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BY E-MAIL

September 28, 2016

Canadian Transportation Agency
15 Eddy Street
Gatineau, Quebec
K1A 0N9

Attention: Mary-Jane Gravelle, Director, Centre of Expertise for Accessible Transportation

**Re: Regulatory Modernization Initiative – ATR - Part VII,
Various Codes of Practice, PTR**

Dear Madam:

As requested at our meeting of July 13, 2016, we are writing in response to the Canadian Transportation Agency's Regulatory Modernization Initiative. In this letter, we will address the topics of the proposed *Air Transportation Regulations* (ATR), Part VII, various codes of practice and guidelines, and *Personnel Training for the Assistance of Persons with Disabilities Regulations* (PTR).

I. ATR, Part VII**1. Uneven Playing Field**

Air Canada welcomes the Agency's regulatory modernization initiative for many reasons, particularly since it creates a more even playing field between carriers. Air Canada is currently subject to many more decisions of the Agency than its competitors, both domestic and foreign, are not, a situation which places an undue burden on Air Canada. One of Air Canada's concerns is that the proposed regulations would be less onerous than Air Canada's obligations under the Agency's decisions, thus perpetuating this undue burden. As such, Air Canada is firmly in favour of a uniform regulatory regime that applies equally to all carriers serving Canada, along with the concurrent withdrawal/rescinding of all decisions that exceed the requirements under the new regulatory regime.

2. Lack of Coordination Between Disability Accommodation and Safety

Air Canada is concerned at the lack of coordination between disability accommodation requirements imposed by the Agency and safety concerns raised by Transport Canada. For example, although required to provide an extra seat to a passenger with a disability who requires it, the seats are not designed to be straddled by a single passenger. Another example is the in-cabin carriage of oxygen tanks and batteries for mobility devices which can create a potential safety hazard. A final example is the presence of lap-held emotional support animals and the risk of such animals becoming flying objects in situations of serious turbulence, or conflict between such unsecured animals. These cases become even more of a safety issue when combined with other situations (e.g. passengers wishing to travel with a lap-held infant and one or more emotional support animals). We have unfortunately seen situations where passengers are using this mechanism to circumvent our current pet-in-cabin policy.

Air Canada is aware that there are parallel initiatives:

- a) One, to amend the *Canada Transportation Act*, which is being carried out by Transport Canada, for which it has made submissions; and
- b) The other carried out by Honourable Carla Qualtrough, Minister for Sport and Persons with Disabilities who officially launched an engagement process on the development of accessibility legislation aimed to promote equality of opportunity and increase the participation of Canadians who have disabilities or functional limitations.

Air Canada trusts that the Agency and the Government of Canada (including Transport Canada) will coordinate to ensure that all disability accommodation requirements imposed on the air transportation industry are clearly identified in one piece of legislation and properly assessed from a safety perspective.

3. Allergy Accommodation

As stated recently in our response of December 17, 2015 to the Ministerial Inquiry into Issues Related to Air Passenger Allergies to Peanuts, Nuts, and Sesame Seeds, there are several issues with requiring air carriers to carry epinephrine auto-injectors. Most importantly, having epinephrine auto-injectors administered by anyone other than trained medical professionals is potentially dangerous to the passenger in crisis, as the person is not trained to identify the appropriate medication for the situation. As such, passengers with severe allergies are responsible for carrying their own epinephrine auto-injectors. Furthermore, carrying epinephrine auto-injectors would be prohibitively expensive, as the shelf life is shorter and each dose is significantly

more expensive than vials of epinephrine. Finally, Air Canada's entire medical kit would have to be redesigned to have space for the epinephrine auto-injectors, as each item is held in place with foam to withstand turbulence, resulting in further additional costs.

4. Pre-approval of Aircraft Configuration

The Agency has proposed a requirement that air carriers obtain the Agency's approval prior to purchasing new or retrofitting aircraft. Air Canada strongly objects to this requirement, as it would pose significant challenges in terms of coordination. It is always very intensive to purchase/acquire new aircraft, involving numerous people and departments, and adding a pre-approval step would make coordination even more difficult. Furthermore, some elements of aircraft configuration that could also be affected by disability requirements may be addressed at a separate stage of the aircraft configuration process, once the aircraft has left the manufacturing plant, and would involve other additional contractors and additional coordination. The configuration of an aircraft is a significant piece of Air Canada's product and customer service and requiring pre-approval is unnecessarily intrusive. As such, the proposed measure is unnecessary and ill-advised. Instead, a description of the minimum accessibility features a Canadian registered aircraft should have would meet the needs of the industry and of the passengers, which is what the US DOT has done as well. Moreover, as stated below, we urge the Agency to ensure that any requirement in this respect is not contrary to or different from US DOT requirements on the same issues.

5. Tactile Row Markers

The Agency's proposal of tactile row markers is not feasible. They are currently located on the overhead bin as a result of past Agency decisions, but they are not currently used by many passengers, as to do so requires leaning into other passengers' space. The same would be true if tactile row markers were placed on the backs or sides of seat, where their use would cause passengers to infringe upon other passengers' personal space, or to touch their tactile entertainment screens. Our agents are currently well-trained and able to assist anyone who may require assistance to their seats.

6. US DOT 14 CFR Part 382

As the Agency is well aware, Air Canada is already subject to many requirements under the U.S. Department of Transportation ("DOT")'s Regulation 14 CFR Part 382 - Nondiscrimination on the Basis of Disability in Air Travel. Compliance therewith is a time-intensive undertaking, involving

everything from cabin crew training to reporting obligations. As such, Air Canada strongly recommends that any new Canadian regulations be aligned with any similar requirements under Part 382. Given that most foreign carriers serving Canada already fly to the United States, this would also make it easier for foreign carriers to comply with any new Canadian regulations.

Air Canada would be willing to report publicly on certain statistics, such as number of customers assisted with a wheelchair or number of service animals carried. However, this would require the imposition of an advance notice requirement for certain medical conditions for Air Canada to be in a position to capture the information and report it to the Agency. Under US legislation, passengers needing assistance within the airport for long distances, or passengers requiring to travel with a service animal (except emotional support animals, psychiatric service animals or if the flight is over 8 hours) do not need to provide advance notice to carriers, and Air Canada therefore does not capture this information. This would therefore result in incomplete, and potentially wrong, statistics.

Notwithstanding its wish for uniformity with Part 382, Air Canada believes strongly that the Agency should have jurisdiction over Canadian passengers regarding disability complaints, whereas Part 382 requires that Air Canada direct such passengers to the DOT, even if it is a Canadian passenger writing to Air Canada about a disability-related complaint for an incident that took place in Canada, for a transborder flight. Air Canada is then required by US law to write back in a formal and rigid style dictated by Part 382, identifying each issue raised and whether there was a breach. In fact, Air Canada has received numerous complaints from passengers regarding the style and tone of such letters, which is also dictated by US law. Air Canada must also direct said passengers to the DOT, which may be an unknown foreign entity for such a passenger.

Instead, Air Canada believes that it is much more logical to direct such passengers to the Agency. For this to be accomplished, Air Canada requests that the Agency explicitly claim exclusive jurisdiction over Canadian passengers regarding disability complaints, which would allow Canadian carriers to apply for an exemption from this requirement under Part 382.

7. PETC/Emotional Support Animals – Danger of Opening Floodgates

As previously stated, Air Canada is concerned that passengers will expect that they can bring their pets in the aircraft at no cost, or have an animal with them that they deem to be an emotional support animal, with no real medical need. There is a need to distinguish between genuine disabilities and personal

preference. This will be increasingly important as the number of cats and other emotional support animals increase thus generating conflictual interactions with those passengers with a disability by reason of their severe allergies to cats (sometimes dogs as well) as well as physical conflict between emotional support animals and genuine service animals who are trained, whose training is costly, and who are difficult to replace, and therefore cannot risk being injured in a fight with another uncaged animal onboard

8. Need for Agency's Exclusive Jurisdiction

Air Canada submits that a recurring and pressing issue is the Agency's jurisdiction over matters regarding carriage by air. Without an explicit clause granting exclusive jurisdiction to the Agency, there is a real risk of conflicting decisions with the courts or with other tribunals, such as the Human Rights Commission. This issue has come up before and will undoubtedly come up again, unless it is addressed. This regulatory modernization initiative is a prime opportunity to clarify this open question.

As stated under paragraph 2 above, we understand that the Government of Canada, as a whole, is currently embarking on a consultation with a view of adopting legislation or policy regarding access by persons with a disability, similar to the current Ontario legislation as well as the U.S. Americans with Disabilities Act (ADA).

Accepting the unique situation of air transportation, the U.S. have carved out from the ADA the measures necessary to provide access to persons with a disability in the transportation network, inserting these principles, as adapted, in US 14 C.F.R. Part 382.

We would encourage the Agency to join Air Canada in pushing for a single source of rights and obligations regarding service and access to persons with a disability in the air transportation network.

9. No Private Right of Action

Air Canada also requests that in line with the U.S. approach, the Agency prohibit private rights of action stemming from decisions of the Agency or from carrier tariffs, by parties who do not have standing in the classical sense, or who are not directly involved in a situation. This would ensure procedural fairness for carriers, as it would provide a specific set of facts upon which arguments and a determination can be made, and it would preserve the Agency's scarce resources, as opposed to theoretical situations.

10. Prescriptive Requirements

Air Canada cautions the Agency against adopting too many prescriptive or detailed requirements. With regard to serving passengers with a disability, Air Canada believes that a clear minimum prescriptive regime is preferable to the current situation where every complaint is assessed in the absence of any written regulation as to whether it may or may not constitute an obstacle to the mobility of a person with a disability. However, Air Canada cautions the Agency to avoid drafting too many details into its requirements, or making them too burdensome.

II. Codes of Practice

Air Canada is not in favour of maintaining, let alone increasing the number of codes of practice. As stated above, we are in favour of establishing a compulsory, even playing field by establishing a regulatory system that applies equally to all carriers serving Canada. With regard to serving passengers with a disability, Air Canada believes that a clear minimum prescriptive regime is preferable to the current situation where every complaint is assessed in the absence of any written regulation as to whether it may or may not constitute an obstacle to the mobility of a person with a disability.

III. PTR

Air Canada has no comments at this point on the proposed amendments to the PTR. The amendments do not apply to Air Canada as a major air carrier. Furthermore, Air Canada already takes its training obligations of its personnel very seriously and meets or exceeds the standards required by the PTR. Moreover, a mandatory training recurrence pre-supposes that there is only one method of training; namely in person. Air Canada transmits its training by a variety of means: in -class, on-the-job, webinars, and bulletins.

IV. Conclusion

As stated in Air Canada's submissions of February 2015 to Transport Canada regarding the review of the *Canada Transportation Act*, Air Canada firmly believes that it is possible to meet both the needs of people with disabilities while ensuring that Canada's air industry remains competitive. To do this, the Government of Canada and the Agency must establish proper policy-making

procedures and implement a uniform regulatory framework for the air industry in order to ensure an even playing field for all carriers serving Canada.

My colleagues Daniel Magny, Martine De Serres and Kerianne Wilson, along with the undersigned, remain available to discuss further any of the points raised above.

Yours very truly,



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