Comments of Airlines for America Regarding Bill C-49
(The Transportation Modernization Act)
Before The Senate of Canada
Standing Committee on Transport and Communications
March 5, 2018

Introduction

Airlines for America\(^1\) (A4A) submits these comments on behalf of our member airlines serving Canada (Alaska Airlines, American Airlines, United Airlines and our associate member, Air Canada) regarding Bill C-49, the Transportation Modernization Act (Act). A4A greatly appreciates this opportunity provide practical input as the Act and any implementing regulations will directly impact U.S.-Canada trans-border services.

A4A member airlines are deeply committed to providing both the highest level of safety and a quality consumer experience to every passenger. The success and/or failure of an airline is heavily reliant on the passenger experience and repeat customers. U.S. airlines operate in an ultra-competitive domestic, transborder and international marketplace, one where passengers have a range of transportation options, including competing airlines, to select from each and every time they travel. Consequently, A4A members are keenly aware of the importance of offering the best and most reliable service to their passengers. A4A members invest heavily in customer-service oriented training and products to enhance their passengers’ travel experience and to distinguish their product offerings from their competitors. Important elements in providing customer service include transparency, customer choice in a free market, and flexible regulations that allows the marketplace to innovate and provide the widest variety of customer options.

A4A incorporates the comments we submitted to the House of Commons’ Standing Committee on Transport, Infrastructure and Communities on September 15, 2017 (attached). A4A also supports the testimony and comments the International Air Transport Association (IATA) has provided regarding the Act. A4A is taking this opportunity to submit these comments in order to highlight select but important points specific to the U.S.-Canada trans-border market. A4A looks forward to submitting additional comments when implementing regulations are being considered.

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\(^1\) A4A is the principal trade and service organization of the U.S. scheduled airline industry. The members of the association are: Alaska Airlines, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.
Key Concerns and Recommendations

**U.S.-Canada Open Skies Agreement Should Be Respected**

A4A urges Canada to not adopt measures that would violate the terms of the U.S.-Canada Open Skies Agreement. The Open Skies Agreement is the crucial linchpin to the robust and highly competitive trans-border air transportation market that provides passengers the greatest choice of service and fares. In order to preserve this competitiveness, neither the Act nor its implementing regulations should include terms that contravene this Agreement.

**Guard Against Applying Requirements Extraterritorially**

A4A recognizes that the Act currently contemplates regulations which apply to “flights to, from and within Canada, including connecting flights...” To ensure operational certainty and avoid conflicting regulatory obligations, A4A urges Canada to refrain from applying its requirements for flights that originate in the U.S. and are bound for Canada since the U.S. Department of Transportation (DOT), which shares CTA and Transport Canada’s concerns and its focus on protecting passengers, has already established specific requirements. For example, C-49 Section 86.11(1)(f) appears to define tarmac delays as those over three hours. DOT, however, establishes the four hour mark as the trigger for a delayed international flight, which is what U.S.-Canada flights are considered by DOT. Therefore, a flight departing from the United States and bound for Canada experiencing a delay would have two different regulations for the same flight merely because the flight is bound for Canada placing airlines in the untenable position of having to choose which law to follow. In addition, DOT tarmac delay rules apply only to flights departing and arriving at U.S. airports, they do not apply to flights departing from Canada for the U.S. Canada should not apply its requirements on an extraterritorial basis.

**Regulatory Consistency is Key**

Section 19 of the Act adds a section to the Canada Transportation Act directing the CTA to issue regulations in several areas that already are regulated by DOT. Given how intricately linked the U.S.-Canada trans-border market is, A4A urges Canada to adopt regulations that align with existing U.S. requirements in order to provide certainty to both passengers and carriers that operate in this market. Conflicting regulations will result in confusion for both passengers and air carriers in such a closely (geographically and financially) integrated market. Specifically, we offer the following comments:

**-Flight Delays, Cancellations, Denied Boarding**

With regard to regulations concerning flight delay, flight cancellation or denial of boarding in paragraph 86.11(1)(b), DOT recognizes four judicious exceptions to automatic denied boarding compensation which we urge the Senate and Transport Canada to adopt:

1. A passenger does not comply fully with the carrier’s contract of carriage or tariff provisions regarding ticketing, reconfirmation, check-in, and acceptability for transportation;
2. The passenger cannot be accommodated because of a substitution of equipment of lesser capacity when required by operational or safety reasons;
3. The passenger is offered accommodations or is seated in a section of the aircraft other than that specified on the ticket at no extra charge, except that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund;
4. The carrier arranges comparable air transportation at no extra cost and the comparable air transportation is planned to arrive at the airport of the passenger’s next stopover or final destination not later than one hour after the planned arrival time of the passenger’s original flight or flights.²

² 14 Code of Federal Regulations (CFR) 250.6
In addition, the U.S. DOT denied boarding compensation rules are designed to permit carrier compensation options that are agreeable to the passenger. This approach maximizes passenger choice and we urge Canada to adopt these measures as well. The U.S. DOT denied boarding compensation process begins with carriers asking for volunteers to relinquish a seat, so that carriers and passengers can negotiate and come to a mutual understanding on what compensation the passenger will accept to relinquish a seat. Compensation at this stage can be currency, future travel, travel vouchers, etc. If volunteers cannot be acquired, carriers are permitted to involuntarily deny boarding to passengers but must provide compensation in the form of cash, check, or free or reduced rate air transportation as long as certain disclosures are made.

-Carriers Do Not Solely Control Tarmac Delays
A4A must underscore that carriers are intensely focused on the needs of passengers during long tarmac delays because they have the greatest customer service and financial incentives to take measures to avoid such delays. In many instances, long tarmac delays are caused and/or exacerbated by safety or security concerns, including force majeure factors, which are elements that should be included when drafting legislation and regulations. For instance, air traffic control or a pilot-in-command of an aircraft may determine that there is a safety or security reason why the aircraft cannot leave its position on the tarmac, such as weather or a directive from a government agency. A4A also believes it is important that the legislation and subsequent regulations recognize that other entities such as government agencies and/or airport authorities play a critical role in providing support to airlines in order to avert a tarmac delay. The U.S. DOT recognizes all of these factors in its tarmac delay regulations in 14 CFR 258.4.

Provide A Long Lead Time for Implementation

A4A urges Canada to provide carriers with one year to comply with any adopted requirement. While A4A member carriers abide by DOT’s existing rules governing the same areas now being considered for regulation by Canada, those requirements and carrier processes and procedures are solely centered in the United States. A4A member carriers estimate that they require one year for time to ask clarifying questions and receive answers after a final rule is adopted. Once all clarifications are received carriers can then train personnel and implement system updates.

Thank you for your attention to and consideration of A4A’s comments. We look forward to working collaboratively with the Canadian government on these pending regulations throughout the entire process and to providing additional information to ensure that all stakeholders benefit from these efforts.

Sincerely,

[Signature]

Keith Glatz, Vice President-International Affairs
Comments of Airlines for America Regarding Bill C-49
(The Transportation Modernization Act)

Before the
House of Commons’ Standing Committee on Transport, Infrastructure and Communities

September 15, 2017

Airlines for America¹ (A4A) submits these comments on behalf of our member airlines serving Canada (Alaska Airlines, American Airlines, United Airlines and our associate member, Air Canada) regarding Bill C-49, The Transportation Modernization Act (Act). The Act and any implementing regulations will directly impact U.S. airlines serving Canada so we appreciate the collaborative efforts to allow input on this Bill and we look forward to continuing a good working relationship with Transport Canada.

The U.S. airline industry is deeply committed to providing both the highest level of safety and a quality consumer experience to every passenger. The success and/or failure of an airline is heavily reliant on the passenger experience and repeat customers. U.S. airlines operate in an ultra-competitive domestic and international marketplace, one where passengers have a range of transportation options, including competing airlines, to select from each and every time they travel. Consequently, A4A members are keenly aware of the importance of offering the best and most reliable service to their passengers.

Important elements in providing customer service include transparency, customer choice in a free market, and flexible regulation that allows the marketplace to innovate and provide the widest variety of customer options.

¹ A4A is the principal trade and service organization of the U.S. scheduled airline industry. The members of the association are: Alaska Airlines, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.
A4A agrees with the testimony of Doug Lavin from the International Air Transport Association (IATA) before the House of Commons' Standing Committee on Transport, Infrastructure and Communities delivered on September 14, 2017. The committee should work with industry in drafting consumer protection legislation and ensure a balanced approach between consumer protections and costs of compliance, keeping in mind that these costs always are passed on to the customer. We encourage the Committee to adopt broad baseline legislation models that do not mandate policies for delays, cancellations or other customer service items. The focus should be on having airlines post existing policies and procedures so that consumers can make their own price-service trade-offs rather than having the government decide for them.

We also emphasize another point raised by IATA, that Canadian airline passengers already have necessary protections provided by airlines and the Canadian Federal Government. For example, all carriers serving Canada currently publish their tariffs on their websites, which includes the conditions attached to each fare level. If passengers feel that airlines have not met those tariff conditions and are not satisfied with an airline response after a complaint is filed, passengers can and do ask the Canadian Transportation Agency (CTA) to intervene on their behalf. This system with CTA intervention, if necessary, works efficiently and should be recognized as a viable option during the decision process.

If the decision ultimately is to provide more prescriptive regulations we ask that the government take a collaborative approach so the CTA and Transport Canada can receive input from all affected airlines and other stakeholders to further goals of transparency and flexible regulation that encourages different business models to ensure that passengers are provided with the greatest choice.

Section 19 of the Act adds a section to the Canada Transportation Act directing the CTA to issue regulations in several areas; we offer the following comments on these sections.

**Flight Delays, Cancellations, Denied Boarding**

With regard to regulations concerning flight delay, flight cancellation or denial of boarding in paragraph 86.11(1)(b): Other regulatory schemes recognize a number of exceptions to automatic passenger compensation. For example, the U.S. DOT recognizes four judicious exceptions to denied boarding compensation. We urge the House of Commons and Transport Canada to adopt these measures as listed below:

1. A passenger does not comply fully with the carrier’s contract of carriage or tariff provisions regarding ticketing, reconfirmation, check-in, and acceptability for transportation;

2. The passenger cannot be accommodated because of a substitution of equipment of lesser capacity when required by operational or safety reasons;
(3) The passenger is offered accommodations or is seated in a section of the aircraft other than that specified on the ticket at no extra charge, except that a passenger seated in a section for which a lower fare is charged shall be entitled to an appropriate refund;

(4) The carrier arranges comparable air transportation at no extra cost and the comparable air transportation is planned to arrive at the airport of the passenger’s next stopover or final destination not later than one hour after the planned arrival time of the passenger’s original flight or flights.²

In addition, the U.S. DOT denied boarding compensation rules are designed to permit carrier compensation options that are agreeable to the passenger. This approach maximizes passenger choice and we urge Canada to adopt these measures as well. The U.S. DOT denied boarding compensation process begins with carriers asking for volunteers to relinquish a seat, so that carriers and passengers can negotiate and come to a mutual understanding on what compensation the passenger will accept to relinquish a seat. Compensation at this stage can be currency, future travel, travel vouchers, etc. If volunteers cannot be acquired, carriers are permitted to involuntarily deny boarding to passengers but must provide compensation in the form of cash, check, or free or reduced rate air transportation as long as certain disclosures are made.

Transportation of Musical Instruments

With regard to regulations concerning the transportation of musical instruments, A4A asks that the current legislative language in section 86(11)(1)(e) remain, allowing airlines to set terms and conditions of carriage, which will allow passengers to choose the airline that best fits their transportation needs.

Tarmac Delays

With regard to tarmac delays over three hours: carriers are intensely focused on the needs of passengers during long tarmac delays. Indeed, carriers have the greatest customer service and financial incentives to take measures to avoid such delays if at all possible. In some instances, long tarmac delays are caused or exacerbated by safety or security concerns, including force majeure factors, which are elements that the government should include when drafting legislation and regulations. For instance, air traffic control or a pilot-in-command of an aircraft may determine that there is a safety or security reason why the aircraft cannot leave its position on the tarmac, such as weather or a directive from a government agency. A4A also believes it is important that the legislation and subsequent regulations recognize that other entities such as government agencies and/or airport authorities may play a critical role in providing support to airlines in order to avert a tarmac delay. The U.S. DOT recognizes all of these factors in its tarmac delay regulations in 14 CFR 259.4.

² 14 Code of Federal Regulations (CFR) 250.6
Thank you for your attention to and consideration of A4A’s comments. We look forward to working collaboratively with the Canadian government on these pending regulations throughout the entire process and to providing additional information to ensure that all stakeholders benefit from these efforts.

Sincerely,

[Signature]

Keith Glatz, Vice President-International Affairs