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Consumers and Congress Lobby for Airline Customer Service Improvements: Voluntary Action or Legislation?

Audrey Johnson

I. Introduction

The winter storms of 1999 sparked congressional interest in customer service practices of the airline industry and passenger rights. On Sunday, January 3, 1999, passengers arriving in Detroit, on flights already delayed at departure, were forced to sit on runways for hours while the airlines scrambled to find ways to disembark them.¹ Some planes were without working lavatories and food.² On others, flight crews threatened those passengers who would not "sit in [their seats] and face forward."³ Passengers were also prohibited from using cell phones to contact family and friends who were waiting in the over crowded terminal.⁴ Finally, after five hours on the ground, phone calls were allowed. Sympathetic passengers passed around their cell phones to those who were without one.⁵ One woman used her allotted phone call to contact a local news station and when she got through they told her they could not believe the story.⁶ After deplaning, some seven plus hours after landing, passengers claimed that the "final assault on [their] intelligence" was when the airline blamed them for the chaos.⁷ The airline insisted that passengers were told of the severe weather warnings and that they should have been prepared for what ensued.⁸ Congress heard many similar stories as they were being urged to take legislative action.⁹

The recent economy has made air travel accessible to the masses. There were over 674 million passengers

flying the friendly skies in 2000, but the skies are not so friendly anymore.¹⁰ Today, passengers are faced with canceled, delayed and overbooked flights inconveniencing them on a regular basis.¹¹ Due to the record number of flights, there is gridlock in the skies, a term formerly reserved for congested highways. Unfortunately, it is likely that this state will remain as demand increases. Of course all air travel inconveniences are not the fault of human hands. For example, weather problems, medical emergencies and crowded flight patterns are unavoidable. But the unavoidable should be approached with tact and responsibility, not chaos and incivility. Airlines should have the ability and be required to properly manage the negative impact these situations will have on their passengers.

The issue of customer service in air travel has been before both the judiciary and the legislature without any resolution. It is time one body moves forward to protect consumers' rights. This paper begins by discussing the Supreme Court's decision to decline ruling on the debate of what constitutes "service."¹² Second, it will explain the congressional initiative to institute legislative measures and the airlines' commitment to undertake voluntary customer service improvements.¹³ Finally, it will examine recent bills proposed in Congress aimed at granting passengers' rights in airline "service" and the current status of the airlines' voluntary commitment to improving customer service.¹⁴

II. Courts Abstain From "Service" Debate

When Congress enacted the Airline Deregulation Act ("ADA")¹⁵ in 1978, it determined that "maximum reliance on competitive market forces" would best further "efficiency, innovation, and low prices" as well as "variety [and] quality ... of air transportation services."¹⁶ This gave airlines the right and ability to institute policies and procedures that would govern passenger service and

other issues.¹⁷ The airlines have broad discretion to vary their methods of providing service to consumers.¹⁸ When the ADA was enacted the legislature tried to prevent the States from disturbing the operation of the regulation by including a preemption provision.¹⁹ This provision prohibits the States “from enforcing any law ‘relating to rates, routes, or services’ of any air carrier.”²⁰

The ADA does not define the term “service” which is at the heart of many air travelers’ complaints.²¹ This has cast a very broad net for the courts when interpreting the term. Thus, it seems that any law enacted that impinges upon the airline industry must overcome the threshold question of whether it relates to service. For example, laws enacted to protect consumers from receiving false and misleading information or enduring substandard treatment must be struck down if they relate to service. The meaning of the word “service” in the preemption provision of the ADA has divided the Courts of Appeals.²² In December 2000, the Supreme Court had the opportunity to rule on how “service” should be defined under the ADA but declined to do so when it denied a petition for certiorari in *Northwest Airlines, Inc. v. Duncan*.²³ Justice O’Connor disagreed with the decision and stressed that the divided Courts of Appeals call for a resolution.²⁴

The Supreme Court has addressed the scope of the preemption provision in the ADA on two prior occasions but has not directly addressed the meaning of the word “service” within the context of the statute.²⁵ In *Morales v. Trans World Airlines*, by looking to the ordinary meaning of the words used in the statute, the Court determined that the preemption was broad.²⁶ The Court concluded that state restrictions on advertising were precisely the type of economic regulation that Congress intended to preempt in deregulating the airline industry.²⁷ It held, “restrictions of advertising serve to increase the difficulty of discovering the lowest cost seller ... and [reduce] the incentive to price competitively ... price advertising

surely 'relates to' price."²⁸ In the second case, *American Airlines, Inc. v. Wolens*, the Court suggests that the term, "service," encompasses "access to flights and class-of-service upgrades."²⁹ The Courts of Appeals have taken directly conflicting positions on this question of statutory interpretation.³⁰

In *Charles v. TWA*, the Ninth Circuit held that the term "service" encompasses "the prices, schedules, origins, and destinations of the point-to-point transportation of passengers, cargo, or mail," but not the "provision of in-flight beverages, personal assistance to passengers, the handling of luggage, and similar amenities."³¹ The Third Circuit has expressly agreed with this approach.³² In contrast, three Courts of Appeals have adopted a much broader definition.³³

In light of the recent congressional legislative activities directed at air passengers' rights, discussed below, perhaps the Supreme Court may have determined the issue of "service" to be a legislative one that is in the process of being addressed.³⁴ For now, the Court has decided to abstain from taking a position to protect customer service and consumer rights in air travel. Until the Court speaks, it is up to Congress to enact the necessary legislation.

III. Congress Debates Legislation

A. Bills Introduced to Correct Customer Service Issues

After hearing numerous stories of the paralyzing midwest snowstorm of 1999, in which hundreds of people were held captive by airlines on a Detroit tarmac for over seven hours, members of Congress have expended much effort in drafting bills that would give consumers basic rights when faced with such unfortunate situations. Congress is wary that the preemption provision has been twisted by airline industry lawyers "to bar ordinary state suits against airlines for standard

torts and business disputes."³⁵ Legislation would re-establish that airlines are subject to the same state laws that govern every other business and industry in America.³⁶ Bills such as the Passenger Bill of Rights Act,³⁷ the Passenger Entitlement and Competition Act,³⁸ and the Aviation Consumer Right to Know Act³⁹ have been introduced. Currently, airlines are free to use one flight number even when passengers must disembark one plane at a connecting airport to board a different plane in route to their final destination. The Passenger Bill of Rights Act of 1999 provides that one flight number may not be used when passengers must change aircrafts.⁴⁰ Under the proposed act, delays, cancellations, or diversions must be explained giving the reason(s) for the delay, cancellation, or diversion.⁴¹ Carriers are prohibited from providing false or misleading information.⁴² Liability, in the form of a fine, will be imposed on an airline for excessive departure and arrival delays.⁴³ For example, if the excessive departure or arrival delay is more than two hours but less than three hours, the amount of the liability shall be 200% of the price the passenger paid for the ticket.⁴⁴ The liability increases exponentially as the excessive departure or arrival delay increases in length of time.⁴⁵ The bill also proposes the following: requiring airlines to refund a ticket (including a "nonrefundable" ticket) in the case of cancellation for economic reasons; mandating that airlines make a good faith effort to return lost property to passengers; placing limitations on the separation of babies from their parents during security screenings; notifying passengers of code sharing policies; directing that airlines not penalize passengers who use only a portion of their ticket; and instructing airlines to better define frequent flyer awards.⁴⁶ Finally, the act would provide for civil penalties, which would give consumers the right to sue an airline under a violation of the Act.⁴⁷

It is no surprise that airlines lobbied against the proposed bills. The major airlines were openly troubled by the prospect of increased competition and congres-

sional mandates to improve customer service.⁴⁸ In recent years, the airlines managed to resist new rules by explaining that enactment would result in “re-regulation.”⁴⁹ Airlines argue deregulation has been a great success in the marketplace, producing lower fares and improved service.⁵⁰ Airlines insist that “re-regulation would be a return to the bad old days.”⁵¹ However, both travelers and legislators have become disillusioned with that argument.⁵² Customers are fed up with the paltry service they regularly receive on board and off.⁵³ In a recent University of Michigan study of customer satisfaction, the airline industry ranked third to last, ahead of only network newscasts and the IRS.⁵⁴

The guiding force behind enacting the Airline Deregulation Act of 1978, relying on economic market forces to drive competition and customer service in the airline industry, is failing.⁵⁵ Thus far, congressional attempts to protect air travelers have been futile as none of the bills mentioned above were enacted as law. In fact, since early 1999, many more bills have been introduced proposing air traveler rights and Congress has yet to take the requisite legislative action.⁵⁶ However, the doors on the enacting legislation have not been closed. In the summer of 1999, the airlines managed to lobby for Congress and the Department of Transportation to give deregulation another chance.⁵⁷

B. Airlines Sign Voluntary “Airline Customer Service Commitment:” Congress to Monitor Progress

Congress agreed to give the airline industry an opportunity to improve the impaired customer service policies before it takes legislative measures.⁵⁸ The Air Transport Association (“ATA”) and its member airlines signed the Airline Customer Service Commitment (Commitment) on June 17, 1999.⁵⁹ This Commitment contains provisions similar to those proposed in the Passenger Bill of Rights Act of 1999.⁶⁰ The Commitment includes the

following customer service promises: offer the lowest fare available; notify customers of known delays, cancellations, and diversions; on-time baggage delivery; support an increase in the baggage liability limit; allow reservations to be held or canceled; provide prompt ticket refunds; properly accommodate disabled and special needs passengers; meet customers' essential needs during long on-aircraft delays; handle "bumped" passengers with fairness and consistency; disclose travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration; ensure good customer service from code-share partners; and be more responsive to customer complaints.⁶¹ Each signatory airline agreed to prepare a Customer Service Plan (Service Plan) implementing the twelve provisions of the Commitment.⁶²

After the Commitment was signed, Congress passed a law that mandates a review of each airline's compliance with the Commitment provisions under the airline's Service Plan by the Department of Transportation Office of Inspector General ("OIG").⁶³ The OIG observed and tested airline compliance and issued its first report, an Interim Report, on June 27, 2000.⁶⁴ The initial observations and testing found the airlines were making a "clear and genuine effort" at strengthening the attention paid to customer service, but the final results are mixed; and, it found that the airlines have a lot of work ahead of them to restore customer confidence.⁶⁵

Airlines made progress in the area of notifying customers of excessive delays, cancellation, and diversions by improving communication technology and media as well as making more frequent announcements.⁶⁶ However, there was still substantial room for improvement in the accuracy, reliability, and timeliness of the communications to customers about the status of these flights.⁶⁷ For example, during testing the OIG noted that several airlines pointed to the air traffic control system as the reason for the delays, even in cases of extremely bad weather, crew unavailability, or maintenance problems.⁶⁸

When the initial testing was done, less than half of the airlines had customer service plans in place for extended on-aircraft delays, but all claimed to put them in place after the initial visit by the OIG.⁶⁹ The OIG found that the provisions, which included terms such as “food,” “reasonable effort,” “for an extended period of time,” or “emergency,” lacked the specificity needed for passengers to clearly understand what would be provided.⁷⁰ The airlines need to define these terms so that consumers will know what to expect and so they can reasonably be held accountable for non-compliance.⁷¹ In addition, the OIG expressed the need for airlines to internally monitor their Service Plans to ensure adequate compliance.⁷²

The report also noted a disparity in whether airlines provide for the Commitment promises in their contracts of carriage.⁷³ The Commitment and the Service Plans, while conveying promises of customer service standards, do not necessarily translate into legally enforceable passenger rights.⁷⁴ Rather, each air carrier has an underlying contract of carriage, which under Federal regulations, provides the terms and conditions of passenger rights and carrier liabilities.⁷⁵ The contract of carriage is a legally binding document between the carrier and the passenger.⁷⁶ The OIG results concluded that the airlines generally have not modified their contracts of carriage to reflect all items in their Service Plans.⁷⁷ Since it is uncertain whether the Service Plans are binding and enforceable on the airline, passengers may be left without legal remedy.⁷⁸ One airline’s Service Plan specifically states that the Service Plan does not create contractual or legal rights.⁷⁹

The ATA defends the airlines saying they are working hard to get better and are well on their way to achieving their goals.⁸⁰ An industry analyst cites that business passengers might agree with this position but that most non-business passengers would disagree.⁸¹ Many airline employees at airports seem more focused on enforcing the latest policies on matters such as carry-

on baggage than providing friendly service.⁸² Another airline industry consultant says, "It's worse than Marine Corp boot camp. Airlines are arrogantly processing passengers, rather than treating them like customers, and they've done nothing to simplify the procedures."⁸³

IV. Congress Revisits Legislation: Air Traveler Rights

Despite the progress made in improving customer service under the Airline Customer Service Commitment, consumer complaints increased to record levels, from roughly 6,000 in 1995 to over 23,000 in 2000.⁸⁴ In 2000, the Department of Transportation ("DOT") Air Travel Consumer Report disclosed that consumer complaints in 2000 increased 14% (20,438 to 23,381) over complaints made in 1999.⁸⁵ Over the last several years, DOT has ranked flight problems (i.e. delays, cancellations and missed connections) as the number one air traveler complaint, with customer care and baggage ranked as either number two or number three.⁸⁶

In January 2001, Congress discussed the possibility of reintroducing an air traveler rights bill.⁸⁷ Unimpressed with the airline industry's efforts to voluntarily improve customer service, senators planned to introduce legislation.⁸⁸ With the Department of Transportation statistics showing a 16% increase in consumer complaints about airlines for the first eleven months of 2000, many legislators believe the airlines were given their chance and have failed to make the needed progress.⁸⁹

Expressing frustration with airline delays and cancellations, Senator Harry Reid introduced two bills, the Air Travelers Fair Treatment Act of 2001 and the Airline Competition Preservation Act of 2001, that attempt to improve customer service.⁹⁰ The Air Travelers Fair Treatment Act has six main provisions covering: flight delays, right to exit aircraft, right to in-flight medical care, access to state laws, termination of ticket agents,

and safety records.⁹¹ The bill is a modified version of the one introduced in 2000 under the same name.⁹²

Under the Air Travelers Fair Treatment Act, air carriers would be required to provide travelers with accurate and timely explanations of the reasons for flight cancellation, delay or diversion from a ticketed itinerary.⁹³ Failure to do this would be classified as an unfair practice that would subject the airline to civil penalties, allowing consumers to file lawsuits enforcing these rights.⁹⁴

Where a plane has remained at the gate for more than an hour past its scheduled departure time and the captain has not been informed that the aircraft can be cleared for departure within fifteen minutes, passengers would have the right to exit the plane into the terminal to make alternative plans, or simply stretch their legs, get something to eat, etc.⁹⁵ Aside from ensuring basic passenger comfort, this may also help prevent "air rage" incidents when passengers are forced to sit in parked planes for long periods of time.⁹⁶

Currently, each airline has its own policy regarding what kind of medical and first-aid equipment and training is provided on their flights, so that the available equipment and medical training varies widely between carriers.⁹⁷ The bill would direct the Secretary of Transportation to issue minimum regulations that would be uniform for all carriers regarding the type of medical equipment each flight must carry and the kind of medical training each flight crew should receive.⁹⁸

The Federal Courts have split on whether the Airline Deregulation Act of 1978 preempts state consumer protection and personal injury laws as applied to airlines.⁹⁹ As discussed above, the Ninth Circuit Court of Appeals held that passengers may sue airlines in state court for violations of state fraud and consumer protection laws; in contrast, the Fourth Circuit held that airlines are immune from state law.¹⁰⁰ This bill would clarify that the 1978 Act does not preempt state tort and consumer

protection laws, allowing passengers full access to their consumer rights in whatever state they reside.¹⁰¹

The bill also provides a protection for travel agencies to require that they receive a written ninety-day advance statement of reasons before the carrier cancels the travel agency's account, and to give them sixty days to correct the identified deficiencies.¹⁰²

Finally, many airlines are reluctant to release information to the public relating to their safety records, including their accident record and certification compliance records.¹⁰³ Nevertheless passengers should have a right to know whether the airline they are flying has complied with government safety standards, whether it has been fined or penalized for safety violations, and how many accidents or safety violations the airline has been involved in.¹⁰⁴ The bill includes a provision requiring the Secretary of Transportation to develop regulations under which the safety, inspection, certification compliance and accident records of the airline will be made available to any customer upon request.¹⁰⁵

The OIG issued its final report on the Airline Customer Service Commitment on February 12, 2001.¹⁰⁶ The number of chronically delayed flights, those fifteen minutes late or more, nearly quadrupled from 8,348 to 40,868 between 1999 and 2000.¹⁰⁷ In 2000, over one in four flights (27.5%) were delayed, canceled or diverted, affecting approximately 163 million passengers.¹⁰⁸ The OIG concluded that the road ahead is long, and the airlines, airports, and FAA require aggressive progress if consumer confidence is to be restored.¹⁰⁹ Providing information to passengers regarding the status of delayed, canceled, or diverted flights continues to be an area that needs substantial improvement by the airlines.¹¹⁰ In a number of cases tested by the OIG, the information given to passengers was inadequate because no information was provided at all (no announcements were made).¹¹¹

In its final report, the OIG made its final recommendation that the Airline Customer Service Commit-

ment be modified and enforced through legislation or voluntary airline measures.¹¹² It suggested that Congress should require the Airline Customer Service Commitment be adopted by all U.S. carriers.¹¹³ Also, the Airline Customer Service Commitment provisions should be made enforceable under the contract of carriage or by regulation, including the provisions to offer the lowest fare for which the passenger is eligible; hold or cancel a reservation; accommodate passengers delayed overnight; and meet customers' essential needs during long on-aircraft delays.¹¹⁴ Further, airlines should make a commitment to establish a quality assurance and performance measurement system and conduct an internal audit to measure compliance with the Commitment and Customer Service Plan provision.¹¹⁵ The quality assurance system and audit would be subject to a Federal Government audit.¹¹⁶

In terms of flight delays, cancellations or diversions, the report suggested that airlines establish targets in their Commitment and Customer Service Plans for reducing the number of chronically delayed and/or canceled flights.¹¹⁷ This should be a short-term measure only to avoid repeating the events of the spring and summer of 2000 and not a way of circumventing the larger issue of expanding capacity to meet demand such as through new runways and technology.¹¹⁸ Airlines should also provide, through existing Internet sites, the prior month's on-time performance rate for each scheduled flight.¹¹⁹ They should disclose to customers, at the time of booking and without being asked, the prior month's on-time performance rate for those flights that have been consistently delayed, (i.e. thirty minutes or more, and/or the cancellation of 40% or more of the flights for three consecutive months).¹²⁰

V. Legislation Needed

Today, for compelling reasons, pro-legislation sentiments in Congress are strong.¹²¹ Senator Ron Wyden recently commented on the state of airline consumer rights legislation saying, "No matter how much concrete you pour, or how many air-traffic computers you connect, things aren't going to change much unless this industry is required to respect the public's right to know."¹²² Now that Congress has the tools and statistics to promote and enact appropriate legislation to protect consumers from airline abuses, it should take that step.¹²³ Time and testing has proven airlines are not aggressively implementing the Commitment to customer service and legislative action is necessary.

In the spring of 1999, the Air Transport Authority and the major air carriers spent much effort convincing Congress to give them a chance at restoring customer confidence before Congress took any steps toward legislation.¹²⁴ Unfortunately, more than two years have passed since the Commitment was signed by the airlines and customer service has yet to be improved. The OIG's final report identified the improvements of several airlines in some areas of consumer complaints, but on the whole the service is still sub-par and inexcusable.¹²⁵ Consumers continue to receive bad or no information about flight departures or cancellations.¹²⁶ Under current law, this is still all they are entitled to receive.¹²⁷ Consumers deserve more for their money. The proposed legislation will give the government the ability to impose fines and make important information available to the public concerning specific airline and flight performance.¹²⁸

Air travel will only become more problematic as the number of air travelers increases each year. Passengers should have the right to know why they are being detained in terminals or held captive on runways. Consumers will have the opportunity to choose a carrier that has a good record of crew performance and maintenance

and, the airlines will not be permitted to blame delays on the weather anymore. It will also put the competitive market forces back to work. A customer is more likely to choose an airline that has good service than one that does not. Thus, if airlines are forced to answer to customer dissatisfaction they are more likely to provide better service.

The OIG's final report proves that if Congress allows the airline industry to continue on a path of voluntary customer service initiatives, the airlines will progress at a pace they choose, which is unlikely to benefit consumers. The Inspector General's report showed improvements were slowly being implemented by the airlines and a lot of work needs to be done.¹²⁹ Enacting the Air Travelers Fair Treatment Act will commit the airline industry to taking customer service seriously. Consumer confidence can be restored and flying would be pleasant again.

V. Conclusion

The simple answer to the problem of poor customer service is to make the airlines accountable for their actions. The proposed legislation is one solution that would serve to protect consumers. By granting consumers legal rights in air travel service they will be able to obtain redress in courts of law. Even without the instant enactment of legislation, Congress is pressuring the airlines to bring their customer service standards up to reasonable levels. The immediate future of customer service and air traveler rights legislation is uncertain. However, Congress has expressed serious discontent with the status quo and is not going to allow customer service abuses to continue without consequence.

Endnotes

1. *Airline Passenger Bill of Rights: Hearing Before the Comm. on Transp. and Infrastructure's Aviation Subcomm. regarding the treatment of aviation passengers*, 106th Cong. (1999) [hereinafter *Hearings:Plecas*] (statement of Barbara Plecas, aviation passenger).
2. *Id.*
3. *Airline Passenger Bill of Rights: Hearing Before the Comm. on Transp. and Infrastructure's Aviation Subcomm. regarding the treatment of aviation passengers*, 106th Cong. (1999) [hereinafter *Hearings:Shank*] (statement of Patricia Shank, aviation passenger).
4. *Hearings:Plecas*, *supra* note 1.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *E.g.*, *Airline Passenger Bill of Rights: Hearing Before the Comm. on Transp. and Infrastructure's Aviation Subcomm. regarding the treatment of aviation passengers*, 106th Cong. (1999) [hereinafter *Hearings:Pearlman*] (statement of Joel Pearlman, aviation passenger); *Hearings:Shank*, *supra* note 3.
10. KENNETH M. MEAD, U.S. DEP'T. OF TRANSP., FINAL REPORT ON AIRLINES CUSTOMER SERVICE COMMITMENT (2001), at 15 [hereinafter DEP'T OF TRANSP. FINAL REPORT], available at <http://www.oig.dot.gov/audits/av2001020.pdf>.
11. *E.g.*, *Hearings:Plecas*, *supra* note 1; *Hearings:Pearlman*, *supra* note 9; *Hearings:Shank*, *supra* note 3.
12. *Infra* Part II.
13. *Infra* Part III.
14. *Infra* Part IV-V.
15. Airline Deregulation Act, 49 U.S.C.A. §§ 1302(a)(4), 1302(a)(9).

16. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992).
17. *See id.*
18. *See id.*
19. *Id.* at 378-9; 49 U.S.C.A. §1305(a)(1) (1998).
20. *Id.* at 378-9; 49 U.S.C.A. §1305(a)(1) (1998).
21. See DEP'T OF TRANSP. FINAL REPORT, *supra* note 10, at 11-12 (stating that the number 2 and number 3 complaint of air travelers is the lack of customer care and problems with retrieving lost baggage).
22. 49 U.S.C.A. §41713(b)(1).
23. *Northwest Airlines, Inc. v. Duncan*, 121 S.Ct. 650 (2000).
24. *See id.*
25. *Id.*
26. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (The National Association of Attorneys General adopted guidelines that contain detailed standards governing the content and format of airline fare advertising and that purport to be enforceable through the States' general consumer protection statutes. The Texas Attorney General attempted to sue allegedly deceptive fare advertisements of the respondent's airlines. The Court affirmed the district court's finding that the state action would regulate or restrict "any aspect" of the respondents fare advertising or other operations involving rates, routes, or services.).
27. *See id.* at 388.
28. *Id.* at 388-389 (quoting, *Bate v. State Bar of Arizona*, 433 U.S. 350, 377 (1977)).
29. *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 226 (1995) (deciding the ADA's preemption prescription bars state-imposed regulation of air carriers, but allows room for court enforcement of contract terms of frequent flyer agreement set by the parties themselves).
30. *See id.*; *see Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 391 (1992).

31. *Charles v. TWA*, 160 F.3d 1259, 1261 (9th Cir. 1998) (en banc).
32. *Taj Mahal Travel, Inc. v. Delta Airlines, Inc.*, 164 F.3d 186, 194 (3rd Cir. 1998).
33. See *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 336 (1995) (defines "service" in terms of the "contractual features of air transportation," including "ticketing, boarding procedures, provision of food and drink, and baggage handling"); *Smith v. Comair, Inc.*, 134 F.3d 254, 259 (4th Cir. 1998) (states that "service" undoubtedly includes boarding procedures rendered by the airline); *Travel All Over The World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1433 (1996) (adopting *Hodges* definition).
34. See H.R. 332, 107th Cong. (2001); H.R. 384, 106th Cong. (2001); S. 200, 107th Cong. (2001); S. 199, 107th Cong. (2001); S.2891, 106th Cong. (2000). (Both the House of Reps. and the Senate has introduced numerous bills over recent years that call for consumer rights in air travel.)
35. *Airline Passenger Bill of Rights: Hearing Before the Subcomm. on Aviation*, 106th Cong. (1999) (statement of Representative Louise M. Slaughter, NY).
36. See *id.*
37. H.R. 700, 106th Cong. (1999).
38. H.R. 780, 106th Cong. (1999).
39. H.R. 908, 106th Cong. (1999).
40. H.R. 700, 106th Cong. (1999).
41. *Id.*
42. H.R. 700(a)(B), 106th Cong. (1999); See DEP'T OF TRANSP. FINAL REPORT, *supra* note 10, at 55 (generally, airlines provide untimely and inadequate information to passengers on these flight).
43. H.R. 700, 106th Cong. (1999).
44. *Id.*
45. *Id.*

46. *Id.*

47. *Id.*

48. Karen Macpherson, *Congress Taking Off On Air Travel: Bills Seek More Flights, 'Passenger Bill of Rights,'* PITTSBURGH POST-GAZETTE, Mar. 8, 1999, at A1.

49. Ed Perkins, *Air Passengers' Rights Bill May Take Off,* SAN DIEGO UNION-TRIBUNE, Mar. 7, 1999, at F10.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Stress in the Skies: More Americans than ever will take to the skies over the Thanksgiving weekend – and it won't be much fun. How stressed carriers, the rising passenger numbers and an antiquated air-traffic-control system have combined to make flying a bad trip,* NEWSWEEK, Nov. 29, 1999, at 38.

54. *Id.*

55. *See id.*

56. H.R. 752, 106th Cong. (1999) (Airline Passenger Fairness Act); S.383, 106th Cong. (1999) (Airlines Passenger Fairness Act); S.603, 106th Cong. (1999) (Airline Deregulation and Disclosure Act of 1999); H.R. 2200, 106th Cong. (1999) (Omnibus Airline Passenger Fair Treatment Act of 1999); S. 2891, 106th Cong. (2000) (Air Travelers Fair Treatment Act of 2000).

57. DEP'T OF TRANSP. FINAL REPORT, *supra* note 10, at 1 (Airline Customer Service Commitment, June 17, 1999, signed by the Air Transport Association and its member airlines promising to uphold standards directed at air traveler service outlined in the agreement.); *see also*, *Airline Passenger Bill of Rights: Hearing Before the House Comm. on Trans. and Infrastructure*, 106th Cong. (1999) (Kevin P. Mitchell, Chairman of the Business Travel Coalition argues against enacting the bill stating that legislation is likely to increase business travel costs, stifle innovation, and raise safety issues).

58. *Airlines Scuttle Announcement of Draft Passenger Rights Plan*, at, <http://www.cnn.com/TRAVEL/NEWS/9906/10/>

passenger.rights.html (June 10,1999) (on file with the Consumer Law Review) (CEO of United Airlines defends the efforts of the ATA and member airlines in plotting a voluntary plan to improve passenger service).

59. DEP'T OF TRANSP. FINAL REPORT, *supra* note 10, at 1 (member airlines includes: Alaska Airlines, Aloha Airlines, American Airlines, American Trans Air, America West Airlines, Continental Airlines, Delta Air Lines, Hawaiian Airlines, Midwest Express Airlines, Northwest Airlines, Southwest Airlines, Trans World Airlines, United Airlines, and US Airways).

60. H.R. 700, 106th Cong. (1999).

61. DEP'T OF TRANSP. FINAL REPORT, *supra* note 10, at 1.

62. *Id.*

63. Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C.A. §§ 107(a)-803(a) (1999).

64. KENNETH M. MEAD, U.S. DEP'T. OF TRANSP., INTERIM REPORT ON AIRLINES CUSTOMER SERVICE COMMITMENT (2000), *available at* <http://www.oig.dot.gov/audits>.

65. *Airline Customer Service: Hearing Before the Comm. on Commerce, Science, and Transportation*, 107th Cong. (2000 WL 890279) (statement of The Honorable Kenneth M. Mead Inspector General U.S. Dep't. of Transp.).

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* ("contract of carriage" is the contract the passenger makes with the carrier when purchasing a ticket).

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*; see also, 'Rule 240': *magic words for fliers* (Aug. 20, 2000), at <http://www.msnbc.com/news/443084.asp> (suggesting one approach for passengers in bargaining for compensation of overnight stays due to canceled or delayed flights).

80. *Federal Report Gives Mixed Reviews to Airline Service Efforts* (June 27, 2000), at <http://www.cnn.com/2000/TRAVEL/NEWS/06/27/passenger.rights/index.html>.

81. *Id.*

82. *Why Flying Is So Awful: Bad weather, bad service and crowded flights have made this a grim season. And there's little hope the ride's going to get smoother*, NEWSWEEK, July, 10, 2000, at 38.

83. *Id.*

84. DEP'T OF TRANSP. FINAL REPORT, *supra* note 10, at 9.

85. *Id.* at 11-12.

86. *Id.* (Complaints such as poor employee attitude, refusal to provide assistance, unsatisfactory seating, and unsatisfactory food service are categorized as customer care complaints.)

87. *Congress to Revive Airline Passenger Rights Bills* (Jan. 28, 2001), at <http://www.cnn.com/2001/congress.airlines.reut/index.html> (on file with the *Consumer Law Review*).

88. *Id.*

89. *Id.*

90. *Patty Davis, Senate Bills Aim to Improve Air Travel* (Jan. 30, 2001), at <http://www.cnn.com/2001/TRAVEL/NEWS/01/30airline.quality/index.html>.

91. S. 200, 107th Cong. (2001).
92. 147 CONG. REC. §636-04 (Jan. 29, 2001) (statement of Sen. Reid).
93. *Id.*
94. *Id.*
95. *Id.*
96. *Id.*; see generally William Mann, *All The (Air) Rage: Legal Implications Surrounding Airline and Government Bans on Unruly Passengers In the Sky*, 65 J. AIR L. & COM. 857 (Fall 2000).
97. *Id.*
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.*
105. *Id.*
106. DEP'T OF TRANSP. FINAL REPORT, *supra* note 10, at 10.
107. *Id.* at 7.
108. *Id.* at 10.
109. *Airline Passenger Service: Hearing Before the Comm. on Commerce*, 107th Cong. (2001 WL 119767) (F.D.C.H.) (statement of The Honorable Kenneth M. Mead, Inspector General, U.S. Dep't. of Transp.).
110. DEP'T OF TRANSP. FINAL REPORT, *supra* note 10, at 14.
111. *Id.* at 15 (adequate information was described as 25 minute updates provided during a 4 hour delay that included the cause, *i.e.*

severe thunderstorms in Orlando suspending inbound/outbound service within the airport).

112. DEP'T OF TRANSP. FINAL REPORT, *supra* note 10.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. Stephen Power, *Study Finds Airlines Aren't Addressing Delays*, WALL STREET JOURNAL, Feb. 13, 2001, at A2.

122. *Id.*

123. DEP'T OF TRANSP. FINAL REPORT, *supra* note 10.

124. *Infra* Part III.

125. *Id.*

126. *Id.*

127. *Infra* Part III.

128. *Infra* Part IV.

129. *See id.*

