta has invested \$2.5 million in this service enhancement and has made it available to all Delta customers at no charge.

With respect to DOT's proposal to require reporting of the percentage of arrivals more than 30 minutes late and the percentage of cancellations, in Delta's view the resulting percentages will be statistically insignificant, but will nevertheless require substantial infrastructure modifications to collect and report the data. Internal estimates suggest that the percentage of flights arriving more than 30 minutes late is just over ten percent system-wide. Delta currently tracks system-wide mainline flight completion rates. The result for November, 2007 was a completion rate of 99.3 percent. This suggests the percentage of time a given flight is cancelled will be, on average, less than one percent. Further, approximately 40 percent of all cancellations result from mechanical problems, which do not correlate to a specific flight, route or schedule. We contend, therefore, that it is unlikely this information will benefit consumer decision making concerning flight selection.

Finally, DOT has asked for comments on whether reservation agents should be required to disclose on-time performance information at the time of booking, without being asked. Requiring on-time disclosures for every flight being considered by every passenger when booking a ticket will necessarily increase call times, call wait times, and the costs associated with each. The additional delays will irritate callers who are not interested in this information and impose significant costs on carriers who will be forced to increase call center staffing to manage the increased load. As previously noted, our experience indicates few if any customers are interested in receiving this information. It is also a very poor predictor of on time performance at the time the passenger will

actually be traveling in the vast majority of cases, so requiring carriers to proactively deliver the information to customers who did not ask for it is not likely to provide any useful information to them, and may in fact confuse or mislead them into choosing not to book reservations on flights which are in fact highly likely to operate on time during the period of their planned travel. It follows, therefore, that making on-time performance disclosure compulsory will negatively impact customer reservation services and increase carrier costs without providing anything close to an equal benefit to the consumer.

Proposed Initiative No. 5: Require Carriers to Publish Complaint Data on Their Web Sites

This initiative proposes to require commercial air carriers operating aircraft with more than 30 passenger seats to publish complaint data on their web sites. Specifically, DOT proposes to mandate that carriers post on their sites the number of consumer complaints received within a defined timeframe concerning subjects such as tarmac delays, missed connections, and the failure to provide amenities to passengers affected by delayed or canceled flights. Delta strongly objects to this proposed initiative.

Carrier websites are rapidly becoming their primary channel for communication with the public and their customers. These communications are protected by the First Amendment, and there are constitutional restrictions on the government's ability to force carriers to communicate messages with which the carriers disagree via these communication channels. Specifically, the U.S. Supreme Court has repeatedly held that the government cannot force a company to host or accommodate another speaker's message in its own communications. *See Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1, 20-21, (1986) (plurality opinion); *accord, id.*, at 25, (Marshall, J., concurring in judgment) (state agency cannot require a utility company to include a third-

party newsletter in its billing envelope); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (right-of-reply statute violates editors' right to determine the content of their newspapers).

The compelled-speech violations in *Tornillo* and *Pacific Gas* resulted from impermissible interference with a speaker's desired message in a manner that is analogous to the proposed mandatory posting of customer complaints on carrier websites proposed in the ANPRM. In *Tornillo*, the Court recognized that "the compelled printing of a reply ... tak[es] up space that could be devoted to other material the newspaper may have preferred to print," 418 U.S., at 256, and therefore concluded that the right-of-reply statute at issue in that case infringed the newspaper editors' freedom of speech by altering the message the paper wished to express, *id.*, at 258. In *Pacific Gas*, a government rule forcing the utility company to publish competing messages in its monthly billing envelope was struck down as invalid because it interfered with the utility's communication of its own messaging. 475 U.S., at 8-9.

Mandating that carriers publish data summarizing customer complaints on their websites would interfere with a carrier's own efforts to communicate with the public and its customers through this important channel. The rule would force each carrier to tally and publish on its website a summary of complaints asserted against the carrier, no matter how unreasonable or meritless the carrier might believe the complaint to be, giving credence to complaints that the carrier views as groundless or unreasonable. This compelled speech by carriers on their websites would directly conflict with the carriers' right to convey a positive self-image to the public through this critical communication channel. It would therefore be an impermissible infringement of the carrier's First

Amendment rights under *Pacific Gas* and *Tornillo*. Further, there is no compelling public interest served by this proposed mandate.

Consumers who want to review the opinions of other consumers concerning a given airline's customer service record already have ample means to do so. There are many online and traditional fora where consumers can already assert complaints and/or engage in debate about the relative quality of air carrier customer service. Consumers can consult the DOT's own customer complaint data, for example. They can peruse third party websites such as epinions.com, airlinequality.com, consumerreports.org, and many others. It is an unprecedented suggestion that carriers themselves should be compelled to convert their own websites to provide another forum for the publication of opinions with which they may strongly disagree. Delta is unaware of any other industry which is subjected to a similar requirement.

Finally, even if the complaint disclosure mandate proposed in this initiative were constitutionally permissible, and even if there were no other outlets for the publication of this consumer complaint information, the proposed rule would be impossible to enforce in anything other than a confusing and arbitrary manner. The statistics this rule would require carriers to publish will be meaningless as a practical matter because carriers will invariably choose different approaches to defining when a customer inquiry rises to the level of a "complaint" that must be reported, and they will adopt inconsistent methods for delivering the required information. There will be no way for consumers to determine whether the carrier information being published provides a true "apples-to-apples" metric. It will be impossible for carriers to provide meaningful information concerning how reasonable the complaints were, how serious they were, how they were handled, and

so on. Thus, the requirement would not provide information to consumers that actually provides any reasonable basis for comparison among carriers with whom they might deal, yet some consumers may be misled into making purchase decisions based on this data, however flawed. For all of these reasons, this proposal must be rejected.

Proposed Initiative No. 6: Require Carriers to Report On-Time Performance of International Flights

This initiative proposes to require commercial air carriers that report on-time performance to the DOT pursuant to 14 C.F.R. Part 234 and the largest foreign carriers to report on-time performance for international flights to and from the United States. This policy proposal is not justified and should also be rejected.

As previously noted in our comments to Proposed Initiative No. 3, on-time performance information is generally of little use to consumers in predicting the performance of any given flight on any given day. Further, our data indicates that consumers are not interested in this information because they almost never request it.

Additionally, on-time performance information for international flights, particularly those to the United States, will be of little use to the DOT from an enforcement standpoint. Again, as noted in our comments to Proposed Initiative No. 3, the factors impacting the performance of international departures are often outside a carrier's control, and the ability to adjust schedules to improve performance is often limited on international routes due to local airport restrictions, time zones, and other issues. If DOT is persuaded not to define chronically delayed flights to include international flights for these and other reasons, as Delta advocates, on-time performance information for international flights will have no direct value to the DOT from an enforcement standpoint.

The proposed initiative is also a bad idea because it would be unfair to impose the requirement on U.S. carriers without also applying the same standards to foreign carriers, but the imposition of a reporting requirement like this on foreign air carriers creates the risk that foreign authorities will impose burdensome retaliatory requirements on U.S. carriers operating abroad. Delta currently operates flights to fifty-three different countries. To the extent some or all of these countries decide to mandate compliance by Delta and other U.S. carriers with their domestic laws, the cost impact on international air travel will be significant. U.S. carriers will see increased costs associated with complying with foreign regulations, and passengers will see increased airfares as carriers attempt to offset some of these compliance costs. Delta therefore urges the DOT to exercise caution in extending any regulatory requirements extraterritorially beyond the critical areas of aviation safety and security.

Proposed Initiative No. 7: Require Carriers to Audit Their Adherence to Their Customer Service Plans

This initiative proposes to require commercial air carriers operating aircraft with more than 30 passenger seats to audit their adherence to their own customer service plans.

Delta believes that a regulation specifically mandating audits of carrier customer service plans is unnecessary for at least three reasons. First, compliance with published customer service plans is simply good business, and the current competitive state of the aviation marketplace mandates that we meet or exceed the expectations of our customers. Second, it may not make sense to conduct a single, unified audit of compliance with the customer service plans. Delta already has audit processes and controls in place within each of the business units that play a role in meeting or exceeding the elements of our

Customer Commitment. We do not perform a single comprehensive audit of all twelve points of our Customer Commitment. Rather, our quality assurance and performance management programs are continuous, and have been in place in one form or another for many years. They are constantly adapted as appropriate to ensure that we are meeting our customer service goals. This accomplishes the intended purpose of the type of audit apparently contemplated by this regulatory proposal. Therefore, a mandated, unified audit of our Customer Commitment would prove redundant and unnecessary. Third, in addition to being good business, any failure by a carrier to comply with its customer service plan is subject to enforcement action by DOT. Hence, carriers have incentive to monitor their processes and procedures to ensure compliance with their plans to avoid sanction by DOT.

CONCLUSION

Delta appreciates the opportunity to comment on the proposed revisions to 14 C.F.R. Parts 234, 253, 259 and 399, Enhancing Airline Passenger Protections. Delta respectfully requests that the Department give serious consideration to the comments provided herein.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David A. Seiler".

David A. Seiler
Senior Attorney
Delta Air Lines, Inc.