

Minutes
Second Meeting of the DOT ACCESS Committee
June 14-15, 2016
Capitol Hilton Hotel, Washington, DC

The Department of Transportation’s Advisory Committee on Accessible Air Transportation (ACCESS) met on June 14-15, 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 9:00 a.m. on Tuesday, June 14, 2016. The list of individuals attending the meeting is provided by **Attachment 1**. The agenda for the meeting is attached hereto as **Attachment 2**.

Committee Action

After welcoming remarks by the facilitator, Richard Parker, and the Department of Transportation Designated Federal Officer, Blane Workie, the proceedings commenced with a meeting of the Service Animal Subcommittee.

Service Animal Subcommittee

Discussion began with a presentation by Brad Johnson on training requirements for service animals and emotional support animals in different legal contexts and the propensity for good-faith confusion on the part of animal handlers as to which requirements apply in each context. This was followed by a brief presentation by Maegan Johnson of DOT on the history and evolution of DOT’s policy on Emotional Support Animals (ESA). See **Attachment 3**. The Subcommittee then turned to a discussion of the latest draft of the Service Animal matrix” setting forth the policies of various federal agencies on each of the issues on the subcommittee’s list of salient issues for this reg-neg. See **Attachment 4**. The Facilitator noted that the matrix omitted a column describing HUD’s policies, since the Department still awaited a response from HUD. Following expressions of interest from some committee members, OST committed to continue its efforts to expand the matrix to include HUD. In addition, airline representatives promised to continue their efforts to collect information on the policies of key foreign jurisdictions regarding carriage of animals on commercial flights. Airline representatives also agreed to explore the kinds of data on service animal incidents that are gathered by various airlines and to develop a questionnaire designed to elicit and organize this information. There was a lengthy discussion of behavioral issues focused on whether it is possible to predict the behavior of an animal on a flight by its behavior in the terminal area, and members agreed that this might be an appropriate topic for exploration through the airline questionnaire if airline records permit. The flight attendants’ union representative offered to investigate and report on the degree to which flight attendant training and practice distinguished between trained psychiatric service animals and emotional support animals. Finally, the members agreed on a process for developing a draft proposal (or set of draft proposals) to serve as a basis for interest group negotiations. They agreed that the Work Group co-chairs would consult together to develop that framework for discussion, if possible, at the next meeting. The meeting concluded with unanimous approval of the Service Animal Issues List and Work Plan (**Attachment 5**).

Accessible Lavatory Subcommittee (Lav Subcommittee)

The Lav Subcommittee focused its attention on the refinement of the Draft Lavatory Subcommittee Issues List and Action Plan (**Attachment 6**), which resulted in the approval of the revised Issues List and Action Plan set forth as **Attachment 7**.

The Subcommittee began its discussion the afternoon of June 14th with a discussion of what constitutes a “new” aircraft for purposes of this negotiated rulemaking. The Department noted that the term “new” in

the statutory/regulatory context may extend to refurbished and reconfigured aircraft but would not encompass retrofits mandated solely for the purpose of compliance with this rule. Other representatives noted that this usage departs from the meaning of those terms as used by aircraft manufacturing and airline industry. An original equipment manufacturer (OEM) representative also explained that airlines often commit to long-term orders of aircraft meeting certain specifications with those orders implemented in stages over many years, and that the rule would need to clarify whether the term “new” applies to the date of the initial order, or to a subsequent implementation date, or to the ultimate date of delivery and entry into service. The Department noted that its approach to the twin-aisle rule might offer a useful point of departure for the Subcommittee’s discussion of the same issue arising in the context of single-aisle aircraft. The Subcommittee accordingly agreed to add the following sentence to Issue 6 of the Action Plan: “How if at all should the existing Federal regulatory approach for accessible aircraft be adapted to the single aisle context?”

The Subcommittee then turned to a brief discussion of whether the rulemaking could encompass the design of the onboard wheelchair carried aboard commercial aircraft, which certain advocates noted is highly variable and often dysfunctional at present. They noted that an improperly-designed onboard wheelchair could thwart the successful use of an “accessible” lavatory if such a lavatory were mandated without appropriate, conforming regulation of the wheelchair. The Department set forth its position that onboard wheelchair design lies within the scope of this reg-neg if and to the extent that such design affects the prospects of successful use of any accessible lavatory that might be prescribed by law. The Committee accordingly agreed to add an Action Item 3: “Make recommendations for a performance specification/standard for wheelchair design to ensure compatibility with the accessible lav.” The Committee also discussed the question of whether the Federal Aviation Administration (FAA) might impose certain requirements on the design of on-board wheelchairs and the Department agreed to make that inquiry of the FAA on behalf of the Subcommittee.

Discussion then turned to the remaining items on the Issues List and Action plan. Advocacy groups noted the importance of exploring options for incrementally improving disabled-passenger lavatory access to existing aircraft designs and configurations, as well as for achieving fuller access in the context of configuration changes or even fuselage changes (in the context of new models/types of aircraft). Advocacy group representatives expressed their view that changes in all three contexts should be explored simultaneously and in parallel. In an impromptu plenary discussion held on the afternoon of June 15, the Lav Subcommittee re-visited the work plan and agreed to concurrently explore accessible lav options divided into 3 scenarios:

- (1) options that can be implemented with no change in aircraft configuration or fuselage changes;
- (2) options that can be implemented with configuration changes but without the expectation of any changes to the fuselage; and
- (3) options that can be implemented by designing both fuselage and configuration with an accessible lavatory in mind.

The Members agreed that these three scenarios may be associated with different compliance dates that remain to be determined; and that the performance specification of an “accessible” lavatory may vary with both aircraft size and compliance date. Advocates agreed to caucus among themselves and with technical expert, Katharine Hunter-Zaworski, to develop and propose accessibility performance specifications for each of these scenarios or “tiers.” (See Attachment 7, Action Items 1a and 1aa)

Advocates also agreed to develop and circulate a questionnaire to be filled out by persons with disabilities, asking them to rate and describe their experience using accessible lavs on either twin-aisle or single-aisle aircraft to date.

Finally, Committee members agreed on the value of arranging for a demonstration of accessible lav designs and a few members offered to lead efforts to explore options for arranging such demonstrations in the near future.¹

The Members did not make progress in deciding among the various options for specifying the threshold size/type of aircraft that might be subject to an accessible lavatory requirement. They did agree that if seat number is used as the threshold, it should be “FAA maximum-certified” number of seats. If range is used as the threshold, it should be maximum range.

At the end of the discussion the Members approved the Accessible Lavatory Issue List and Action Plan set forth in **Attachment 7**.

The IFE/IFC Subcommittee opened its discussion on the morning of June 15 with a PowerPoint presentation by Karen Peltz Strauss of the Federal Communications Commission (FCC) on the applicability of FCC rules to IFE. The PowerPoint is posted on the DOT website at <https://www.transportation.gov/sites/dot.gov/files/docs/DOT-ACCESS-Cmte-FCC-presentation.pdf>.

Michael Childers and Geoff Freed then offered the Committee a basic background and primer on some of the technical issues arising in the field of IFE/IFC. The Subcommittee then turned a discussion of the IFE/IFC Issue List (**Attachment 8**). Numerous editorial refinements to that document were introduced and adopted, resulting in a revised Issues List (**Attachment 9**), which was unanimously approved.

[Coda: After the second plenary meeting, the Facilitator proposed a sequencing of the issues in the Issues List set forth in Attachment 9 so as to distinguish between those issues that are ripe for negotiation now and those that require further preparation before they are discussed. The first group of issues would be discussed in “Round 1”; the second in “Round 2.” This was accomplished in short order by our technical experts and the resulting revised issues list and action plan was approved by the IFE/IFC Working Group during the June 30 conference call. It further calls for the formation of four (4) technical sub-groups to start preparing the analytical foundation for negotiations on four clusters of issues to be taken up in Round 2. See **Attachment 10**. Meanwhile, for each Round 1 issue, our experts also have prepared, in draft form, a technical background discussion which indicates both the technical possibilities and the technical constraints on action to increase the accessibility of IFE/IFC through captioning and/or audio description. That document is under revision now. It will be circulated to the Subcommittee prior to the Third Plenary meeting and will serve as the basis for the discussion of Round 1 issues at that meeting.]

¹ Facilitator’s note: These efforts resulted in a visit on June 23 by Lav Work Group chairs and/or their designees to a Boeing facility and to Boeing/Airbus aircraft parked at Sea-Tac airport in Seattle to explore “Tier 1” solutions.

ATTACHMENT 1

ACCESS Committee Second Plenary Meeting
Attendance List

Committee Members	DOT and Other Governmental Representatives
Michelle Albert, Boeing	Stephanie Berger, Department of Justice
Zainab Alkebsi, National Association of the Deaf	Kathleen Blank Riether, Department of Transportation
Kelly Buckland, National Council on Independent Living	Livaughn Chapman, Department of Transportation
Parnell Diggs, National Federation of the Blind	Catherine Burnett, Federal Aviation Administration
Paul Doell, National Air Carrier Association	Barbara Elkin, Department of Justice
Geoff Freed, WGBH/National Center for Accessible Media	Marcus England, Federal Aviation Administration
Brian Friedman, JetBlue	Robert Gorman, Department of Transportation
Dr. Katharine Hunter-Zaworski, Oregon State University	Anne Hammond, Department of Transportation
Candace Kolander, Association of Flight Attendants	Maegan Johnson, Department of Transportation
Lorne Mackenzie, WestJet Airlines	Jill Laptosky, Department of Transportation
David Martin, Delta Airlines	Vinh Nguyen, Department of Transportation
Bradley Morris, Psychiatric Service Dog Partners	Suzy Rosen Singleton, Federal Communications Commission
Larry Mullins, Lufthansa	Ray Samara, Department of Transportation
Lee Page, Paralyzed Veterans of America	Karen Strauss, Federal Communications Commission
Richard Parker, Facilitator	Norman Strickman, Department of Transportation
Deborah Lynn Price, Frontier Airlines	Other Attendees
Roser Roca-Toha, Airbus	Marcia Alden, Paws Global
Alicia Smith, National Alliance on Mental Illness	Heather Ansley, Paralyzed Veterans of America
Jenine Stanley, Guide Dog Foundation for the Blind	Tristan Atwood, Holland & Knight LLP
Tony Stevens, American Council of the Blind	Bill Botton, U.S. Access Board
Jennifer Sunderman, Regional Airline Association	Alec Bramlett, American Airlines
Blane Workie, Department of Transportation	Stephanie Carmody, American Humane Association
	Tung Chan, Hawaiian Airlines
	Michael Childers, Airline Passenger Experience Association
	Charlie Crawford, American Council of the Blind
	Tom Depasquale, Paws Global
	Drew Derco, Eckert Seamans Cherin & Mellott, LLC
	Joan Durocher, National Council on Disability
	Joan Gabel, Air France
	David Gayle, Hearing Loss Association
	Sid Goldstein, Transit Access Report
	Chad Heflin, International Air Transport Association
	Leslie Horton, International Association of Canine Professionals

	Paul Hudson, FlyersRights.org
	Alison Kehrer, United Airlines
	Douglas Kidd, National Association of Airline Passengers
	Alicia Leahy, Motion Picture Association of America
	Netanya Lebach, National Multiple Sclerosis Society
	Heather Lenahen, Spirit Airlines
	Maren Matal, Southwest Airlines
	Mtambuzi Kavaragu, Virgin America
	David Nelson, Amtrak
	Jennifer Nowak, Holland & Knight LLP
	Ray Prentice, Alaska Airlines
	Patrick Quayle, American Airlines
	Katy Rosseland, Open Doors Organization
	David Semanchik, Air Line Pilots Association
	Kenneth Shiotani, National Disability Rights Network
	Donna Smith, Easter Seals
	Kristin Stephenson, Muscular Dystrophy Association
	Jim Thumpston, Zuckert Scoutt Rasenberger
	Jennifer Tripp, Muscular Dystrophy Association
	Brazilia Vela, Frontier Airlines
	Laura Weidner, National Multiple Sclerosis Society

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ATTACHMENT 2

**Agenda for Second Plenary Meeting
(Modified)
Tuesday and Wednesday, June 14-15, 2016
Capitol Hilton, 1001 16th St NW
Washington, D.C. 20036
Congressional Room
*Business Casual***

Tuesday, June 14, 2016, 9 AM – 5:00 PM**Meeting of Service Animal Subcommittee**

- 09:00 – 09:15 AM** *Call to Order and Introductions; Agenda Approval
Richard Parker, Facilitator, ACCESS Committee
Blane Workie, Designated Federal Officer (DFO), ACCESS Committee*
- 09:15 – 10:30 AM** *Service Animals
Discussion and vote on adoption of SA Issue List
Discussion of policies and practices of DOJ, FRA & FTA (Issue Matrix)
Documents: (a) Issue List; (b) Issue Matrix*
- 10:30 – 10:45 AM** **Break**
- 10:45 – 12:00 AM** DOT presentation on original rationale for Emotional Support Animal (ESA)
category. Group discussion.
Document: DOT Backgrounder on ESA
- Discussion of Work Plan
- 12:00 – 01:30 PM** Lunch [on your own]

Meeting of the Accessible Lavatory Subcommittee

- 01:30 – 03:00 PM** *Discussion of the scope of Committee jurisdiction (the “new aircraft”
limitation and what constitutes a “new” aircraft); and committee scope for
addressing on-board wheelchair design*
- Discussion and vote on Issue List (not action items)*
- Brief overview and discussion of Action Items as a whole
Document: Lav Issue List and Action Items*
- 03:00 – 03:15 PM** **Break**
- 03:15 – 05:00 PM** Concurrent advocate/industry discussion (in breakout groups) of individual
Action Items:
Advocates:

- (a) Performance Specifications for “Accessible” Lav
- (b) Possible user survey

Airlines/Aircraft OEM: (a) Methodology for constructing “representative cases”
 (b) Recommendation on the appropriate metric (seats, range, scheduled flight time) for scope of application of rule

Documents: (a) Draft performance specification; (b) Sample survey

Wednesday, June 15, 2016, 9 AM – 4:00 PM

Meeting of IFE/IFC Subcommittee

- 09:00 – 09:15 AM** *Call to Order and Introductions; Agenda Approval*
- 09:15 – 9:45 AM** *FCC Presentation on the Applicability of the Federal Communications Commission's Rules to IFE*
Presenter: Karen Peltz Strauss, Deputy Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission
- 09:45 - 10:30 AM** Report of the IFE WG Co-chairs:
 Discussion and vote on IFE/IFC Issue List
Document: IFE/IFC Issue List
- 10:30 - 10:45 AM** **Break**
- Documents: (a) issue matrix (forthcoming); (b) phase-in timeline powerpoint slide; (c) work plan template; (d) IFE/IFC glossary of terms*
- 12:30 – 02:00 PM** Lunch [on your own]

Meeting of the full ACCESS Committee

- 02:00 – 03:00 PM** Discussion of legal framework for decisions – What is the “undue burden” test
- Discussion of IP issues associated with information sharing in course of reg-neg and how to address them
- 03:00 – 03:15 PM** **Break**
- 03:15 – 04:00 PM** *Administrative Issues: Scheduling, agenda, operation of WG, Dropbox, Google Docs, etc.*
- 4:00 PM** *Adjourn*