

Association for Airline Passenger Rights (AAPR)

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December 7, 2011

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave., SE.
Room W12-140
Washington, DC 20590-0001

RE: Department of Transportation, Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports [Docket No. DOT-OST-2011-0177-0026]

To Whom It May Concern,

I am writing to you on behalf of the Association for Airline Passenger Rights (AAPR) in response to the U.S. Department of Transportation's (DOT) Notice of Proposed Rulemaking (NPRM) and Supplemental Notice of Proposed Rulemaking (SNPRM) on "Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports," [Docket No. DOT-OST-2011-0177-0026], RIN No. 2105-AD96]. AAPR commends DOT for recognizing the importance of making air travel more accessible for travelers with disabilities under the Air Carrier Access Act (ACAA).

ACAA states that individuals with disabilities will have access to all services, goods and information that they provide to any other passenger as part of their normal operating practices and forbids air carriers from treating travelers with disabilities any differently than other passengers except in making the necessary accommodations. It applies to all facets of air travel, including airport accessibility, aircraft accessibility, wheelchair issues, service requirements, accommodations for the deaf and hard of hearing, attendants and service animals.

ACAA is important because it ensures that air travel is more accessible for travelers with disabilities. But it also serves as a reminder to the entire aviation industry that consumers with disabilities looking to fly share a common denominator with their non-disabled flyers: **THE POWER OF THE ALMIGHTY DOLLAR.**

There are 54 million Americans living with a disability, further demonstrating the potential buying power of this growing segment of the U.S. population. As such, they represent the 3rd largest market in the nation according to the U.S. Department of Labor's Office of Disability Employment Policy (ODEP). In fact, ODEP reported that individuals with disabilities and their families control over \$1 trillion in buying power annually, including over \$175 billion in discretionary spending.¹

ACAA has led the way for accessible travel. The airline industry, however, still has a long way to go to ensure that air travel is fully accessible for travelers with disabilities. Numerous high-profile fines levied by DOT on the airline industry only serves as a reminder that there remains much more work to be done in this area. Among them was the historic \$2 million fine against Delta Airlines in February 2011 for violating ACAA rules.²

¹ "A positive strategy for expanding market share," U.S. Department of Labor, Office of Disability Employment Policy, May 2009.

² "Delta Fined for Violating Rules Protecting Air Travelers with Disabilities," U.S. Department of Transportation, February 17, 2011.

Some in the travel industry suggest that the airlines would be well served to learn a thing or two from the hotel industry,³ which has recognized that consumers with disabilities play an important role in the marketplace. Look no further than Starwood Hotels, or Wyndham Hotels as perfect examples of two companies tapping into this emerging base of loyal consumers.

As the following chart demonstrates complaints among travelers with disabilities is on the rise; half are wheelchair related.

Flying with Wheelchairs

Among US Carriers Complaints Rising

Year	Total Number of Disability Complaints Received by Domestic Carriers	Total Number of Disability Complaints Received by Foreign Carriers	Total Number of Disability Complaints Received by All Carriers
2004	10,193	1,326	11,519
2005	12,194	1,398	13,592
2006	12,075	1,691	13,766
2007	13,926	1,364	15,290
2008	12,557	1,449	14,006
2009	15,496	1,572	17,068

Summary Report 2010 by USDOT Aviation Consumer Protection & Enforcement ACPE

Chart: Don Brandon, "Flying with Wheelchairs: Knowing Your Rights & Responsibilities at 32,000," Northwest ADA Center, December 7, 2010.

³ David Koeppel. "Business Travel: Hotels Learn to Deal with Disability" The New York Times on the Web. 17 February 2004.

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Rather than the airlines adopting a “risk adverse” type strategy towards travelers with disabilities, they should recognize the value of their consumers with disabilities. After all, consumers with disabilities have been shown in numerous studies to display some of the most loyal spending habits of any market.

AAPR’s believes that the proposed changes to ensure more accessible air travel will improve air travel for travelers with disabilities, but also ALL air travelers.

Web Site Accessibility

AAPR fully supports DOT’s assessment regarding website accessibility. In today’s e-commerce driven marketplace, there is no question that the airlines leverage their websites to share information about their services (including but limiting to their contracts of carriage, passenger of size policies, baggage fees, etc.), sell tickets, reconcile consumer comments and complaints, and advertise special travel deals. Regrettably, many airlines are still reluctant to offer fully accessible website because not all information and services available to the public on these websites are accessible to individuals with disabilities. Accessible websites should not be viewed as a regulatory requirement – or a cost of doing business for that matter – but rather a strategic decision to enhance their marketability and therefore maximize their outreach to potential customers. In the absence of the airlines coming to this sound business decision, minimum standards are necessary to prevent unequal access to services that discriminate against individuals with disabilities.

The applicability of the accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended (hereinafter Section 508) as a means of ensuring that all domestic and international flight and other information on their websites is accessible to persons with visual impairments should not be discounted during DOT’s review. After all, airlines utilize airports – including their terminals, runways, etc. – that are subsidized by the federal government; they’re granted access to the airspace which is controlled by the federal government; and they benefit from numerous services funded by the federal government that are designed to facilitate air travel. Therefore, Section 508 requirements are a fundamental necessity to ensure that every taxpayer can have equal access to the products and services associated with every aspect of air travel and that should include foreign air carriers doing business in the United States. Our history is laced with examples whereby separate is **NOT** equal, so AAPR supports requiring foreign air carriers to make accessible the portion of their websites displaying information related to flights serving U.S. airports, as well as multi-carrier travel service websites owned by groups of carriers or with whom carriers have contractual or agency relationships.

That air carriers continue to expressly oppose making their websites fully accessible demonstrates their lack of understanding about the return on investment it represents for their bottom line. The risk adverse approach that the airlines have adopted overlooks one of the largest emerging markets in the country, and worldwide. Companies like IBM, Microsoft, Google and many others have all harnessed their accessibility to expand their respective markets, so the airlines’ argument that it would be “*it would be too difficult and expensive to accomplish*” is not reflective of what many other companies have already achieved in this area.

In “**The Importance of Mobile Accessibility**,” Debra Ruh, Chief Marketing Officer for SSB Bart Group (and AAPR member), applies the very same business case for the mobile phone industry to improve its accessibility for individuals with disabilities as it relates to their website accessibility (and kiosks). The parallels are striking.

Ruh’s blog reads, in part:

“In February, [CBS News](#) did an article stating that the number of mobile phone subscriptions had reached 4.6 billion and was expected to hit 5 billion by the end of 2011. Today mobile devices are being used to access all kinds of data, including financial data. It is estimated that between 500 million and 1 billion individuals will access financial services via mobile technology by the year 2015. Even more reason why it is critical that everyone, including individuals with disabilities, has access to communications and technology.

So what needs to be done to assure everyone can participate? A good first step is to design the devices following Universal Design and Accessibility Standards. Persons who are blind or have low vision, are deaf or hard of hearing, have mobility impairments, intellectual disabilities or age related disabilities, are all impacted by inaccessible devices.

According to the [W3C](#), many of the mobile devices’ limitations match a number of well-known disabilities:

- the small screen can easily induce pages with very small characters
- the limited viewport makes layout and browsing context changes as disturbing as for someone with limited vision
- the sometimes difficult lighting conditions (e.g. from using a phone screen under the sunlight) can make colors and contrasts as difficult to identify as for a person with color perception problems
- the lack of a mouse matches the inability of some persons to use a mouse due to mobility difficulties
- likewise, the very limited and often hard-to-use keyboards available on mobile devices are evocative of the difficulties some persons with disabilities can have interacting with a keyboard
- the social and mobility context of some mobile users make the use of some modalities (sound, video) for multimedia content inappropriate, matching the inability for some individuals to hear sounds or see images
- in a mobile context, a user might have a very limited or patchy attention span, as someone with a cognitive disability might have
- on mobile networks where time and cost are often limiting factors, being able to determine what an image is before it gets downloaded matters — assistive technology having such a description would help a blind user
- the use of some technologies (plug-ins, scripts) might not be possible on a number of mobile devices, like they wouldn’t be usable with a number of assistive technologies”

Everyone needs access to the internet, communications and technology.”⁴

⁴ “The Importance of Mobile Accessibility,” Debra Ruh, SSB Bart Group, September 15, 2011.

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Companies like SSB Bart Group, and others, can provide DOT with more accurate and technical information relating to the applicability, system requirements, feasibility, costs, etc.

While the airlines in their stated objections to numerous website accessibility requirements cite the cost associated with it (*the Air Transport Association and some individual carriers themselves put the actual cost of initial compliance as ranging from \$300,000 to more than \$1,000,000 per carrier, with recurring costs of \$10,000 to \$200,000 per carrier annually*), they fail to cite relevant information regarding the money they make off travelers with disabilities. According to a Harris poll commissioned in 2005 by Open Doors Organization, 21 million adults with disabilities traveled within a two-year period, spending more than \$3.3 billion annually. These numbers have since increased, too.

Therefore, AAPR supports DOT's SNPRM on website accessibility apply to all public-facing content on the websites of U.S. carriers. Foreign carrier websites also should be covered only with respect to web pages involved in marketing (advertising or selling) covered air transportation to the general public in the U.S.

Likewise, AAPR strongly supports DOT's proposal to require carriers offering travel packages online that include covered air transportation must ensure that their website pages marketing all package components (e.g., hotel or rental car reservations) are conformant with the WCAG 2.0 accessibility requirements.

With respect to implementation of some of the proposed timelines included in DOT's SNPRM, AAPR contends that they are too long. AAPR would prefer to see the timeline reduced to one year, thereby striking a balance between the immediate needs of consumers with disabilities and the concerns stated by the airlines related to functionality, cost, etc. Fully accessible websites are not a luxury, but rather a necessity of doing business. They not only benefit travelers with disabilities seeking to purchase airfare, but they also directly impact the airlines' revenue stream because it taps into the 3rd largest market in the U.S.

Automated Airport Kiosk Accessibility

As pointed out by DOT, "*most airlines today are using automated kiosks at airports to perform customer service functions such as automated flight check-in and printing of boarding passes.*" Therefore, AAPR supports DOT's SNPRM to amend section 382.57 to require U.S. and foreign air carriers at every U.S. airport with 10,000 or more enplanements per year where they own, lease, or control automated kiosks providing flight-related services to their customers (e.g., ticket purchase, seat selection, issuance of boarding passes, bag tags, etc.) to ensure that all new kiosk orders initiated 60 days after the rule's effective date are for accessible units. Furthermore, AAPR encourages DOT to consider extending this requirement to all airports using kiosks. Often times, small regional airports provide better customer service than the larger hubs, so there is no reason why passengers with disabilities should expect a different level of service with respect to accessibility standards.

In addition, AAPR contends that DOT should require carriers to retrofit or replace a certain portion of their kiosk fleet to meet the accessibility standards during the interim period until 100% of all automated airport kiosks are accessible. Frankly, these kiosks were put into use without being accessible which seems to fly in the face of the legislative intent of protections afforded under ACAA for individuals with disabilities. DOT might consider providing grants to airlines to offset some of the costs, but the bottom line remains that a transition timeline of ten years is far too long to for accessible kiosks to be available to individuals with disabilities. Achieving anything less than 100% accessible kiosks would achieve a standard that is no different than Part 382, which currently requires carriers to provide equivalent service to passengers with disabilities when automated airport kiosks are inaccessible, such service typically involves assistance from carrier

personnel in operating the kiosk or permitting a passenger to move to the first class ticket counter line. Either way, unequal access to services is unacceptable. With that in mind, AAPR agrees that DOT's best alternative as requiring that all new automated airport kiosks ordered after a certain date be accessible so that eventually 100% of kiosks at all airport locations will be accessible.

With respect to specific questions put forth by DOT, AAPR submits the following responses regarding Effective Date, Alternatives, and Retrofitting:

Should the proposed time frame for accessible kiosks (i.e., kiosks ordered 60 days after the effective date of the rule) be reduced or increased assuming the rule is effective 30 days after publication in the Federal Register?

- Maintain the 60-day requirement.

Is it reasonable to require that all new kiosk orders initiated after the effective date of the rule be for accessible models?

- Yes.

Should there be a delay in the effective date of this provision? If so, what is a reasonable amount of time to delay the effective date of this provision?

- No. Accessible kiosks are on the market and therefore should be required to ensure equal access to services.

Should the effective date for carriers to enter into and implement agreements with airport operators concerning the provision and maintenance of accessible shared-use automated airport kiosks be more than 60 days after the final rule's effective date? If so, what is a reasonable time to enter into such agreements and commence implementation?

- Yes, but no longer than 120 days.

Should less than 100% of new automated airport kiosks ordered after the effective date of the rule be required to be accessible? If so, what is a reasonable percentage to be accessible at each airport location?

- No, 100% of new automated airport kiosks ordered after the effective date should be accessible.

If only some kiosks are accessible at each location, how would carriers ensure that the accessible kiosks are available to passengers with disabilities when needed?

- During the "transition" period, accessible kiosks should be designated with appropriate placards designating them as accessible.

Would a phasing in period over 10 years, gradually increasing the percentage of automated airport kiosks required to be accessible, meaningfully reduce the costs of implementing this requirement (e.g., 25% of new automated kiosks must be accessible within 3 years of the rule's effective date, 50% within 5 years, 75% within 7 years and 100% within 10 years)?

- Yes, but AAPR believes that 3 years is too long to achieve the 25% milestone and that milestone should be modified to reflect 1 year.

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With respect to retrofitting inaccessible kiosks, AAPR believes that the airlines' focus—and thus DOT's focus—should be on ensuring all new kiosks are fully accessible for individuals with disabilities. AAPR would favor less strict retrofitting requirements in favor of more ardent requirements to phase in the newer, more accessible kiosks.

In closing, AAPR encourages DOT to pursue the most aggressive policies possible with respect to ensuring that travelers with disabilities are afforded equal access to products and services offered by the airlines, and other vendors and therefore reiterates its strong support for the SNPRM.

In 1986, President Ronald Reagan signed the Air Carrier Access Act into law (49 U.S.C. 41705), effectively ending decades of discriminatory practices that had kept individuals with disabilities grounded. DOT and travelers with disabilities recently celebrated the law's 25th anniversary. Upon charactering ACAA as a significant civil rights triumph, DOT Secretary Ray LaHood said, "Unlike 25 years ago, when passengers with disabilities frequently suffered degrading and discriminatory treatment from airlines, today air travelers can be assured of fair and equal treatment regardless of disability." AAPR agrees!

As ACAA turns 25 this year, travelers with disabilities remain hopeful that air travel will continue to evolve and become even more accessible for everyone. Whether its providing closed-captioning for in-flight entertainment, or ensuring that psychiatric service dogs are treated the same as physical service dogs, ACAA provides an important foundation by which the U.S. aviation industry can improve the delivery of products and services to this important segment in the marketplace – and it is from the standpoint of the marketplace that AAPR is pleased to submit its comments in support of the SNPRM on behalf of the millions of passengers with disabilities who fly annually.

Thank you.

Sincerely,

Brandon M. Macsata
Executive Director