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Canadian Transportation Agency

Comments of the International Air Transport Association on Canada Gazette, Part 1, Volume 153, Number 10: Accessible Transportation for Persons with Disabilities Regulations

Dear Ms Gangopadhyay,

I am pleased for the opportunity to submit the following comments on behalf of the 290 member airlines of the International Air Transport Association (IATA) regarding the proposed “Accessible Transportation for Persons with Disabilities Regulations” (hereinafter “ATPDR”).

As you know, IATA members provide extensive connectivity to, from and within Canada which in turn contributes significantly to the Canadian economy. We are confident that the Canadian Transportation Agency (CTA) will carefully consider our comments before finalizing the regulatory requirements.

As we have noted throughout the consultation process leading up to the publication of the ATPDR, IATA and its member airlines are committed to providing safe, reliable and dignified travel to passengers with disabilities and to supporting their particular needs. We applaud the CTA and other government regulators around the world that share our commitment to these travellers.

At the same time, the unique nature of air travel can present obstacles to meeting all the needs of persons with disabilities. We believe airlines should assist passengers with disabilities in a manner that considers the best interests of the passengers, relevant safety regulations and operational realities. We also firmly believe that effective regulations, no matter what the subject matter, requires a comprehensive impact statement that addresses the costs and benefits of any regulatory action.

We appreciate the consultation that the CTA has undertaken with IATA and the industry to date. We wish to thank the CTA for having already considered a number of the operational and technical issues we and others raised during the initial consultation process.
IATA strongly endorses the comments of Airlines for America (A4A) on the ATPDR, particularly as they relate to their analysis of the discrepancies between the ATPDR and how the US Department of Transportation (DOT) addresses accessible air travel.

Below are some general comments as well as comments specifically on the various sections and parts of the ATPDR.

General Comments:

Cost Benefit Analysis

We appreciate the effort that the CTA has gone to in preparing a detailed cost-benefit analysis (CBA) to inform and accompany the ATPDR.

The CBA has many positive features, particularly when compared with the CBA accompanying the Air Passenger Protection Regulations (APPR). From a process perspective, we would like to highlight three elements that are included for the ATPDR but which were omitted for the APPR:

- A clear statement of the policy rationale motivating the regulatory proposals and the outcomes which the rulemaking is intended to deliver or facilitate;
- Consideration of 3 alternative options – including the status quo and a non-regulatory solution;
- Recognition that the regulations do impose additional administrative obligations and therefore should be subject to the one-for-one rule.

The headline NPV for the proposed regulatory solution is significantly positive in the central case, suggesting that benefits outweigh costs. However, closer examination reveals some concerns, in particular the very wide range between upper and lower bound estimates. This range reflects the considerable uncertainty around several of the input assumptions used in the analysis. While this is understandable given the evolving nature of research in the field of accessibility, such levels of uncertainty should prompt caution on the part of rule makers.

Indeed, under the sensitivity analysis, the case for implementation is slightly negative. The Regulatory Impact Assessment (RIA) justifies this on the basis that the sensitivity analysis reflects an extreme scenario that is highly unlikely. Equally the upper bound scenario gives a much larger benefits case but is equally unlikely. Two comments flow from review of the sensitivity analysis:

- The CBA is clearly highly sensitive to one or more non-linear input assumptions which have a disproportionate impact on the overall results. Without having had access to the detailed calculations, we assume that the greatest variation must come from assumptions around the scale and value of time savings;
- Rather than presenting extreme boundary outcomes, the sensitivity analysis would be more valuable to decision-makers if more realistic positive and negative scenarios were used.
Given the level of uncertainty surrounding the cost-benefit numbers for the regulatory option, it is unfortunate that cost-benefit numbers are not presented for the status quo and non-regulatory options. In principle, this should be important decision support information for the CTA.

Regulatory Alignment

The ATPDR includes a section\(^1\) noting the importance of aligning these provisions with those of other key jurisdictions that have accessible transportation regulations, particularly the United States and the European Union. The ATPDR concludes that the regulations would align Canada’s regulations with those of the United States and Europe. In its comments, A4A points out multiple differences between the draft regulations and the US DOT Part 382 which covers accessible air travel. We urge the CTA to modify the proposed ATPDR to address these discrepancies in the name of seamless and internationally accessible air travel.

As part of that alignment, IATA urges the CTA to follow the European Union approach to mobility assistance, which places that responsibility on the airport authority as it is best positioned to provide an uninterrupted chain of service to the person with a disability throughout the airport experience even when the passenger interacts with different carriers. The reason that the EU has adopted this model is clear: airport authorities have the necessary control over facilities and infrastructure, and are ideally placed to support mobility assistance.

Extraterritoriality

We understand that Part 2 of the ATPDR is intended to apply to all “large air carriers” operating in Canada while Part 1 and 3 only applies to Canadian “large carriers.” However, the definition of “large air carriers” in all three parts is identical:

- (a) An air carrier that transported one million passengers or more during each of the two preceding calendar years; or
- (b) An air carrier that is, under a commercial agreement with a carrier referred to in paragraph (a), operating a flight or carrying passengers on behalf of that carrier\(^2\)

In the case of Part 3, we understand from the CTA that the intention of paragraph (b) was to capture smaller regional or low-cost carriers that are partners (direct or code-share) with larger carriers. Whatever the intent, as drafted, paragraph (b) would capture any carrier that code shares with a “large air carrier” serving the Canadian market. As such, a carrier (large or small) that code shares with a foreign carrier serving the Canadian market would apparently be subject to these regulations even though they

\(^1\) Draft regulations, page 28 of 74  Regulatory Cooperation
\(^2\) Part 23(2) and Part 59(2)
themselves never touch Canadian airspace. This extraterritorial application of Canadian regulations would violate Article 1 of the Chicago Convention as well as relevant bilateral air service agreements of which Canada is a party. We are confident that the EU and US would not support this extraterritorial application of Canadian regulations, particularly since a number of the Canadian provisions would conflict with US and EU regulations governing their airlines.

IATA firmly opposes CTA’s unrealistic approach of imposing the terms and conditions of marketing carriers on flights operated by other airlines, even if they operate entirely outside Canada. Setting aside the technicalities of a code share arrangement, it is impractical for an operating carrier to apply a different set of terms and conditions for a small subset of passengers, based on a marketing code on their ticket. This will inevitably result in passenger expectations that cannot be met by carriers. Given the global and complex nature of the aviation industry, IATA urges the CTA to restrict service obligations to operating carriers only, and instead use well-established international channels to set service standards across the industry.

One Person-One Fare

On a fundamental level, IATA opposes the one person-one fare (1P1F) rule or any suggestion that airlines should be obliged to provide seats to anyone for free. We are aware of no other country in the world that imposes this requirement on any mode of transportation. At its root, no matter how well-intentioned, this obligation is an expropriation of airline property.

We appreciate that the CTA has not sought to apply 1P1F to international flights in the proposed ATPDR. However, we note with concern the potential that Canada may seek to impose 1P1F in a subsequent rulemaking. We believe that 1P1F would violate the pricing provisions in the Canada-US and Canada-EU air services agreement as well as other agreements to which Canada is a party. We will reserve our full comments on this issue for if and when Canada seeks to expand 1P1F internationally.

Clarity

We appreciate the challenge associated with drafting comprehensive regulations to cover a range of different challenges to accessible air travel. However, we urge the CTA to simplify the language in the final regulations to allow for maximum compliance by commercial airlines. As experienced English-speaking advocates, we have had significant difficulty navigating the proposed ATPDR to determine the scope of the various provisions, particularly the extensive use of cross-references. This will only be more

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3 For example, there are a number of provisions that require carriers to provide support “on the request of a person with a disability.” There is no indication in any of these sections that use this language that the carrier needs advance notice to comply with this request for support. However, Section 29(1) indicates that a person making such a request must do so within 48 hours. This section can easily be missed by a carrier, which will have a significant impact on their operations and compliance.
difficult for foreign carriers for which English and French are not their native languages. We appreciate
the CTA’s effort to clarify these provisions in various guidance materials. However, guidance materials
are not an adequate substitute for clear, concise regulations that can be understood by all airlines and
passengers impacted by these provisions.

Section Comments

Part 1

**Section 4-10: Communication of Information:** IATA is troubled at the extensive communication
obligations that the ATPDR impose on carriers. Today, the technology does not exist that would enable
carriers to make the required accessible airport and aircraft announcements. Further, by mandating
braille and TTY, the draft regulations are forcing airlines to utilize outdated technologies rather than
allowing carriers to identify innovative solutions to address the needs of the disability community. While
IATA appreciates that this requirement is intended to provide clarity to passengers, this can only be
accomplished if the requirement is limited to bookings made directly with the carrier and to services that
are industry standard and requested in advance. This is the only way to ensure that the written
confirmation can be automatically generated from the booking process, which in turn is the only way to
ensure that the written confirmation is accurate and to avoid inevitable human error caused by manual
processes.

IATA recommends that accessible communication and written confirmation be removed from the ATPDR
until the CTA has completed further consultations and feasibility studies to identify the best way to meet
its goals. If the CTA is unwilling to defer this section, we ask the CTA to consider the fact that some carriers
will have difficulty meeting the one-year deadline for Section 9 website accessibility, including any mobile
apps, in large part because they are dependent on contractors to get this work done. We recommend that
some provision be put in place to allow carriers to delay this deadline if they can demonstrate that they
have in good faith contracted with an external contractor on a timely basis. US DOT provided that leeway
when it enforced its accessible website requirement. We also recommend that the CTA make it clear in
the ATPDR that this will only encompass airline websites, not the websites of travel partners. Further, it
should not cover non-travel related webpages of the airline, such as investor relations sites or other
websites that do not support passengers’ travel needs. To that end, we recommend that the language in
Section 4(1) specifying “transportation-related service or facility” be also applied to Section 9.

**Section 11: Automated Self-Service Kiosks:** It is important to note that very few automated self-service
kiosks are owned by Canadian carriers. As such, absent a similar requirement imposed on terminal
operators who own the majority of the existing kiosks, we do not believe that this regulation will meet
the CTA’s stated goal. Further, we recommend the CTA modify Section 11 to require that only a
percentage of self-serve kiosks be made accessible. For example, US DOT requires that 25% of the kiosks
be accessible. There is no need for all kiosks to be accessible since Section 12 requires airline staff to support those with disabilities using the kiosks.

Part 2

Section 23: Requirements Applicable to Carriers: Section 23(1) should be amended to clarify that carriers falling within Part 2 are large carriers that provide international service to, from or within Canada, and that obligations are on the operating carrier, not the marketing carrier. The language as currently written would cover every carrier in the world, even those that do not touch Canada nor have a business relationship with a Canadian carrier. In addition, as noted above, we believe Section 23(2)(b) is extraterritorial and should be amended to only cover carriers that touch Canadian airspace. It is also unclear if a carrier under 23(2)(b) must itself be a “large air carrier.”

Section 32: Check-in, Boarding, Disembarking, Baggage, etc.: As noted above, we believe that airports are best positioned to support the mobility needs of passengers. We therefore recommend that the requirements of Section 32 be modified to require airport authorities to accommodate those needs for which they have operational control or expertise, including 32(c)(s)(t)(u)(v) and (w). Further, we recommend that the accommodations in Section 32 be made only to address the person’s specific disability. As noted by A4A, a person with severe allergies does not necessarily require assistance in retrieving their baggage.

Sections 36-45: Transport of Mobility Aids and other Assistive Devices: As an active member of the Agency’s Mobility Aids and Air Travel Working Group, IATA urges the CTA to focus its efforts on the many practical suggestions that the various stakeholders have made and defer to their expertise to improve the transportation of mobility aids in air travel.

IATA also strongly recommends that the ATPDR clearly manage passenger expectations and explicitly mention that a failure to bring written instructions and tools required to disassemble/assemble, or a failure to arrive early for check-in or to the boarding gate, may result in refusal to carry the mobility aid. Carriers must have the means to ensure that they have sufficient time and information to carry mobility aids without rushing (and unfortunately sometimes damaging them) or impacting on-time performance.

Under Section 39, we believe that carriers should only be obligated to make “a reasonable effort” to permit a person with a disability who uses a walker or manually operated folding wheelchair to store it on an aircraft that has a dedicated stowage area for those devices. Trying to stow bulky heavy equipment in overhead bins etc. could pose a significant safety hazard for other passengers and crew.

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4 Including, for example, a Handling Checklist between ground handlers (a simple, standardized generic list of handling actions that may be completed at the sending station, and must then be redone at the receiving station) and a Mobility Aid Passport (the sole source of reliable, detailed information about the mobility aid, issued by the manufacturer, that physically travels with the mobility aid), as well as promoting the design of mobility aids for air travel.
Finally, IATA recommends that the ATPDR be clarified to explicitly limit a carrier’s obligation to provide alternate routing to flights operated by the carrier in question (rather than flights provided by the carrier), and with the aircraft scheduled to operate the flights in question.

**Section 47: Transport of Service Dogs:** We recommend language be included in Section 47 to make it clear that no other animals will be considered service animals for the purpose of this regulation and that emotional support animals are not permitted in the ATPDR. We also recommend language be included in this section to provide airlines with the discretion to refuse transport of a service dog if the animal is clearly not trained to support the disability and/or is posing a threat to passengers’ safety. During the consultation process, the CTA indicated that 56(1) provides an opportunity for an airline to deny transporting a person on the grounds of safety if the transportation would “impose an undue hardship on the carrier.” We do not believe this language is sufficient to give a carrier the opportunity to apply common sense to exclude a service dog from the aircraft that is clearly not a trained service dog.

**Section 49: Allergy Buffer Zone:** We have a number of concerns about this section, which is unique to Canada as compared to other major jurisdictions. Firstly, it is unclear what is meant by “severe” allergy. Using such a subjective term in a regulation opens the carrier up to potential ongoing legal and regulatory challenges. We recognize that Section 30 gives the carrier the option to require the traveler to provide information or documents, including a medical certificate. However, without a clearer definition, one doctor may term an allergy as “severe” whereas another doctor might consider it a mere annoyance. We urge the CTA to define “severe” in the final regulations. We are also concerned about the operational implications of this policy. While the regulation requires 48 hours’ notice from the passenger, the crew would still need to spend time pre-take off interviewing passengers in the row where the person with the allergy is sitting to determine if they have the same allergen. If someone in the row has the allergen, the airline would under this language have to reseat the person and interview that row to make sure the allergen is not present. This would take up valuable time needed to get persons timely boarded, seated, briefed on safety matters and prepared for take-off. It is important to note that accommodating the person with allergies could impact other rights set forth in these regulations (such as being provided a seat for a large guide dog) as well as rights provided under the recently published Canadian draft air passenger protection regulations (such as the requirement of seating a parent with their child if under a certain age). With high load factors, it will not be uncommon for circumstances to arise whereby a carrier cannot accommodate all of the requirements in the passenger rights and accessibility rights regulations on any given flight. We urge the CTA to include some language to provide airlines the flexibility to accommodate the person suffering from allergies to the greatest extent possible under the circumstances. We also recommend that language be included in the regulation to make clear that while airlines may be obligated to inform passengers of allergens, they bear no responsibility if passengers either purposely ignore airline staff direction or don’t act because they do not know that a product contains such allergens.
Section 57: Damaged, Destroyed or Lost Mobility Aids: This section is inconsistent with the Montreal Convention’s rules for baggage (see Articles 17, 22 and 29). A number of positive obligations are placed on carriers, for example with regard to the repair, replacement and reimbursement obligations, that would appear to offend the Convention and its exclusivity principle. The applicable limit for baggage in the carrier’s custody is SDR 1,131, which contradicts the drafter’s formulations for "full replacement cost", and the duties of replacement and repair. The section should therefore be amended to relate solely to domestic carriage or otherwise to carriage to which the Convention does not apply, in keeping with Canada’s international obligations. It bears noting that section 57 deals with matters that should be dealt with under a private insurance policy. If the present wording is retained, additional language should clarify that section 57 should be read down in the event of conflict with the Montreal Convention. It is IATA’s view that a separate class of baggage (i.e. mobility aids) or other items cannot be created by domestic legislation to circumvent or supplant the provisions of the Convention.

Part 3

Section 59: Application of this Part: As noted above, we believe Section 59(2)(b) is extraterritorial and should be redrafted to exclude any carrier that does not touch Canadian airspace. If this language is included, it should be made clear whether 59(2)(b) applies to all carriers or just “large air carriers.”

Section 83: Passenger Seats: We recommend that 83(b)(ii) be modified to stipulate that the moveable armrests be on aisle seats as a movable armrest on a middle seat will not make the row accessible. On 83(d)(ii) we recommend that an accessible button on an entertainment screen be considered equivalent to a traditional call button.

Section 101-102: Washroom Facilities: We support the decision by the CTA not to apply these provisions to pre-existing aircraft, as defined in Section 62(4). The final ATPDR needs to consider the long lead time from order to delivery of new aircraft.

Section 110: On Board Entertainment Systems: As stated previously, IATA is firmly of the belief that the CTA has no mandate to regulate on-board entertainment systems. That said, at the very least, we believe that greater flexibility must be given to airlines to meet the CTA’s goals. For example, at least one major Canadian carrier’s entertainment system is WIFI-based, which requires passengers to use their personal electronic devices (PEDs) to access entertainment content. We believe that providing WIFI enabled entertainment for persons with a disability is equivalent to that being offered to other passengers. As such, we believe the CTA should change the language of this section to provide carriers with the flexibility to provide an equivalent entertainment service to all passengers rather than proscribing how to provide that equivalency. If in the end the CTA decides to mandate the use of PEDs, we recommend that this section be amended to require persons with a disability to notify the airline 96 hours in advance that they will need a PED during the upcoming flight. It is unreasonable to require carriers to estimate how many
PEDs to carry on any given flight. In addition, we believe language should be included to clarify that a carrier is only obligated to provide commercially available accessible content. Finally, the word “also” in 110(b) should be removed as 110(a) and 110(b) are alternative options for the carrier.

IATA strongly recommends that the CTA modify the ATPDR before final publication so as to ensure they are more concise and better align with current airline operations and practices.

Thank you once again for the opportunity to comment on these proposed regulations. We hope that these comments as well as those from our member airlines and other industry associations will support the CTA’s goal of implementing effective and rational protections for passengers with disabilities.

Thank you for your consideration.

Sincerely,

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cc: Hon. Marc Garneau, Minister of Transport
Hon. Joyce Murray, President of the Treasury Board and Minister of Digital Government
Mr. Scott Streiner, Chair and CEO, Canadian Transportation Agency
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