
Minutes

First Meeting of the DOT ACCESS Advisory Committee May 17-18, 2016 Omni Shoreham Hotel, Washington, DC

The Department of Transportation's Advisory Committee on Accessible Air Transportation (ACCESS) met on May 17-18, 2016 in Washington, D.C. In accordance with the Negotiated Rulemaking Act, 5 U.S.C. §561-570, and the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, the meeting was open to the public. Richard Parker, Facilitator, called the meeting to order at 9:30 a.m. on Tuesday, May 17, 2016. The list of individuals attending the meeting is attached hereto as Attachment 1.

Committee Action

After welcoming remarks by the facilitator, Richard Parker, and the Department of Transportation Designated Federal Officer, Blane Workie, the facilitator provided a Draft Agenda (Attachment 2) which was adopted. It called for discussion, revision and vote on draft rules of procedure/ground rules for the negotiating process going forward, followed by a preliminary discussion of each of the three major topic areas: service animals, in-flight entertainment/communications (IFE/IFC) and accessible lavatories.

...

Committee Ground Rules. The facilitator opened the meeting by offering a detailed overview of the negotiated rulemaking statute and process. He then presented the Facilitator's Draft rules of procedure for discussion, and explained that the ground rules must be adopted unanimously, even if the parties agree in the ground rules that something short of unanimity may suffice to establish "consensus" in an issue area thereafter. The facilitator also proposed that the Plenary Committee be divided into three Voting Subcommittees, with participation expectations and voting rights limited to those topic areas in which each voting member expressed a stakeholder interest. This approach was adopted and three Voting Subcommittees were created, composed of the designated representatives listed in Annex A to the Ground Rules. After extensive discussion, focused principally on the definition of consensus and the obligations of the stakeholders in the event of consensus, the Committee voted (on Day 2) to adopt the Ground Rules subject to subsequent affirmation of each participant after consultation with their respective organizations. The parties agreed to communicate their affirmation (or otherwise) by email no later than one week from the conclusion of the meeting (i.e. May 25). [This was done in timely fashion, with 25 Committee Members signifying their final assent to the Ground Rules in an online poll, and two Members assenting by email.] The unanimously-agreed Ground Rules for the ACCESS Committee are attached hereto as Attachment 3.

Discussion of Issues. In addition to reaching agreement on the ground rules, the Committee discussed each of the substantive issue areas, with the goal of reaching informal consensus on the specific policy issues to be resolved -- along with the data/analysis that might need to be gathered to inform decisions -- in each of the three topic areas. The Committee also established Work Groups in each topic area and selected co-chairs to lead and serve as interest group points of contact for each work group. The list of Work Group chairs is attached hereto as Attachment 4.

Service Animals. The initial discussion of service animals focused on exchanges of views regarding the nature, scope and source of problems in this area, and the delineation of the key issues to be addressed in this rulemaking. The committee informally agreed to ask the Service Animal Work Group (SAWG) to focus its energies on addressing the list of issues set forth in Attachment 5.

IFE/IFC. Discussion of IFE/IFC included both a technical introduction and Powerpoint presentation by Michael Childers of APEX, which may be found on the agency website at [<https://www.transportation.gov/sites/dot.gov/files/docs/5-APEX-Powerpoint-on-IFE.pdf>], and a discussion of the scope of the reg-neg. The Department re-affirmed its consistent position that the Air Carrier Access Act (ACAA) gives the Department legal authority to ensure equal access of passengers with disabilities to IFE provided by airlines to other passengers, so long as (and to the extent that) such access does not impose an “undue burden” on airlines. Airline representatives reaffirmed their position that IFE is not integral to air transportation and thus lies outside the scope of the DOT’s regulatory jurisdiction under the ACAA. After some discussion, all parties agreed to explore options for improving access for passengers with disabilities in good faith, without prejudice to their respective legal positions.

Certain airline representatives also asserted that In-Flight Communications (IFC) was not within the scope of the reg-neg of the Committee announced at the outset of the convening process. The facilitator explained, however, that one of the many purposes of the reg-neg convening process is to clarify, based on extensive interviews with a wide array of stakeholders, what the scope of the reg-neg should be. In this case, a convening process involving interviews with over 45 stakeholders led to a recommendation that three of the six issues originally identified in the convening process were not suitable topics for a reg-neg and should not be pursued. However, one sub-issue (In-Flight Communications) had been overlooked in the Department’s convening notice, although it had been reported as a problem by certain stakeholders representing passengers with disabilities and met the other criteria for inclusion in the reg-neg. The facilitator explained that adjustment of scope as the result of the convening process is normal procedure in the development of a reg-neg. The facilitator also noted that the Department had appropriately signaled its intention to widen the scope of the reg-neg to include IFC when it announced its intention to proceed with the reg-neg, defined the scope of that reg-neg, and invited nominations to participate in the committee. There being no further objection, the parties agreed to address IFC issues within the reg-neg. The parties then asked the IFE/IFC Work Group to develop a draft list of issues to consider at the next plenary session.

Accessible Lavatories. The afternoon of the plenary session on May 18th was devoted to an exchange of views on the issues pertaining to the accessibility of lavatories on single-aisle aircraft. The Department explained the reason for its prior decision to limit the requirement for accessible lavatories to new twin-aisle aircraft, but noted two developments since that rule had led to the Department’s decision to explore options for requiring accessible lavatories on certain single-aisle aircraft as well: (1) single-aisle aircraft were increasingly carrying passengers on long flights; and (2) promising new designs for providing accessible lavatories on single-aisle aircraft were emerging that merited exploration. The Committee representative from Airbus then offered a PowerPoint presentation (posted on Negotiated Rulemaking Docket docket at <https://www.regulations.gov/docket?D=DOT-OST-2015-0246>) of Airbus recent designs for single-aisle aircraft. The parties concluded by asking the Lav Work Group to develop an Issues List and action plan for discussion at the second plenary meeting.

Data Needs. The plenary session concluded with a short presentation by a DOT economist on the Regulatory Impact Assessment process and methodology and the sort of data sought by Department economists for that assessment.

Attachments

ATTACHMENT 1**ACCESS Committee First Plenary Meeting
Attendance List**

Committee Members	DOT and Other Governmental Representatives
Michelle Albert, Boeing	Deborah Aiken, Department of Transportation
Zainab Alkebsi, National Association of the Deaf	Stephanie Berger, Department of Justice
Mary Barnicle, United Airlines	Kathleen Blank Riether, Department of Transportation
Kelly Buckland, National Council on Independent Living	Livaughn Chapman, Department of Transportation
Curt Decker, National Disability Rights Network	Christina Galindo-Walsh, Department of Justice
Parnell Diggs, National Federation of the Blind	Robert Gorman, Department of Transportation
Geoff Freed, WGBH/National Center for Accessible Media	Anne Hammond, Department of Transportation
Brian Friedman, JetBlue	Bryna Helfer, Department of Transportation
Lise Hamlin, Hearing Loss Association of America	Rachel Jacobs, Department of Transportation
Dr. Katharine Hunter-Zaworski, Oregon State University	Maegan Johnson, Department of Transportation
Candace Kolander, Association of Flight Attendants	Jill Laptosky, Department of Transportation
Doug Lavin, International Air Transport Association	Rosalind Lazarus, Department of Transportation
Russ Lemieux, Airline Passenger Experience Association	Vinh Nguyen, Department of Transportation
Lorne Mackenzie, WestJet Airlines	Suzy Rosen Singleton, Federal Communications Commission
David Martin, Delta Airlines	Norman Strickman, Department of Transportation
Orit Michiel, Motion Picture Association of America	Other Attendees
Bradley Morris, Psychiatric Service Dog Partners	Heather Ansley, Paralyzed Veterans of America
Lee Page, Paralyzed Veterans of America	Tristan Atwood, Holland & Knight LLP
Richard Parker, Facilitator	Bill Botton, U.S. Access Board
Deborah Lynn Price, Frontier Airlines	Alec Bramlett, American Airlines
Roser Roca-Toha, Airbus	Oakley Brooks, National Air Carrier Association
Alicia Smith, National Alliance on Mental Illness	Michael Childers, Airline Passenger Experience Association
Jenine Stanley, Guide Dog Foundation for the Blind	Charlie Crawford, American Council of the Blind
Tony Stevens, American Council of the Blind	Mario Damiani, US Access Board
Blane Workie, Department of Transportation	Drew Derco, Eckert Seamans Cherin & Mellott, LLC
	Jennifer Dexter, Easter Seals
	Joan Durocher, National Council on Disability
	Kristen Foster, Hawaiian Airlines
	Joan Gabel, Air France
	Jason Haag, American Humane Association
	Chad Heflin, International Air Transport Association
	Dayan Hochman, Eckert Seamans Cherin & Mellott, LLC
	Leslie Horton, International Association of Canine Professionals

	Tony Jasionowski, Panasonic
	Danique Masingill, American Humane Association
	Mtambuzi Kavaragu, Virgin America
	Doug Mullen, Airlines for America
	Siddarth Nagaraj, Association of University Centers on Disabilities
	David Nelson, Amtrak
	Jennifer Nowak, Holland & Knight LLP
	Ray Prentice, Alaska Airlines
	Howard Rosenblum, National Association of the Deaf
	Katy Rosseland, Open Doors Organization
	Evelyn Sahr, Eckert Seamans Cherin & Mellott, LLC
	Kenneth Shiotani, National Disability Rights Network
	Kristin Stephenson, Muscular Dystrophy Association
	Jim Thumpston, Zuckert Scoutt Rasenberger
	Jennifer Tripp, Muscular Dystrophy Association
	Laura Weidner, National Multiple Sclerosis Society
	Kimberly Villiers, Georgetown University

Attachment 2

Tuesday and Wednesday, May 17 – 18, 2016
Omni Shoreham Hotel (Diplomat Room)
2500 Calvert Street NW.
Washington, DC 20017

Tuesday, May 17, 2016, 9 AM – 5:00 PM

- 09:00 – 09:30 AM** *Call to Order and Introductions; Agenda Approval*
Richard Parker, Facilitator, ACCESS Committee
Blane Workie, Designated Federal Officer (DFO), ACCESS Committee
- 09:30 – 10:15 AM** *Overview of Negotiated Rulemaking Process*
Richard Parker, Facilitator
- 10:15 – 10:30 AM** *Break*
- 10:30 – 12:00 AM** Presentation and Discussion of Rules of Procedure
- 12:00 – 01:30 PM** Lunch [on your own]
- 01:30 – 03:00 PM** Continuation of Rules of Procedure Discussion and Vote
- 03:00 – 03:30 PM** Break
- 03:30 – 05:00 PM** *Service Animals*
Initial Discussion/Issue Identification/Work Plan

Wednesday, May 18, 2016, 9 AM – 4:00 PM

- 09:00 – 09:15 AM** *Call to Order*
Richard Parker, Facilitator, ACCESS Committee
- 09:15 – 10:45 AM** *In-flight Communications (IFC)*
Initial Discussion/Issue Identification/Work Plan
- 10:45 – 11:00 AM** *Break*
- 11:00 – 12:30 PM** *Accessible Lavatories*
Initial Discussion/Issue Identification/Work Plan
- 12:30 – 02:00 PM** Lunch [on your own]
- 02:00 – 03:00 PM** Short presentation on data needs; Group discussion
Deborah Aiken, Economist, DOT
- 03:00 – 04:00 PM** Finalize work plan and work groups
- 04:00 PM** Adjourn

ATTACHMENT 3

U.S. DEPARTMENT OF TRANSPORTATION
Accessible Air Transportation Advisory Committee (ACCESS)
Docket No. DOT-OST-2015-0246

Negotiated Rulemaking Committee Ground Rules

1. Goal of the ACCESS Committee (“Committee”)

The goal of the Committee is to reach consensus in good-faith on proposed amendments to the Department’s disability regulation on three issues: (a) whether to require accessible in-flight entertainment (IFE) and strengthen accessibility requirements for other in-flight communications (IFC); (b) whether to require an accessible lavatory on new single-aisle aircraft over a certain size; and (c) whether to amend the definition of “service animals” that may accompany passengers with a disability on a flight. The objective is that each Party will support the consensus recommendation formed by the Committee.

2. Participants

- a. **Interests Represented.** Any interest that would be significantly affected by the rule may be represented in the negotiations.
- b. **Parties to the Negotiations.** The Committee consists of those individuals whom the Secretary appoints, as nominated by the affected interests. Each organization or interest caucus that is directly represented on the Committee shall be deemed a Party to the negotiations. The list of member organizations of the ACCESS committee (hereafter “Parties”) is set forth in Annex A.
- c. **Committee Members.** Each Committee member appointed by the Secretary agrees to serve a 2-year term or until the dissolution of the Committee, whichever occurs first, unless that member becomes unable to serve, resigns, or ceases to maintain the representational requirements.
- d. **Alternates for Committee Members.** Each Party to the negotiations may designate an alternate Committee member. Alternates may substitute for Committee members in the event the member cannot attend a session of the Committee. Only Committee members may vote on any consensus recommendation, and any alternate casting a vote shall do so on behalf of the Committee member, and not as a representative of their own organization’s interest, if different. Alternates may vote on the final recommendation only on the instructions of their principal.

-
- e. **Additional Interests.** Additional organizational interests may join the Committee after negotiations have begun only with the consensus of the Committee. Any members determined by the Committee to be necessary additions in order to achieve a balanced membership representing all significantly affected interests will be appointed by the Secretary in accordance with departmental procedures.
 - f. **Attendance and Participation at Meetings.**
 - (1) Attendance. Each Committee member agrees to make a good faith effort to attend every session of the Committee. In addition, the Committee member's alternate agrees to make a good faith effort to attend all Committee meetings and to represent the interest at any meeting that the member is unable to attend.
 - (2) Participation. Only Committee members or their alternates have the privilege of sitting at the negotiating table. Any person may speak from the floor during the negotiations upon recognition by the facilitator; however, the Committee may limit discussion as needed to resolve issues in a timely manner.
 - g. **Constituents' Interests.** Committee members are expected to represent the concerns of their interest group to ensure, to the extent reasonably practicable, that any agreement developed by the Committee is acceptable to the organization or caucus which the Committee member represents.

3. Decision making

a. Consensus.

The Committee will operate by consensus which, for these purposes, means no more than 2 negative votes in each issue area. Abstention shall not be construed as a negative vote. All agreements reached during the negotiations and prior to the final votes are tentative and may be made by the members present at the meeting, or their Alternates who attend a meeting in their stead, until the Committee reaches a final decision.

The Parties recognize that these negotiations will address three disparate issues and that some Parties do not have a stakeholder and/or expert interest with respect to certain issues. Annex A indicates the issues for which each Party has a stakeholder and/or expert interest. Parties shall not be required to participate in deliberations, and hereby agree to abstain in all votes, on issues for which they do not represent a stakeholder and/or expert interest per Annex A. The Committee will submit three recommendations to the Department – one on each of the three separate issues.

b. Working Groups

- (1) Working groups may be formed to address specific issues and to develop information for, advise, and make recommendations to the Committee. Other individuals who the Committee believes would enhance the functioning of a working group or representatives of interests that would be significantly affected by the topics addressed by the working group but which are not otherwise represented on the Committee may also serve on that working group. Not all organizations or interest caucuses represented on the Committee need to participate in each working group.
- (2) The Department of Transportation (DOT) will provide appropriate support for the Committee and the working groups, including senior technical staff, clerical support, and so forth.
- (3) Working groups are not authorized to make decisions for the Committee as a whole, but shall submit their report, including any recommendations, to the full Committee.
- (4) Working group meetings will be held between the full sessions and will be scheduled in the same location and time whenever possible. All Committee and working group members will be notified via email of all working group meetings.

c. Discontinue if Unproductive. The Committee may discontinue negotiations in any issue area if at any time if they do not appear productive in that issue area.

d. Deadline for Negotiations. Every reasonable effort shall be made to conclude negotiations by October 14, 2016.

4. Agreement**a. Written Statement, Term Sheet and supporting explanation.**

It is anticipated that any agreement in each issue area will include a Written Statement by the facilitator that includes (a) a Term Sheet agreed to by the Committee outlining the significant terms of the Proposed Rule and (b) supporting explanation of the basis for the agreed-to terms from a legal and policy perspective. Any member dissenting on particular issues should provide the basis for their negative vote. The Written Statement shall be submitted to DOT within 3 weeks of the conclusion of negotiations, and will contain all final voting results in each of the issue areas separately.

b. Statement as Basis for Notice of Proposed Rulemaking (NPRM).

DOT staff will be responsible for translating this Term Sheet into the language of a proposed rule, its supporting preamble, a Regulatory Impact Analysis, and all other appropriate materials necessary for the publication of a Notice of Proposed Rulemaking. In the event the Committee reaches consensus on a package of recommendations in a given issue area (such as IFE/IFC, accessible lavatories and/or service animals) and DOT has not cast a dissenting vote on the consensus Term Sheet for that issue area, DOT agrees to use the Term Sheet and any associated recommended regulations as the basis for the Notice of Proposed Rulemaking to the maximum extent possible. The Department will include the consensus recommendation and a discussion of any dissenting views in any proposal issued.

The Department considers that the three issue areas addressed in this rulemaking – IFE/IFC, lavatories and service animals – are separate and independent. In the event the Committee reaches consensus on one or more of these issue areas but not all issue areas, the commitments made in this section shall apply to each issue area separately.

c. Response to Public Comments.

DOT will consider all relevant comments submitted concerning the Notice of Proposed Rulemaking and will make such modifications in the proposed standard and its preamble as are necessary when issuing a final standard.

d. No Challenge.

[No Challenge. Each Committee member agrees to make good faith efforts to represent its affected interests including raising concerns and dissenting views. Accordingly, each Party who votes in favor of the Committee's Term Sheet in any issue area agrees not to take a position materially inconsistent with the Term Sheet during the public comment period of the proposed rule to the extent that the proposed rule has the same substance and effect as the Term Sheet.]

5. Facilitator

A neutral facilitator will work with all the Parties to ensure that the process runs smoothly. The facilitator serves at the will of the Committee.

6. Meetings

- a. FACA and NRA.** The negotiations will be conducted under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act of 1990 (NRA).
- b. Open Meetings.** Plenary negotiating sessions will be announced in the Federal Register prior to the meeting and will be open to the public.

-
- c. **Meeting Summaries.** The proceedings will not be electronically recorded, but summaries of Committee meetings will be circulated for the convenience of the Committee. Such summaries shall not be approved by the Committee and shall not be construed or taken to represent the official position of the DOT, the Committee or any member as to what transpired at Committee meetings. No photographs may be taken during meetings without the approval of the Committee.

 - d. **Work Product.** Any documents created during the Committee meeting will be made available to the Committee members as soon as possible.

7. Future Amendments

Committee members may propose modifications to this document, with due consideration given to such proposals.

[Page Intentionally Left Blank]

Annex A
Voting Committee Lists

Inflight Entertainment/Communications

1. Boeing
2. National Association for the Deaf (NAD)
3. United Airlines
4. National Council on Independent Living (NCIL)
5. Nat'l Disability Rights Network
6. National Federation of the Blind (NFB) **
7. National Air Carrier Association
8. National Center for Accessible Media at WBGH (NCAM)
9. Jet Blue
10. Hearing Loss Association of America (HLAA)
11. Nat'l Center for Accessible Transportation
12. Association of Flight Attendants-CWA
13. Intl Air Transport Association
14. Airline Passenger Experience Association (APEX)
15. West Jet
16. Delta Air Lines
17. MPAA
18. Lufthansa
19. Paralyzed Veterans of America
20. Frontier Airlines
21. Airbus
22. Guide Dog Foundation for the Blind
23. American Council of the Blind (ACB) **
24. Regional Airline Association
25. DOT

Service Animals

1. United Airlines
2. National Council on Independent Living (NCIL)
3. Nat'l Disability Rights Network
4. National Federation of the Blind (NFB) **
5. National Air Carrier Association
6. Jet Blue
7. Association of Flight Attendants-CWA
8. Intl Air Transport Association
9. West Jet
10. Delta Air Lines
11. Psychiatric Service Dog Partners (PSDP)
12. Lufthansa
13. Paralyzed Veterans of America
14. Frontier Airlines
15. Nat'l Alliance on Mental Illness (NAMI)
16. Guide Dog Foundation for the Blind
17. American Council of the Blind (ACB) **

-
18. Regional Airline Association
 19. DOT

Accessible Lavatories

1. Boeing
2. United Airlines
3. National Council on Independent Living (NCIL)
4. Nat'l Disability Rights Network
5. National Federation of the Blind (NFB) **
6. National Air Carrier Association
7. Jet Blue
8. Nat'l Center for Accessible Transportation
9. Association of Flight Attendants-CWA
10. Intl Air Transport Association
11. West Jet
12. Delta Air Lines
13. Lufthansa
14. Paralyzed Veterans of America
15. Frontier Airlines
16. Airbus
17. American Council of the Blind (ACB) **
18. Regional Airline Association
19. DOT

Attachment 4

Service Animals	
Alec Bramlett	American Airlines
Alicia Smith	National Association of Mental Illness (NAMI)
Brad Morris	Psychiatric Service Dog Partners (PSDP)
Jenine Stanley	Guide Dog Foundation for the Blind
IFE	
David Martin	Delta Airlines
Geoff Freed	WGBH/National Center for Accessible Media
Michael Childers	APEX/Lufthansa Systems
Zainab Alkebsi	National Association for the Deaf
Lavatories	
Brian Friedman	JetBlue
Kate Hunter-Zaworski	Oregon State University
Lee Page	Paralyzed Veterans of America
DOT Contacts	
Blane Workie (DFO)	Overall DOT Contact
Maegan Johnson	Service Animal Issues
Rob Gorman	Lavatory Issues
Vinh Nguyen	IFE Issues
Facilitator	
Richard Parker	

[PAGE INTENTIONALLY LEFT BLANK]

ATTACHMENT 5

KEY SERVICE ANIMAL ISSUES

Overarching issue (per Federal Register notice that convened this group): “whether to amend the definition of “service animals” that may accompany passengers with a disability on a flight.”

Current definition of a “service animal”: Any animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well being of a passenger.

For non-U.S. carriers, the requirement is only to transport service dogs. For U.S. carriers, the requirement is service animals.

Key issues to be addressed in resolving this issue:

1. Should the rule designate eligible species and, if so, what should those species should be?
2. Should the rule eliminate the distinction between psychiatric service dogs and other service dogs?
3. Should documentation be required and, if so, under what circumstances? What documentation may be required? Who may provide it?
4. If documentation is required, how to we prevent fraud in the documentation process?
5. How do you distinguish between a pet and a service animal? Is it possible to predict reliably the animal’s behavior on the flight with its behavior in the gate area?
6. Should there be additional guidance given as to how to assess the animal’s behavior in the gate area?
7. Whether there should be a distinction in the documentation required based on the disability of the passenger?
8. Should there be a distinct emotional support animal category?
9. Should special training (i.e., disability mitigation training, public access) for the animal be required as a condition of access?
10. Should the rule allow airlines to deny passengers boarding if their animal is ineligible?
11. Should the rule specify procedures for challenging eligibility determinations by the airline, and if so, what should they be?
12. Is there something different about air travel that justifies a distinction between the ACAA and ADA?
13. Should the rule specify a limit on the number of service animals that may be brought on board by any passenger, and/or the total number of animals on a given flight?

Themes:

1. Eligibility criteria
2. Nature of the disability
3. Documentation
4. Procedural (due process, number of passengers, etc.)