

U.S. Department of Transportation  
Meeting of the Aviation Consumer Protection Advisory Committee (“ACPAC” or “Committee”)  
Summary of Meeting

## **Overview**

The meeting took place from 9:30 am to 5:00 pm Eastern Time on September 24, 2020 using a virtual platform. The attached appendix identifies the individuals who attended the meeting. The webcast of the meeting is available at:

<https://www.transportation.gov/airconsumer/ACPAC/second-meeting-video>.

Three topics were discussed at that meeting: (1) the report of the National In-Flight Sexual Misconduct Task Force (Task Force), available [here](#); (2) transparency of airline ancillary service fees; and (3) involuntary changes to travel itineraries. The agenda and presentation materials that were provided at the meeting are available for public review at <https://www.regulations.gov>. After entering the docket number (DOT-OST-2018-0190), click the link to “Open Docket Folder” and choose the document to review.

## **Welcome and Housekeeping Matters (9:35 am to 10:00 am)**

The morning session commenced with the ACPAC Designated Federal Official Blane A. Workie calling the meeting to order, going over housekeeping matters, and introducing the Committee members: (1) Christopher Carr, Attorney General of Georgia, as the State or local government representative and Chair of the Committee; (2) Frances Smith, Adjunct Fellow, Competitive Enterprise Institute, as the consumer representative; (3) Patricia Vercelli, General Counsel, Airlines for America, as the airline representative; and (4) Mario Rodriguez, Executive Director of the Indianapolis Airport Authority, as the airport operator representative. Each Committee member gave brief opening remarks, noting the value of being on the committee and the extensive impact of the COVID-19 public health emergency on the aviation industry.

Ms. Workie welcomed the participants to the virtual meeting and gave an overview of the purpose and composition of the Committee. Ms. Workie noted that the COVID-19 public health emergency has had a significant impact on the aviation industry. She noted that there has been an increase in the number of consumer complaints received by the Department. Ms. Workie assured the participants that the Department has been actively working towards the Federal government’s response to the public health emergency. She noted that consumer issues related to COVID-19 would not be discussed at this meeting. She encouraged attendees to reach out to their ACPAC representative to discuss possible topics regarding COVID-19 for potential future meetings.

Since this meeting was held virtually, Ms. Workie stated that members of the public could ask questions during the meeting by using the chat function of the virtual meeting format or sending an email to the Department and could post comments to the Committee’s docket.

## **National In-Flight Sexual Misconduct Task Force (10:00 am to 12:00 pm) Judith Kaleta, DOT, Office of the General Counsel**

The first topic for discussion was the Task Force, which was established by the Secretary of Transportation, Elaine L. Chao, on February 11, 2019. Judith Kaleta, DOT's Deputy General Counsel and Chair of the Task Force, provided remarks about why the Task Force was established and how the committee went about its work and prepared its report. She also provided additional thoughts on the Task Force's findings and recommendations. Ms. Kaleta explained that the Task Force was established in response to the FAA Reauthorization Act of 2018 (the 2018 FAA Act); in response to the Joint Explanatory Statement of the Transportation Housing and Urban Development and Related Agencies Appropriations Act for Fiscal Year 2018 (the Joint Statement); and in furtherance of the Department's aviation consumer protection responsibilities.

Ms. Kaleta explained that in the Joint Statement, Congress expressed concern about the adequacy of response to incidents of sexual assault and sexual harassment that take place onboard aircraft. Congress noted that there are limited data on the prevalence of incidents of sexual assault and sexual harassment and that there may be a lack of guidance and training for airline personnel to respond to such incidents. It requested the establishment of a Task Force to provide recommendations on best practices for air carriers related to training, reporting, and data collection. Subsequently, in October of 2018, the 2018 FAA Act also called for the establishment of the Task Force, identifying the need for airlines to have policies and procedures in place to address reporting sexual misconduct incidents to law enforcement, informing passengers and employees of their rights, and training employees on responding to sexual misconduct.

Secretary Chao established the Task Force as a subcommittee of the ACPAC, and appointed a number of representatives of different interests. The Task Force included representatives from the federal government, including the Department of Transportation and, from the Department of Justice: the FBI, the Office on Violence Against Women, and the Office for Victims of Crime. The Task Force also included individuals representing from state and local law enforcement; a national organization specializing in providing services to sexual assault victims; a national travel organization; flight attendant and pilot labor organizations; airports; air carriers; and consumers. The consumer representative to the Task Force is also the consumer representative to the ACPAC.

Secretary Chao charged the Task Force with reviewing and evaluating existing ways that passengers involved in incidents of sexual misconduct by other passengers onboard aircraft could report such allegations to the carrier. The Task Force also was charged with reviewing and evaluating carriers' existing training protocols and identifying best practices to address incidents of sexual misconduct onboard the aircraft; reviewing and evaluating existing reporting protocols; identifying best practices for air carriers to facilitate timely reporting of incidents of sexual misconduct by passengers to law enforcement; and ensuring privacy protections for individuals who were subject to sexual misconduct. In addition, the Task Force was charged with evaluating carriers' existing data practices, if any, and identifying effective methods to collect, maintain, and make publicly available data on incidents of sexual misconduct by passengers. The Task Force also was tasked with reviewing and utilizing firsthand accounts from passengers who experienced sexual misconduct onboard aircraft and reviewing air carrier practices for addressing incidents of sexual misconduct.

Ms. Kaleta noted that the 72-page report, transmitted to the ACPAC in March 2020, provides information on existing practices with regard to reporting, data collection, training, and responding to allegations of in-flight sexual misconduct. The report highlights aspects of awareness, reporting, and data collection that are suitable for enhancement. It also makes recommendations on actions that could be taken by the federal government, law enforcement agencies, airlines, airports, and unions.

Ms. Kaleta shared that bringing people together with different perspectives and experiences helped the Task Force learn as much about this issue as possible. Ms. Kaleta explained that the Task Force worked diligently and took the charges from Secretary Chao very seriously. Members listened to firsthand accounts from passengers and flight attendants who experienced in-flight sexual misconduct, and heard about actions that airlines and law enforcement had taken in response to such incidents. Members also reviewed complaints that were filed with the Department, and considered the results of airline and airport surveys. Ms. Kaleta expressed her gratitude for the time, work, attention to detail, and analysis that each member contributed to the efforts of the Task Force. She explained that the Task Force did not want to look at one area and see only one part of the problem, it wanted to understand the nature of the situation and what would be the best efforts going forward to address sexual misconduct. Members listened carefully to the perspectives of consumers, labor unions, victims' service providers, and experts on training to address sexual violence and sexual harassment. Ms. Kaleta stated that it was that kind of dedication through months of meetings, information sharing, and data collection that allowed the Task Force to develop the report.

Ms. Kaleta described the Task Force meeting schedule during 2019, which included an introductory organizational meeting in May, a two-day meeting in June, a one-day meeting in July, and a two-day meeting in September, as well as teleconferences in October and November.

Ms. Kaleta explained that the Task Force used listening sessions to understand the perspective of survivors of in-flight sexual misconduct. She explained that the Task Force took their stories, perspectives, and experiences into account when making its findings and recommendations.

Ms. Kaleta shared a story from a woman who spoke to the Task Force about her experience with in-flight sexual misconduct and how the situation was handled by the flight crew when she reported the incident. When the woman reported the incident to the flight attendants, they shared their own stories with her about the sexual misconduct they experienced. The woman shared that there appeared to be confusion with the flight manifest, because according to the manifest she was sitting next to a minor. The woman followed up with the airline after the flight, and the airline offered frequent flyer miles. The airline advised her that she could file a report with authorities, and if she could not do that, a police report could be filed on her behalf. Several weeks later she followed up with the airline and learned that the case had been closed and there was no report filed. The woman reported the incident to the FBI and explained that it was a difficult experience. After a year-long investigation by the FBI, the case was ultimately closed after problems identifying the alleged offender.

To learn about the issue of in-flight sexual misconduct, the Task Force heard several personal accounts and read complaints filed with the DOT. The Task Force contacted airlines to learn how they train their crew to take reports from passengers and provide reports to law enforcement. The Task Force also looked at statistics of sexual misconduct on aircraft. The FBI representative provided complaint numbers suggesting an increase in incidents over three years, but on delving further, the Task Force learned that there might not be confidence that those numbers reflected an actual increase in incidents. In addition, DOT provided the numbers of complaints made to the Department over three years. The Task Force discussed whether from a statistical perspective the extent of a problem can be determined based on the limited numbers available. The Task Force considered whether to gather additional data, such as through public surveys. It struggled with how detailed should recommendations be as well as if the recommendations should require airlines and airports to do something to address this problem. The Task Force also struggled with the issues of awareness and discussed if people really understand that sexual misconduct is considered a crime.

Ms. Kaleta explained that the Task Force members discussed what how to define sexual assault, and whether its definition should be broad or legalistic. Regarding awareness, the Task Force felt that reporting, data collection, and training would be enhanced because people would be more aware of the situation. The Task Force asks the ACPAC to consider this report in making recommendations to the Secretary. She indicated that the Task Force is confident that the report and the adoption of its recommendations will lead to improved awareness, reporting practices, data collection, training, and responsiveness to these incidents. Ms. Kaleta noted that although the report is focused on passengers, the Task Force did hear from flight attendants. The Task Force expects that the implementation of its recommendations would reduce incidents of sexual misconduct to both passengers and flight attendants.

After Ms. Kaleta concluded her remarks, Ms. Workie initiated the discussion by asking the ACPAC members if they had questions.

Patricia Vercelli commended Ms. Kaleta on her leadership and stated that the way the report and issues were presented was phenomenally done and the work was tremendous to help everyone in this endeavor. Ms. Smith reiterated Ms. Vercelli's comments and stated that she served on the Task Force and explained that there were all-day meetings, conference calls that would last a number of hours, and various reviews of preliminary documents. Ms. Smith stated that it was a tremendous effort involving huge numbers of people. Ms. Smith commended DOT personnel that pulled together comments from all the Task Force members to put everything together in a clear and concise form.

Next, Ms. Workie introduced Jessica Ilich of the Department's Office of Aviation Consumer Protection, who presented an overview of the Task Force's report, beginning with the definition of sexual misconduct.

## **Presentation on Defining Sexual Misconduct: Jessica Ilich, Director of Consumer Advocacy, DOT Office of Aviation Consumer Protection**

Ms. Ilich stated that sexual misconduct is not defined by the 2018 FAA Act, so the Task Force looked at existing criminal statutes and definitions used by airlines and organizations that provide services to sexual assault victims. The Task Force crafted this proposed definition:

*Sexual misconduct is a broad term. It encompasses any behavior or attempted behavior of a sexual nature that is committed without consent or with someone incapable of consent, or by force, intimidation, coercion, or manipulation. Sexual misconduct also includes physical or verbal advances or harassment of a sexual nature, or public indecent exposure.*

The Task Force believes that a standardized definition will facilitate better data collection, reporting, and training within the airline industry. The Task Force made two recommendations for defining sexual misconduct:

- The Task Force recommends that airlines incorporate the Task Force’s definition of sexual misconduct in their operation manuals, training, data collection, and reporting policies and procedures, as appropriate.
- The Task Force recommends law enforcement responding to reported incidents of in-flight misconduct be made aware of the Task Force’s definition.

### **Deliberation on the Proposed Definition**

Ms. Smith stated that it is very important to include verbal harassment (e.g., jokes and rude comments), not just physical contact. She further stated that she likes the broad definition and feels that adoption by airlines and law enforcement would contribute to public awareness. Ms. Smith noted that individuals may think that verbal assault is not sexual misconduct.

Ms. Workie explained the difference between the definition of sexual assault and sexual misconduct. She stated that the Task Force definition of misconduct specifies that it would include acts that were committed by force, intimidation, coercion, or manipulation.

Ms. Vercelli cited the portion of the report that states “the definition has to be broad for the purpose of deterring passengers from committing acts of sexual misconduct but narrow enough for the purpose of collecting consistent data.” Ms. Vercelli asked if there was discussion within the Task Force about behavior that occurred versus attempted behavior. She stated that she would like to discuss “attempted behavior.”

Attorney General Carr stated that “attempted behavior” can make this more challenging, as the word “attempted” gets murkier and it may make more sense to say “behavior.” He asked about the purpose of the definition and where the Task Force is trying to go with it. Attorney General Carr stated that “behavior” provides more clarity than “attempted behavior.”

Ms. Workie stated that the purpose of the definition is for training, data collection, and reporting. She explained that the definition can be divided into two elements. The first captures “behavior

and attempted behavior,” and the second captures “without consent or incapable of giving consent, force, intimidation, coercion, and manipulation.”

Ms. Smith stated that in rereading the definition, she thinks that any behavior would incorporate “attempted behavior.”

Mr. Rodriguez commented that even attempted behavior should fall into this definition. He stated that even if the definition is not perfect, it gives the ability for the industry to make incremental moves forward and refine the definition as time goes on. He stated that this is a great start. Ms. Vercelli noted that her only comment was regarding “attempted behavior” and other than that, she thinks the definition is excellent.

Attorney General Carr asked for clarification about when the FBI or law enforcement has jurisdiction. Ms. Workie responded that the Task Force spent some time talking about jurisdiction. She explained that at times the FBI and local law enforcement would have concurrent jurisdiction. In those instances, a decision would need to be made between the concurrent agencies to determine who will have primary jurisdiction. Ms. Workie pointed out that page six of the report provides information regarding jurisdiction if the aircraft is operated by a U.S. carrier regardless where the operation takes place, and the aircraft door is closed. Ms. Workie stated that if a U.S. carrier is flying to a foreign destination, even when the FBI has jurisdiction it can be difficult to gather information for evidence necessary for the U.S. Attorney’s office to prosecute such a case. For a U.S. carrier arriving at a foreign airport, the FBI will still have jurisdiction, but the foreign law enforcement would be the first to respond and would gather all the information. When foreign law enforcement is responding, the cases tend to be more difficult. If a foreign carrier lands in the U.S., the FBI has jurisdiction from the time the aircraft doors close to the time the aircraft lands in the U.S. If a foreign carrier is traveling to a foreign airport, the FBI would not have jurisdiction.

Ms. Workie stated that with the deletion of “attempted behavior” there seems to be consensus among the ACPAC members to adopt the definition. There is also agreement with the Task Force’s recommendation that airlines be encouraged to incorporate this definition in their manuals and to focus on how to make smaller airports aware and law enforcement aware of the definition.

### **Presentation on Awareness: Jessica Ilich, DOT**

Ms. Ilich stated that the 2018 FAA Act states that airlines should have policies and procedures in place to inform personnel and passengers of their rights with respect to sexual misconduct. The Task Force determined that many passengers were not aware that sexual misconduct may be a crime and that it should be reported. When an incident of sexual misconduct is not reported, the possibility of an effective response is limited. When airlines and law enforcement become more aware of the potential severity of these incidents, they are more equipped with appropriate response procedures when incidents occur. It is vital to achieve better training, reporting and data collection. It is also important for passengers to be better informed about standards of behavior, and about how to report an incident of in-flight sexual misconduct.

Ms. Ilich stated that awareness campaigns are intended to deter offenders, to advise passengers how to report incidents, and to inform victims of available resources, including victim support services. The Task Force considered the FBI Awareness campaign and awareness campaigns by airports, airlines, and government agencies. The Task Force considered options such as in-flight announcements; information in the in-flight magazine, posters or other signage; adopting and posting a passenger code of conduct (which would include the definition of sexual misconduct and criminal consequences); and posting resources or statements on websites or Wi-Fi landing pages. Ms. Ilich stated that in its discussions, the Task Force recognized the challenges to awareness programs but determined that they are vital to achieving better training, data collection, and reporting outcomes.

The Task Force made one recommendation for awareness:

Airlines, airports, and appropriate federal agencies should engage in awareness campaigns by using the methods that best fit with their policies and practices on sexual misconduct. Federal agencies should take steps to raise awareness of how incidents involving in-flight sexual misconduct should be reported and to ensure that passengers know these incidents are punishable under Federal law and subject to penalties.

### **Deliberation on Awareness**

Mr. Rodriguez asked if the awareness campaign is directed to passengers or to airports. He stated that some airports have very small markets, and that awareness campaigns directed to airports would improve awareness by airport customers. Ms. Workie responded that the Task Force discussed awareness campaigns geared towards airports. Ms. Workie stated that Mr. Rodriguez made a valid point that the airports need to be aware, in order to share that information with consumers. Ms. Workie asked Mr. Rodriguez if his recommendation related to awareness is for airports associations, and Mr. Rodriguez stated that he was thinking more of FAA or TSA pushing that mandate to the airports. He explained that most commercial service airports will know, but the smaller ones may not. He stated that information disseminated by FAA may go a long way.

Ms. Vercelli observed that the recommendation talks about airlines, airports, and appropriate federal agencies and then it goes into more detail on how the airlines can implement this. She further explained that the recommendation then speaks on how the federal agencies should take steps and implement and asked why there was not specific direction for airports, asking if there is a reason specifically that airports were not addressed.

Ms. Workie indicated that page nineteen of the report addresses awareness campaigns by airports. She explained that airports were surveyed about how they currently inform consumers. Some airports inform via their websites or posters. The FBI has been active in this area and has created posters that have been sent to airports.

Mr. Rodriguez stated that a campaign could be sent to an airport so customers and local law enforcement are aware. He stated that smaller airports could become aware by an FAA letter to every airport stating, "this is what you need to be aware of and make your local law enforcement

aware.” Mr. Rodriguez stated that he does not want the campaigns to slip by small airports and, and that he wants to ensure the information is shared so airport law enforcement officers (LEOs) are made aware.

Ms. Smith asked if trade associations, such as Airports Council International (ACI) and American Association of Airport Executives (AAAE), would be the effective sources of that information. Ms. Smith observed that if they do educational campaigns, this would be a good fit. Ms. Smith stated that trade groups may do a more effective and faster job. Mr. Rodriguez stated that not everyone is a part of those associations and it would make sense to do a dual approach. Mr. Rodriguez stated that a letter from FAA will not hurt, it will just make people more aware, and associations should put something in their newsletters.

Ms. Vercelli suggested that the recommendation should read “Federal agencies should also take steps to ensure that passengers, airports, and airlines are aware that acts of sexual misconduct....” and in the final report include that as a recommendation (e.g. a letter from the FAA.)

Mr. Rodriguez commented that it is up to the Secretary to determine who is the proper organization to send that information. Ms. Smith observed that the word “airlines” was not included in the recommendation and suggested that “airlines” be added. Ms. Workie stated that although “airlines” is presumed, it may be more clear if “airlines” was added to the second part of the recommendation.

The recommendation from the Task Force is as follows: “Airlines, airports, and appropriate Federal agencies should engage in awareness campaigns. The Task Force recognizes that there are various methods for the airlines to do so and encourages airlines to consider the methods mentioned in Chapter 3 and use the methods that best fit with their policies and practices on sexual misconduct. Federal agencies should also take steps to ensure that passengers are aware that acts of sexual misconduct are punishable under federal law and how incidents involving in-flight sexual misconduct should be reported.”

Ms. Workie stated there appears to be agreement with the suggestion of adding to the last sentence of the recommendation the following: “Federal agencies should also take steps to ensure that passengers, airports, and airlines are aware that acts of sexual misconduct...”

Ms. Workie also sought confirmation that the ACPAC members felt the first sentence of the recommendation should remain the same, and all members concurred.

### **Presentation on Reporting: Jessica Ilich, DOT**

Ms. Ilich stated that the 2018 FAA Act provides that airlines should have policies and procedures in place to report incidents of sexual misconduct to law enforcement. It also required the Task Force to review airlines’ current practices and protocols in responding to allegations of in-flight sexual misconduct. The Task Force was required to make recommendations based on a review of current airline practices and listened to first-hand accounts of passengers who have experienced sexual misconduct onboard aircraft. The Task Force reviewed passenger complaints



and examined the process of government reporting. It also surveyed airlines on current reporting practices, and considered recommendations made by consumer rights organizations not on the Task Force. The Task Force learned that incidents of sexual misconduct may occur when it is difficult for passengers to report immediately, such as when the aircraft is descending and flight attendants are in their seats. Individuals react to traumatizing events in different ways and some may need time to process and will not report the incident right away

With respect to reporting, the Talk Force discussed and analyzed what airlines currently do, how flight attendants report the data, how airlines address privacy concerns, how to deal with passengers who were not comfortable with reporting an incident or who delay reporting, and how other entities such as DOT and local law enforcement respond to allegations of reports of in-flight sexual misconduct.

The Task Force made five recommendations for Reporting:

- Airlines should establish clear policies and procedures around reporting methods, so the airline may accept and appropriately respond to reports of sexual misconduct, whether the incident occurs during the flight or after the aircraft has landed, and to disseminate the information as appropriate.
- Airlines should have a procedure to identify and obtain contact information of the alleged offender and any witnesses to provide to law enforcement. Employees should be trained on policies and procedures of collecting this information.
- In order for airlines to better track the handling of sexual misconduct allegations, airlines should segregate sexual misconduct incidents in airline records, such as documenting whether the incident involved a minor or whether law enforcement was requested.
- Airlines should have a policy and procedures of informing law enforcement when incidents of sexual misconduct are reported to the airline, regardless of when the incident occurred. Policies may be developed in consultation with local law enforcement.
- Government entities should forward any complaints of in-flight sexual misconduct to the FBI.

### **Deliberation on Reporting**

Ms. Workie began the discussion with the first recommendation that airlines should enable passengers to report incidents in various ways. Ms. Workie explained that the Task Force heard first-hand accounts from the victims and learned that individuals had different ways that they thought would be helpful to report incidents: some suggested going to the back of the aircraft and talking, while one wanted to write something down. There was not agreement on one uniform way of reporting, so the Task Force recommended that airlines enable passengers to report incidents in various ways.

Attorney General Carr had a question on the way the recommendation was written. He stated that his wife experienced an incident two years ago, before the flight took off. Attorney General Carr asked if there was a reason that “before the flight took off” was not included.

Ms. Smith commented that some people do not feel comfortable reporting on the plane; some feel more comfortable reporting after the plane has landed and they have deplaned. Ms. Vercelli suggested modifying the verbiage to: “the Task Force encourages airlines to establish clear policies and procedures around reporting methods to enable the airline to accept and appropriately respond to passenger reports of sexual misconduct, and disseminate the info as appropriate.” She suggested removing “whether the airline learns it on the aircraft or after the aircraft has landed.”

Ms. Smith stated that would eliminate a fairly large number of passenger complaints. Some may think that since nothing was reported on the plane, the airlines don’t have to worry about it. Ms. Smith asked if the customer service representatives are responsible for reporting to the flight attendants after the flight has landed. She stated that it expands the purview of the airline, which is not necessarily bad. Ms. Smith stated that if a person gets off the aircraft and reports to the person at the desk, it might not necessarily get back to the airline in a very efficient way.

Ms. Workie explained that this recommendation was intended to address two different points: (1) accepting and appropriately responding; and (2) disseminating the information. Ms. Workie stated that with regard to accepting the report and appropriately responding, the Task Force heard from passengers including some who came and provided firsthand experience. She explained that one woman mentioned a reluctance on the part of airline employees to accept the report, when the report was not made on the aircraft. Others said that reports were taken if the passenger reported it at the time but not afterwards. Organizations who are familiar with victims of sexual violence explained that some victims may freeze and may not be able to report until after the fact. Ms. Workie explained that the Task Force wanted to make it clear that the report should be accepted whether it was made on the aircraft or at a later time. Ms. Workie explained that the second part of the Task Force’s recommendation related to disseminating information as appropriate. The Task Force discussed methods such as using an iPad, talking to someone, and writing it down.

Attorney General Carr suggested the verbiage: “regardless of the time, manner or method the airline receives the information.”

Ms. Workie restated the suggested revision as: “The Task Force encourages airlines to establish clear policies and procedures around reporting methods to enable airlines to accept and appropriately respond to passenger reports of sexual misconduct, regardless of the time, manner or method that the airline receives the report.” Ms. Vercelli clarified that the end of the sentence, “, and to disseminate the information as appropriate” should remain. Attorney General Carr agreed. Ms. Vercelli noted it would be a very long sentence and Ms. Workie noted that the verbiage about disseminating the information could be broken out in a second sentence if agreed by the ACPAC.

Next, the ACPAC discussed the second recommendation for airlines to have a procedure to obtain contact information for the alleged offender and any witnesses. Ms. Workie indicated that according to the Task Force, airline personnel should gather contact information and provide it to law enforcement, while law enforcement should conduct the investigation.

Ms. Vercelli asked whether a report made at the airport would be forwarded to local authorities. Mr. Rodriguez responded that as long as the airline is well trained it would know to call law enforcement. The ACPAC members agreed that they had nothing to add to the second recommendation. Ms. Smith stated the recommendation is a good one because it encompasses flexibility, recognizing that airlines have various ways of compiling and reporting misconduct incidents.

Next, the ACPAC turned to the third recommendation regarding segregating sexual misconduct incidents, encouraging airlines to identify whether the incident involved a minor, and documenting whether law enforcement has been contacted.

Attorney General Carr inquired about when an individual says they do not want to file a report. Ms. Workie stated there was a lot of discussion among the Task Force members about this. During these discussions, airlines indicated that if the passenger explicitly indicates that he or she does not want to file a report, law enforcement was not contacted. Others stressed the importance of this information being provided because there have been times when individuals have changed their minds days or a week later. Ms. Workie explained that if the information had not been gathered, then a lot of time is essentially lost. Ms. Workie clarified that even though law enforcement is called whenever a report is made, it does not mean that the person needs to speak to law enforcement.

Attorney General Carr asked if this would be different from filing a police report than filing for data collection purposes. Ms. Workie explained that once an airline becomes aware of an incident, the airline would then report that incident to law enforcement. The airline could share with law enforcement that the passenger did not want to file a report. Ms. Workie clarified that it would not be the passenger filing a report; the airline would be informing law enforcement there was an incident.

Attorney General Carr expressed concern because police reports can be made public and the individual's name would be on the report. He stated that the passenger may or may not want to have their name made public. He stated that he is not necessarily making a recommendation, but asking what the intent was, and that it is worth considering from a privacy perspective if the individual does not want their name made public. Attorney General Carr stated that reporting to the appropriate law enforcement for data collection is important from a public policy standpoint.

Ms. Workie explained that the ACPAC may want to make that distinction. She noted this was not an easy recommendation and asked for suggestions on how it might be modified.

Attorney General Carr suggested making clear while reporting if the individual has declined to notify law enforcement. He stated that it is important to reach out to law enforcement for data collection but also respecting the privacy of the passenger who has declined to notify law enforcement themselves.

Ms. Workie explained the purposes of reporting, one being data collection and the other for investigation purposes.

Ms. Vercelli suggested adding “unless the passenger specifically requests that the report not be forwarded.” Attorney General Carr stated that sexual misconduct can be a traumatic experience and that the ACPAC needs to be survivor-informed and aware that publicizing the victim’s name may cause additional trauma. He emphasized that he wants criminals to be held accountable, but reiterated that trauma-informed services are important in these situations.

Ms. Workie summarized the three proposals as: 1) airlines submit everything; 2) airlines do not submit if the passenger says they do not want to be included; or 3) airlines still submit but only for data collection if the passenger says they do not want to be included.

Mr. Rodriguez asked if it is the airline’s responsibility to make that determination or law enforcement’s. He stated that it would put a burden on the airline if the airline had to decide whether to report the incident or not. He thinks law enforcement should make that determination. Ms. Workie responded that the Task Force also discussed how to factor into the passenger’s statement to the airline that they do not want the incident reported to law enforcement.

Ms. Vercelli observed that the Task Force appears to have discussed these issues and she does not want to somehow undo or impose anything based on ten minutes of discussion. Airline policies make it clear that the report is filed with the authorities. In essence, the passenger making the report is giving consent for that information to be forwarded, then law enforcement makes the determination if there will be an investigation. Ms. Vercelli commented that this process ensures data collection for public policy purposes, although there is some risk to privacy, to the extent the passenger knows it will be forwarded to the authorities.

Attorney General Carr stated that he would rather someone be held accountable and the data be collected, but is being aware of the risk of re-traumatizing a victim. He stated that he agrees with the third recommendation.

Ms. Workie stated that it appears that the ACPAC members agree with the fourth recommendation, that airlines to report all incidents of sexual misconduct to law enforcement. The ACPAC agreed. The ACPAC also concurred with the fifth reporting recommendation to forward all complaints to the FBI.

### **Presentation on Data Collection: Jessica Ilich, DOT**

Ms. Ilich stated that in the Joint Statement, Congress noted that there is limited data on the prevalence of incidents of sexual assault and harassment onboard aircraft. The Task Force was charged with providing recommendations on best practices and protocols for airlines relating to data collection, to enable a better understanding of the frequency and severity of this conduct. The Task Force considered existing government data, purposes and uses of data, existing airline data collection practices, and methodologies to determine prevalence of such incidents. The Task Force focused on collecting data on incidents of sexual misconduct that protects the privacy and confidentiality of individuals involved and precludes the release of data that publicly identifies an individual airline to enable better understanding of the frequency and the severity of the misconduct.

The Task Force made four recommendations regarding data collection:

1. The FBI should maintain data on the number of reported in-flight sexual misconduct incidents received from members of the public, airlines, local law enforcement, other Federal agencies, airports or other interested parties. The Department (the Office of the Secretary and the FAA) should refer all incidents of in-flight sexual misconduct to the FBI.
2. The FAA should review its complaint intake process and ensure that incidents of in-flight sexual assault can be identified.
3. Law Enforcement Referrals: Airlines are encouraged to have a policy and procedures to identify the victim, alleged offender, and any witnesses and obtain their contact information to provide to law enforcement.
4. Airline Training: Airlines are encouraged to utilize data on incidents of sexual misconduct that are reported to the airline to inform the airline's training and policy development on in-flight sexual misconduct. The Task Force also encourages airlines to share their data, and resulting policies and procedures, with their regional airline partners.

### **Deliberation on Data Collection**

The ACPAC members concurred with the first recommendation regarding the FBI maintaining data on in-flight sexual misconduct incidents.

Next, Ms. Workie restated the second recommendation and discussed FAA's role. She explained that FAA has the statutory authority to issue civil penalties against offenders for sexual assault, but not for sexual misconduct. This is separate from the FBI's authority to pursue criminal action. The ACPAC members agreed with the recommendation that FAA should review its complaint intake process and ensure that incidents of in-flight sexual assault can be identified.

Ms. Workie restated the third recommendation of the Task Force, encouraging airlines to have policy and procedures to identify the victim, alleged offender, and witnesses to be provided to law enforcement for further action. The ACPAC members concurred with this recommendation.

Ms. Workie restated the fourth recommendation, that airlines be encouraged to use the data of reported sexual misconduct to inform their training and policy development. The ACPAC members concurred with this recommendation.

### **Presentation on Training: Jessica Ilich, DOT**

Ms. Ilich stated that in the 2018 FAA Act, Congress noted that airline personnel should be trained to recognize and respond to incidents of in-flight sexual misconduct and to notify law enforcement. The Task Force was charged with making recommendations on how airlines should address and respond to incidents of in-flight sexual misconduct through training. The Task Force found that most airlines do not train employees specifically on handling incidents of sexual misconduct. The Task Force considered results of an airline survey of existing training practices, existing airline disability training programs required by DOT, training models from

related industries (such as cruise companies and hotels), and the training programs of airlines that currently conduct sexual misconduct training. The Task Force considered who should be trained on handling incidents of in-flight sexual misconduct, how often, the content of the training, and how airlines can ensure the training is effective. The Task Force acknowledged the importance of trauma-informed training for communicating with individuals who have experienced in-flight sexual misconduct and having policies and procedures in place for responding to and reporting incidents.

The Task Force made two recommendations for training:

- Airlines should train employees on how to address incidents of in-flight sexual misconduct.
- The key elements of training should include (appropriate to the duties of the employee):
  - the definition of “sexual misconduct” (adopted by the airline);
  - sensitivity training;
  - policies and procedures on responding to incidents of in-flight sexual misconduct; and
  - policies and procedures on airline reporting (internal and external) and data collection practices.

### **Deliberation on Training**

Ms. Workie explained that the first recommendation concerns training for “flight attendants, pilots, and other personnel” charged with reporting or responding to incidents of sexual misconduct. Ms. Workie explained that the Task Force learned that depending on the airline, it is not always the same employees that are involved in addressing these kinds of incidents. Rather than identifying all of the positions, the Task Force thought it would be better to describe broadly describe the types of employees who should be covered by this training as including anyone charged with responding and reporting. The ACPAC agreed with this recommendation.

Ms. Workie restated the second recommendation concerning the key elements of the training and the ACPAC agreed with this recommendation.

### **Summary of Discussion of Recommendations**

After concluding the discussion of the training recommendations, Ms. Workie summarized what the ACPAC had agreed regarding the Task Force recommendations as follows:

- **Definition.** The ACPAC agrees with the definition with a slight modification proposed removing the phrase “attempted behavior” so it is focused on actual behavior.
  - The definition would be modified as follows: Sexual misconduct is a broad term. It encompasses any behavior ~~or attempted behavior~~ of a sexual nature that is committed without consent or with someone incapable of consent, or by force, intimidation, coercion, or manipulation. Sexual misconduct also includes physical or verbal advances or harassment of a sexual nature, or public indecent exposure.

- **Awareness Campaigns.** The ACPAC is adopting Task Force recommendation as is that airlines, airports and other appropriate federal agencies engage in awareness campaigns.
  - The Task Force recommendation on awareness is: Airlines, airports, and appropriate Federal agencies should engage in awareness campaigns. The Task Force recognizes that there are various methods for the airlines to do so and encourages airlines to consider the methods mentioned in Chapter 3 and use the methods that best fit with their policies and practices on sexual misconduct. Federal agencies should also take steps to ensure that passengers are aware that acts of sexual misconduct are punishable under federal law and how incidents involving in-flight sexual misconduct should be reported.
  - The ACPAC agreed to modify the second part of the recommendation (the third sentence of the recommendation) to add “airlines and airports.” The third sentence of the recommendation would read, “Federal agencies should also take steps to ensure that passengers, airports, and airlines are aware that acts of sexual misconduct are punishable by federal law.”
  - The ACPAC also agreed it would be helpful to provide an example of how federal agencies can increase awareness by sending a letter to entities such as airports.
- **Reporting.** There are five recommendations by the Task Force that the ACPAC agreed to adopting “as-is” for all except the first recommendation. There was agreement on a modification to the first recommendation.
  - The first Task Force recommendation on reporting is: The Task Force encourages airlines to establish clear policies and procedures around reporting methods to enable the airline to accept and appropriately respond to passenger reports of sexual misconduct whether the airline learns of it on the aircraft or after the aircraft has landed, and disseminate the information as appropriate. Additionally, the Task Force suggests airlines consider allowing passengers more than one way to report such incidents to allow passengers to select the method that is most comfortable for them.
  - The suggested modification agreed by the ACPAC is: “The Task Force encourages airlines to establish clear policies and procedures around reporting methods to enable the airlines to accept and appropriately respond to passenger reports of sexual misconduct, regardless of the time, manner, or method that the airline receives the report.” There will be a separate sentence about the Task Force encouraging airlines to establish clear policies and procedures around disseminating the information.
  - Ms. Vercelli clarified that reporting “regardless of time, manner, and method” would be governed by the policies of the airlines. She also asked if a statute of limitations would apply. Attorney General Carr stated he is sure it would; it could be two years or four years, but he would need to check. He noted that the policy

would address accepting reports whether it was made on the plane or after it landed. Ms. Workie clarified that the airline would not have to make statute of limitations determinations; that would be left to law enforcement.

- Ms. Workie recapped the other four Task Force recommendations on reporting. The ACPAC agreed they had no suggested changes.
- Ms. Workie recapped the Task Force's recommendations for Data Collection and Training. The ACPAC agreed they had no suggested changes.

The ACPAC then addressed questions and comments submitted by members of the public through the chat feature or by email. Kimberly Graber, Deputy Assistant General Counsel for the Office of Aviation Consumer Protection, read the questions.

Bill McGee from Consumer Reports:

Considering the FBI findings, did the members discuss the specific issue of children traveling apart from their parents or caregivers when families are separated onboard? Will the Task Force recommend that the airlines be prohibited from charging fees to sit children apart from families?

Ms. Workie stated there was discussion during the Task Force meetings and in the report as well, about the impact on minors. She noted that the Task Force recommended segregating data to determine if minors were involved. Ms. Workie stated that to her recollection, the Task Force did not discuss fees.

Ms. Smith stated there was extensive discussions about minors, including the word "manipulation." She explained that the FBI stated that "manipulation" particularly relates to children traveling without parents or an adult. "Manipulation" is considered grooming/making friends with the child. Manipulating was added to directly relate to children. The Task Force had a fairly extensive discussion on that.

Paul Hudson from Flyers Rights:

Flyers Rights and others have suggested that passengers and flight attendants be able to contact the FBI directly in a timely manner by phone, text or email or correspondence and that the FBI have a dedicated place to receive such complaints or reports. What did the Task Force discuss and decide on this?

Ms. Workie stated that the Task Force's recommendation is in the report. She thanked Mr. Hudson for coming to speak to the Task Force and stated there was discussion of the Flyers Rights recommendations. She stated that the FBI explained the importance of being able to have information right away. Ms. Workie shared that the FBI stated that it does not have presence at all airport locations, and there is local law enforcement at all locations that can follow up. The Task Force recommended that airlines contact local law enforcement for all reports of in-flight sexual misconduct so the local law enforcement can follow up on these issues.

Ms. Smith stated that FBI personnel played a large role in some of the Task Force deliberations. Ms. Smith commented that in her view, the ACPAC does not have the authority to say what the



FBI has to do. She stated that we can recommend certain things, but that would be in conjunction with our overall role with DOT.

Charlie Leocha from Travelers United:

Does this Task Force and Advisory Committee believe that parents should pay extra to ensure they can sit next to minors?

Ms. Workie stated there was not discussion at the Task Force meetings on fees associated with sitting next to minors. She noted that all of the ACPAC deliberations are public, and as of this morning there was not a discussion on fees. Ms. Workie explained that in terms of minors, unfortunately one of the incidents that sticks in her mind is hearing there was a minor assaulted on an aircraft when traveling with the parents. She stated that the father was there and did not know it was occurring until afterwards. Ms. Workie said that it is horrible that these kinds of things happen to anyone, and we have learned of these things happening when the minors are not traveling on his or her own.

Ms. Workie stated that she appreciated the work of the ACPAC. It was very clear they came prepared.

*The meeting broke for lunch from 12:00 pm to 1:00 pm*

### **Transparency of Airline Ancillary Service Fees (1:00 pm to 1:50 pm)**

#### **Background and Topic Summary: Robert Gorman, DOT, Office of Aviation Consumer Protection**

Mr. Gorman gave a presentation which summarized the information that was presented to the Committee at the previous meeting. Mr. Gorman presented a background of the topic, described current regulations addressing transparency of ancillary service fees, and outlined previous DOT regulatory actions on the topic. Mr. Gorman then summarized the presentations made to the Committee at the previous meeting by consumer advocates, business travelers, the International Air Transport Association (IATA), travel technology companies, online travel agencies (OTAs), metasearch entities, global distribution systems (GDSs), and three airlines with different business models.

#### *Role of the Committee*

Mr. Gorman stated that in March 2018, in the Joint Statement, Congress directed DOT to work in collaboration with stakeholders to establish guidelines which “should lead to airlines or any for-profit seller of commercial air transportation displaying, on an airline’s website or any travel metasearch website with which the airline is partnered, full ticketing charges, including, but not limited to, seat price, any additional fees the consumer will pay per piece of baggage or per seat upgrade, and optional flight insurance costs. As a result, all the charges should be clear to the consumer, at the time of the initial search, and the anticipated total charges fully disclosed.” While Congress asked for transparency on airline websites and partnered metasearch sites, Congress also noted that consumers should have clear and accurate pricing information “whether consumers are purchasing directly from the airlines or through ticket agents.”

### *Discussion of Key Terms*

Mr. Gorman explained that while the term “ancillary service fee” is not specifically defined by statute or regulation, it generally refers to a fee charged by an airline for a service that is separate from the fare for air transportation. He explained that traditionally, the fare included a seat, two checked bags, and a carry-on bag. However, with the advent of unbundling, checked bags and carry-on bags became ancillary services for which airlines charged separate fees. Today, ancillary services can be bundled, unbundled, and packaged in various ways. These services now include transporting checked bags and carry-on bags, providing advance seat selection and seat upgrades, processing flight changes and cancellations, providing Wi-fi and other entertainment options, providing flight insurance, and delivering other innovative services.

Next, Mr. Gorman explained that the term “transparency” is not specifically defined in statute or regulation, but generally refers to displaying fees in a way that is clear to consumers. Factors that impact transparency include: (1) whether the fee information available; (2) whether the display is easy to understand; (3) whether the fees are specific and not in a range; (4) whether all fees are displayed; and (5) the timing of the display.

### *Prior DOT Advisory Committee Recommendations on Transparency of Ancillary Service Fees*

Mr. Gorman explained that prior DOT advisory committees have addressed the issue of ancillary service fee transparency. In 2010, the Future of Aviation Advisory Committee advised generally that DOT “should ensure transparency in air carrier pricing, including ancillary fees.” In 2012, the Advisory Committee on Aviation Consumer Protection adopted this recommendation and added that all participants in the airfare and fee distribution system should be guided by principles of transparency, providing choices and offers that meet consumer needs, and knowing the full price before purchase.

### *Regulations and Other DOT Actions Relating to Transparency of Ancillary Service Fees*

Mr. Gorman detailed current regulations on the issue of transparency of ancillary service fees. He explained that in 2011, DOT issued a regulation (14 CFR 399.85), providing that U.S. and foreign carriers must: (1) disclose on their home web site any recent increases to their baggage fees; (2) list on their web site all ancillary service fees in one page, linked to the home page; and (3) disclose, upon displaying the result of an itinerary search, that baggage fees may apply, and where the consumer can see those fees. With respect to the third requirement, the disclosure must appear on the first screen in which the airline offers a fare selection for a specific itinerary. The third requirement also applies to ticket agents.

Next, in 2012, the Department issued the “full fare rule” (14 CFR 399.84(a)), which provides that it is an unfair and deceptive practice for an air carrier or ticket agent to advertise a price for air transportation “unless the price stated is the entire price to be paid by the customer to the carrier, or agent, *for such air transportation*” (emphasis added). Mr. Gorman explained that the full fare rule does not apply to ancillary service fees, because those fees are for services that are separate from air transportation. Mr. Gorman explained that pursuant to 14 CFR 399.84(b), if a carrier or ticket agent chooses to display the components of a fare (including ancillary fees), then the displayed components must be accurate. Finally, 14 CFR 399.84(c) provides that airlines and ticket agents may not offer ancillary services using an “opt out” system, where the services are

automatically included unless they are affirmatively refused. Instead, ancillary services must be displayed using an “opt in” system, where the consumer affirmatively chooses the services.

Mr. Gorman noted that in 2012, DOT approved IATA’s New Distribution Capability (NDC). He explained that NDC is a standard for transmitting data about airline products and services to all players in the distribution system.

Mr. Gorman explained that in 2014, the Department issued a Notice of Proposed Rulemaking (NPRM) titled “Transparency of Airline Ancillary Fees and Other Consumer Protection Issues,” available at Docket DOT-OST-2014-0056. In January 2017, the Department issued a Supplemental NPRM on Transparency of Airline Ancillary Fees (at docket DOT-OST-2017-0007), but the Department withdrew this rulemaking in December 2017.

Mr. Gorman then summarized the presentations made to the Committee at the previous meeting.

#### *Consumer Advocates’ Views*

Mr. Gorman summarized the presentation of Travelers United, a consumer advocacy organization. Travelers United stated that with the advent of unbundling, comparison shopping has been made virtually impossible. The Department allowed unbundling, but corporate powers (from airlines to GDSs) do not want consumers to be able to conduct true comparison shopping. Travelers United argued that ancillary fees are not standardized.

Travelers United recommended mandatory full price transparency. According to Travelers United, everyone would benefit: airlines could sell ancillary services, software developers could create new interfaces, and security of the information technology infrastructure would improve travel security.

Next, Mr. Gorman summarized the presentation of the National Consumers League (NCL), a consumer advocacy organization. NCL stated that from 2008 to 2017, the average fare has dropped by about \$50, but ancillary fee revenue has jumped significantly. Using the example of an individual who wanted to travel with a surfboard, NCL explained that it is difficult to comparison shop even between two airlines because ancillary fee information is difficult to find and terms are not standardized. NCL noted that a 2017 Government Accountability Office (GAO) [report](#) found that “the variety of new optional services and products has made it difficult for consumers to compare prices.” NCL also noted that a 2010 GAO report recommended that DOT should require airlines “to disclose baggage fees and policies along with fare information across all sales channels used by the airline, and to separately report to DOT the revenues from all optional service fees paid by passengers.”

NCL made the following recommendations:

- Consider ways to reduce friction so that consumers can more accurately and easily compare the true cost (fares + ancillary fees) to fly between carriers
- Standardize ancillary fee disclosure terminology across carriers
- Study how segmentation (e.g., dividing consumers into categories, such as being a frequent flyer or credit card holder) is affecting the ability of consumers to accurately comparison shop the true cost of flying.

### *Business Travelers' Views*

Mr. Gorman summarized the presentation of the Global Business Travel Association (GBTA), representing business travelers. GBTA stated that ancillary fees are one of the top three issues facing corporate travel buyers, and that today, only large companies with purchasing power/preferred provider agreements can negotiate away ancillary fees.

GBTA recommended that all participants in the airfare and fee distribution system should follow GBTA's "Rules of the Road" regarding fee clarity:

- Rates and additional costs, including ancillary fees or surge pricing, should be stated upfront. All rates should be available for purchase on all distribution systems where inventory is sold.

### *IATA Presentation on NDC*

Mr. Gorman summarized the presentation of IATA relating to NDC. IATA explained that a problem in the market is that airlines can personalize their own web sites, but GDS-provisioned third party web sites do not provide a rich and easy comparison shopping experience. IATA stated that the solution is NDC, which modernizes a pre-internet standard and allows airlines to display differentiated, personalized, dynamic offers throughout the system.

IATA explained that 66 airlines and 61 IT providers are NDC-certified and capable, but only small percentage of tickets are sold today via NDC. IATA stated that:

- In an NDC-enabled industry, airlines would communicate more directly with consumers: either with no intermediary, or through an agent.
- Airlines could develop offers to meet individual needs; third parties could enter the market to help consumers compare and contrast complete offers.
- NDC is disrupting the GDS business model, and GDS firms resist this by entering into agreements with airlines and travel agents that restrict their ability to use alternative suppliers of ticket distribution services and third-party technology providers.

IATA did not make recommendations to the Committee.

### *Travel Technology View*

Mr. Gorman summarized the presentation of Travel Tech, which represents GDSs, travel IT providers, OTAs, metasearch platforms, and travel management companies (TMCs).

Travel Tech indicated that NDC is one way to display and sell ancillary services, but its members are working with carriers to various degrees on different methods. Travel Tech indicated that the market is evolving: market trends are now allowing for greater transactability of ancillary fees on OTA sites, but airlines are not fully providing available data through all channels. Travel Tech stated that it favors transparency but does not support any form of a mandatory participation rule.

At the plenary session, Travel Tech did not make recommendations to the Committee.

In a follow-up comment to the docket, Travel Tech stated that:

- OTAs can often offer ancillary services (because of contractual agreements between OTAs and airlines), but this is not universal and is dependent on airlines providing the data;
- The NDC “story is unfolding,” but no guarantee it will be the standard of the future. Travel Tech supports it as one of a number of paths;
- OTAs are still limited by the data that airlines are willing to provide; and
- There is no guarantee that progress will continue; contracts can terminate.

In the follow-up comment, Travel Tech recommended that DOT should remain vigilant to ensure that parties are not engaging in unfair or deceptive practices.

#### *OTA View*

Mr. Gorman summarized the presentation of Expedia Group, representing OTAs. Expedia indicated that the online shopping experience has become more difficult in recent years for consumers, because they must review much more information to understand what they are purchasing. Expedia stated that it is very hard for an OTA to display a full price up front because (1) ancillary bundles are tied to fare tiers; (2) tier types vary by airline; and (3) airlines do not always train OTAs about changes to fare tiers. Moreover, oftentimes the consumer does not know what they want until they explore options. Expedia described the marketplace as “challenged.”

Expedia recommended that “consistency of data is required.” Mr. Gorman indicated that Expedia did not specifically recommend that this requirement should come through statute, regulation, or other government intervention.

#### *Metasearch Entity View*

Mr. Gorman summarized the presentation of Skyscanner, representing metasearch entities. Skyscanner explained that as a metasearch entity, it does not charge its users and does not profit from specific arrangements among OTAs or airlines. Skyscanner tries to standardize information for consumers but this is very difficult: consistency in displaying baggage and seat selection information is particularly important. Skyscanner indicated that it is NDC-compliant. Skyscanner described the marketplace as “barely working.”

Skyscanner recommended that consistency of information from airlines is required. Like Expedia, Skyscanner did not specifically indicate that this requirement should come through statute, regulation, or other government intervention.

#### *GDS View*

Mr. Gorman summarized the presentation of Amadeus, representing GDSs. Amadeus explained that it operates the world’s largest travel data processing center and provides diversified solutions for the travel industry as a whole (not just for airlines). Amadeus indicated that NDC is a pipeline for data, and is good because it is less airline-centered and more distribution-centered than before. Amadeus indicated that the market is *not working* and has inconsistencies but that a regulatory approach is not required.

Amadeus did not make recommendations to the Committee.

In a follow-up comment to the docket, Amadeus objected to comments from IATA that GDSs are holding back NDC. Amadeus stated that it has worked hard to improve NDC's functionality so it works for OTAs. Amadeus indicated that airlines have pushed the market in the direction of a direct-distribution model, and that GDSs do not have extraordinary market power; only 1/3 of bookings in 2018 were made with GDSs. Amadeus stated that GDSs are willing to transact ancillary services, but airlines raise technical and economic obstacles to doing so.

#### *Airline View – Southwest*

Mr. Gorman summarized the presentation of Southwest Airlines. Southwest indicated that it has direct distribution model, with 96% of fares booked directly on southwest.com. Southwest explained that this model keeps fares low and provides for full transparency. Southwest states that it keeps a bundled fare (with a number of ancillary services included in the fare) through its "Transparency" campaign. Southwest expressed the view that regulation is not necessary, and that the market is competitive and self-correcting.

#### *Airline View – Alaska*

Mr. Gorman summarized the presentation of Alaska Airlines. Alaska indicated that it displays the full array of potential charges (including ancillaries) on the home page. Alaska stated that the flight price is displayed on search, and that seat selection price is displayed during the purchasing process on a seat upgrade page. Alaska indicated that all anticipated charges are displayed before checkout. Alaska expressed the view that shopping should create loyalty. Alaska indicated that it receives few complaints about ancillary service fees.

#### *Airline View – Spirit*

Mr. Gorman summarized the presentation of Spirit Airlines. Spirit indicated that it was the first carrier in the U.S. to offer ancillary options, and that it is the fastest-growing carrier in the United States. Spirit stated that its customers are highly price-sensitive, generally non-corporate passengers who are looking for the best value. Spirit states that it actively educates its consumers on how to shop for only the ancillary services that they want. Spirit's back-end interface allows OTAs to transact certain ancillary services, with more to come. Spirit states that it sends a special email to passengers who purchased through an OTA.

The airline representatives did not make recommendations to the Committee.

#### *Public Comment*

Mr. Gorman indicated that one other comment was received in the docket relating to transparency of ancillary service fees. Travel Fairness Now stated that the Committee should also address "the growing practice of major airlines to restrict third party online access to and display of publicly available airline information," because that issue is related to transparency.

## Discussion and Deliberation

Ms. Vercelli opened the discussion by noting that transparency issues have been discussed for 10 years and that this is an area that is already highly regulated. She noted that in the Joint Statement, Congress directed DOT to collaborate with stakeholders with respect to transparency of information that airlines or any for-profit seller of commercial air transportation display, on an airline's website or any travel metasearch website with which the airline is partnered. She indicated that this collaboration effort has already worked well because Sabre (a GDS) has 155 agreements with airlines, and Amadeus (another GDS) has 157 agreements with airlines setting terms for sharing information. Ms. Vercelli questioned where the market failure exists; she stated that the industry is competitive and innovative, and that standardization should not be imposed. Customers have a variety of ways to shop, including through NDC channels and direct distribution. Ms. Vercelli indicated that airlines work hard on their relationship with their customers and standardization would limit creative airline programs. She stated her view that a regulatory approach may stifle that innovation and requested that the other members address what is the market failure that the Committee is trying to address.

Mr. Rodriguez agreed, stating that it appears that airlines are "completely transparent," in that they provide all information about all ancillary service fees on their own web sites if a customer does enough research. He indicated that the overview showed an attempt to get to comparison shopping and a standardization of data. In his view, that was not the spirit of Congress's directive, which was for the airlines to be transparent with their own customers, not to standardize data for purposes of comparison shopping. The transparency is there as much as it is going to be with airlines in competition with each other.

Ms. Workie noted the docket comment of Travel Fairness Now, recommending that airlines share fee data (relating to airline practices of restricting third party access to data). Ms. Workie indicated that she agreed with Ms. Vercelli's view that Congress did not intend DOT to address that issue in this Committee, because the directive was written to address airlines and *partnered* entities.

She then asked about airlines and ticket agents providing "full ticketing information" as described in the Committee's directive. She asked whether an airline's practice of providing fees in a range on one page of its web site satisfies this directive. Ms. Vercelli responded that nothing further is necessary because airlines provide this data not only directly to their own customers, but to GDSs with which they have a contractual relationship. She pointed to an example from the previous meeting when an entity stated to the Committee that the data is flowing and from Ms. Vercelli's perspective, the agreements are healthy, and information is being displayed today. She indicated that the role of DOT should be to remain vigilant to make sure that entities comply with current law, but this is all that is required.

Ms. Smith indicated that there are many players in the marketplace and that the market is active and dynamic. Ms. Smith noted at the previous meeting that many participants commented on the evolving nature of the industry. She also noted the number of players in the industry and stated that things are moving, perhaps not as quickly or always in the direction we would like, but the situation is a dynamic. Boundaries are changing so setting something in stone right now would be disservice to consumers and to competition. Due to the dynamic nature of this situation, her view is that DOT should not stifle this activity through regulation, but should carefully evaluate the situation and perhaps raise the issue in a future ACPAC session if necessary.

Ms. Workie requested confirmation that both Ms. Smith and Ms. Vercelli thought the Department should remain vigilant in this area and potentially revisit this issue if necessary and involve the ACPAC if needed, but did not think further action was necessary at this time. Ms. Smith agreed but noted Ms. Vercelli was coming from a different perspective and may not agree. Ms. Vercelli agreed that revisiting issues if necessary is appropriate, but that nothing further is necessary at this time.

Attorney General Carr agreed with this perspective, noting that the number of stakeholders and overall number of players in the market shows that this is a dynamic situation. Attorneys General have seen something similar in the hotel industry. There are opportunities in the marketplace for entities to come in and say they can do things better. His perspective is to avoid stifling innovation in the marketplace such as by airlines; or to hinder the abilities of the OTAs to come in and say they have built a better widget or platform. He observed that it does not appear that entities are violating existing statutes and regulations but rather that some are of the view that more could be done. However, in his view, the market should fill that gap.

Ms. Workie referenced the phrasing of the Joint Statement, which mentions guidelines by DOT to lead to transparency, and asked if the Committee is suggesting that no guidelines are necessary, or if the guidelines need to focus on DOT remaining vigilant.

Mr. Rodriguez stated that maybe the guidelines are that DOT remain vigilant and DOT does not need to issue guidelines at present. Ms. Workie restated his comment as DOT should continue to evaluate and issue guidelines if needed in the future and Mr. Rodriguez concurred.

Ms. Vercelli indicated that she did not think that DOT was required to issue something in writing, and that DOT is already vigilant, so it may not be necessary for DOT to affirmatively issue guidelines simply indicating that the DOT should remain vigilant.

Ms. Workie clarified that she was trying to ascertain the Committee's recommendation on this issue and noted that appropriations language such as that in the Joint Statement, is viewed as a request for DOT to work with stakeholders, which we are doing by working with the Committee, and to issue guidelines, but is not a statutory obligation.

She stated that it appears that the recommendation of the Committee is that DOT should remain vigilant to ensure transparency of airline ancillary service fees, and to revisit this issue in the future if necessary, and if so, to consult with the ACPAC as appropriate.

Mr. Rodriguez confirmed that she captured the recommendation. Ms. Smith noted that an important concept to consider was the evolving marketplace.

Ms. Workie asked whether the Committee was recommending that DOT's vigilance should ensure that "transparency continues," (i.e. a compliance approach with respect to existing requirements) or whether the vigilance is designed to ensure *increased* transparency by looking at the marketplace.

Mr. Rodriguez indicated that he thought that ensuring compliance with existing requirements made more sense. Ms. Vercelli reiterated that it is an evolving marketplace and said DOT should be observing changes in the marketplace while ensuring compliance and she thought that was Ms. Smith's suggestion. After Ms. Workie sought further clarification, Mr. Rodriguez reiterated that the focus should be on ensuring compliance. Ms. Vercelli reminded the participants to remember



the scope of Congress's directive, and that if any written recommendation is necessary, it should be for DOT to remain vigilant with respect to the issue as written in the Joint Statement because nothing else is necessary at this time. Mr. Rodriguez and Attorney General Carr concurred.

Ms. Workie clarified that the language in the Joint Statement was general and that she wanted to be sure she was understanding the Committee's interpretation. She reminded the Committee that the Joint Statement asks the Department to collaborate with stakeholders to ensure transparency with respect to "full ticketing charges, including, but not limited to, seat price, any additional fees the consumer will pay per piece of baggage or per seat upgrade, and optional flight insurance costs." She indicated that this language could be interpreted in one of two ways: (1) this level of transparency is already required by DOT's regulations, which allows certain ancillary fees to be displayed in a range; or (2) that additional transparency is required, (e.g., for fees to not be displayed in a range), in order for the consumer to understand "full ticketing charges."

Ms. Workie noted that the Committee appeared to be interpreting the language the first way she described, that DOT should remain vigilant regarding compliance with existing requirements, and that the recommendation will be for DOT to remain vigilant in this area. The Committee members concurred.

Ms. Vercelli stated that the language regarding ensuring that full ticketing charges are displayed, either by the airline or an entity under contract to the airline, appears to capture DOT's role. Ms. Workie also pointed out that the Joint Statement asks for transparency "at the time of initial search," not at the end of the search. The Committee members generally concurred with the interpretation that DOT should be ensuring compliance with its existing transparency requirements.

Ms. Workie summarized the Committee's recommendation as: DOT should remain vigilant to ensure compliance with the transparency requirements that currently exist.

### **Involuntary Changes to Passenger Itineraries (1:50 pm to 2:30 pm)**

#### **Background and Topic Summary: Stuart Hindman, DOT, Office of Aviation Consumer Protection**

Mr. Hindman gave a presentation which summarized the information that was presented to the Committee at the previous meeting. Mr. Hindman presented a background of the topic, described the current state of the law and regulations which cover involuntary changes, and outlined previous DOT positions on the topic. Mr. Hindman then summarized the presentations made to the Committee at the previous meeting by consumer advocates, large airlines, low-cost airlines, and ultra-low-cost airlines.

#### *Role of the Committee*

Mr. Hindman addressed the Congressional mandate to the Department related to involuntary itinerary changes. Section 414 of the 2018 FAA Act requires the Department to review U.S. airline policies and practices on providing compensation or alternate transportation when carriers (i) change passenger itineraries more than 24 hours before departure, and (ii) those changes involve an additional stop or a departure time plus or minus three hours from the originally scheduled time. The 2018 FAA Act stated that the Department should consult with the ACPAC during its review of this topic.

### *Relevant Law and Prior DOT Statements*

Mr. Hindman detailed the relevant law that governs this area. First, he explained the Department's statutory authority to prohibit unfair and deceptive practices and unfair methods of competition by U.S. and foreign air carriers and ticket agents is found at 49 U.S.C. § 41712. He further discussed current Departmental regulations based on § 41712, which require airlines to:

- Timely inform passengers of known delays, cancellations, and diversions (14 CFR 259.8)
- State the carrier's cancellation policy and allow for prompt refunds in its customer service plan (14 CFR 259.5)
- Maintain a realistic flight schedule (14 CFR 399.81)

He further noted that the Department does not require airlines to provide compensation or alternate transportation in the event of a delay. However, the Department has previously stated in the preamble of the 2011 rule related to enhancing airline passenger protections, that passengers would be due a refund, including a refund of non-refundable tickets and associated optional fees, due to certain significant delays. The Department further stated in that preamble that it is manifestly unfair for a carrier to fail to provide the transportation contracted for and then refuse to provide a refund if the passenger finds the offered rerouting unacceptable. While no regulation specifically covers this area, the Department's Office of Aviation Consumer Protection continues to monitor airline practices and will assess on a case by case basis whether § 41712 is violated.

### *Website Disclosures*

Mr. Hindman noted that U.S. carriers generally disclose their policies relating to itinerary changes on the carrier's customer service plan, its contract of carriage, or in a "frequently asked questions" section, all of which can be found on the carrier's website. He reviewed examples of such policies from two large U.S. carriers. The policies describe how the carrier will notify passengers of involuntary itinerary changes and the resulting rights of the passenger.

### *Consumer Complaints*

Mr. Hindman noted that the Department received approximately 20,000 complaints in 2017 (18,153) and approximately 15,000 complaints (14,257) in 2018, and approximately 140 of those complaints related to the issue of involuntary itinerary changes. He discussed common themes in consumer complaints, which included:

- Failure of the carrier to provide a refund after an itinerary change or to provide expense reimbursement for costs incurred by the passenger as a result of the change
- Failure of the carrier to notify consumer of itinerary change
- Addition of a stop by the carrier although the consumer chose a non-stop flight at higher fare for convenience
- Change in itinerary by the carrier caused, or was expected to cause, the consumer to miss his or her connecting flight
- Refusal of carrier to re-book consumer on another airline, at no additional cost

- Refusal of carrier to honor purchased optional services (i.e. higher class of service) after itinerary change

Mr. Hindman described the common responses from carriers, which included:

- Schedule changes are common in the industry and/or the change was consistent with its guidelines
- The carrier provided an option to re-book a different flight or cancel for a refund of the unused portion of the tickets
- Consumer chose not to cancel, and therefore accepted the schedule change
- Per its policy, when consumers accept a schedule change, the airline does not offer reimbursement for miscellaneous expenses (hotel, meal, ground transportation, etc.) and does not offer gestures of goodwill (i.e. vouchers)

Mr. Hindman then summarized the presentations made to the Committee at the previous meeting.

#### *Consumer Advocates*

Two consumer advocates presented to the Committee and stated there was a need for greater transparency by airlines when involuntary changes or flight interruptions occur. The consumer representatives made several recommendations to the Committee:

- All U.S. carriers should be required to notify passengers within one hour of any change to a scheduled flight
- Inconvenienced passengers should be given priority in re-securing seats previously assigned to the passenger
- Fees for seat selection should be refunded if the passengers are unable to secure the same seats on the rescheduled flight
- Passengers should be fully informed of their right to a refund if the passenger does not accept the new itinerary
- Airlines should also be required to pay the passenger a cancellation or change fee, or pay for a substantially similar flight on another airline
- DOT should implement a passengers' bill of rights to ensure all passengers on U.S. carriers are treated fairly during air transportation
- DOT should mandate refunds and compensation to passengers to cover additional expenses resulting from involuntary itinerary changes
- DOT should require airlines to pay consumers the same change fee passengers are required to pay the airline for customer-driven changes to itineraries
- DOT should establish standards for itinerary changes and incorporate those standards in the legal authority airlines are provided from the Department to offer air transportation
- DOT should increase notification requirements to passengers

### *Large Airline View – United Airlines*

Mr. Hindman summarized the presentation of United Airlines. At the last meeting, United noted that air travel is not comparable to other service industries due to the unique factors that make an airline's ability to complete its contract responsibilities almost impossible. Less than 1% of United itineraries are subject to involuntary changes. United indicated that itinerary changes occur either in irregular operations caused by weather or schedule changes made by the airline. United summarized its policy for handling involuntary itinerary changes as:

- Provide a refund if requested by the passenger,
- Refund optional or ancillary fees purchased by the passenger, or
- Waive any change fees if the new itinerary is not acceptable to the passenger.

United noted that complaints related to involuntary itinerary changes was less than .07% of the total number of complaints received by the carrier. Finally, Mr. Hindman summarized that United does not believe that there is a need for additional regulation in this area due to the minimal effect on consumers and the small percentage of complaints received by the carrier.

### *Low Cost Carrier View – JetBlue*

Mr. Hindman summarized the presentation of JetBlue Airways. In its presentation to the Committee, JetBlue noted that it always seeks to mitigate the effect to its customers when there are delays, cancellations, or itinerary changes. JetBlue stated that most involuntary itinerary changes are caused by irregular operations, and JetBlue always seeks to ensure it is handling affected customers in a fair manner.

When changes occur, JetBlue state it will provide notification to passengers though multiple methods for all changes. JetBlue will then use its internal reaccommodation tool which is designed to reaccommodated passengers using the next best itinerary given rules and standards established by the carrier. JetBlue noted its reaccommodation tool considers several factors, such as time in seat, when calculating the next best itinerary for the passenger. JetBlue will also offer a refund if the passenger does not accept the new itinerary, or will waive change fees

JetBlue noted that it is the only airline to implement a passenger bill of rights. Finally, JetBlue stated that its passengers may be empowered to find flights on other airlines and JetBlue will issue compensation to the passenger to cover that additional cost.

Mr. Hindman concluded that no recommendations were made to the Committee by JetBlue.

### *Ultra-Low-Cost Carrier – Allegiant Airways*

Mr. Hindman summarized Allegiant's presentation to the Committee. In its presentation, Allegiant noted its belief that there is already common ground between the airlines, passengers, and DOT related to the handling of involuntary itinerary changes. Allegiant stated its policy in the event of involuntary itinerary changes is to:

- Permit the passenger to accept the change,
- Rebook the passenger on another Allegiant flight without a change fee or difference in fare, or

- Provide a travel credit or refund if the passenger does not accept the changes.

Mr. Hindman noted that no recommendations were made to the Committee by Allegiant.

#### *Public Comments*

Mr. Hindman concluded that the Department received one public comment on the Committee's docket about this topic after the conclusion of the previous meeting. Mr. Hindman summarized the public comment:

- The Committee should recommend the adoption of a binding regulation that explicitly entitles air travel consumers to a refund in the original form of payment when the consumer's flight itinerary is affected by a cancellation or significant schedule change.
- The Committee should recommend that the Department take swifter action against airlines that continue the unfair and deceptive practices of denying refunds to passengers in such situations.

#### **Discussion and Deliberation**

Mr. Rodriguez noted that due to the very small number of complaints on this topic, the risk of over-regulation and unintended consequences of over-regulation for a small number of complaints far outweighs the benefits to consumers who are affected by involuntary schedule changes. He noted that airlines seem to be properly handling passengers who are affected by schedule changes, most of which are caused by factors outside the control of the airline, such as irregular operations. He suggested no change is needed.

Ms. Vercelli noted that industry has all but eliminated most change fees in the time since the last ACPAC meeting alleviating the need for airlines to be required to reimburse passengers when schedule changes occur. She opined that this is evidence of the competitive nature of the airline industry and shows that the market is working. Ms. Vercelli further noted that the Department is only required to study the issue of involuntary changes and make a report back to Congress, but is not mandated to take any action.

Ms. Workie confirmed that the 2018 FAA Act only directed the Department to study the issue and consult with the ACPAC and report back to Congress the results of its study. The 2018 FAA Act does not require any additional action.

Attorney General Carr stated that the airlines appear to be treating passengers appropriately when involuntary changes occur, noting five actions that airlines already take (i.e., providing refunds on fares, refunding fees, waiving change fees, notification of changes to itineraries, rescheduling passengers) and does not believe further regulation or action is necessary. He indicated his belief that the Department has met the mandate to conduct a review of the issue and the Committee has met the mandate in the 2018 FAA Act to review and study the issue.

Ms. Workie agreed that the Department has conducted a preliminary review and the review with the ACPAC. She noted that the statutory mandate permits the ACPAC to make recommendations to the Secretary of action necessary in this area. She restated the points made by the Committee, such as the low numbers of complaints to consumers and airlines, and that based on the Committee discussion thus far, no further action is necessary. She also observed that Ms. Vercelli suggested that changes are already being made on a much larger scale.

Ms. Vercelli concluded that many of the recommendations made to the Committee by previous presenters have already been implemented by airline policy or law, for example, the requirement to notify consumers of a change within 30 minutes, so no further action is necessary.

Ms. Workie asked about the consumer recommendation that airlines proactively notify consumers of the right to a refund. In response to the recommendation made by consumer advocates that airlines be required to proactively inform passengers of their right to a refund when involuntary changes occur, Ms. Smith indicated that passengers may be in a position to negotiate a resolution with the airlines.

Ms. Vercelli stated that she believes the Department has intentionally not opined on that topic. She further stated that her belief is that airline policies about refunds are already clearly laid out and available for review by passengers on the airlines' websites. She stated that passengers should be aware of their right to request a refund in such circumstances. She stated that as long as passengers request a refund, the passenger would get a refund. She concluded that she did not believe any recommendation was needed by the Committee.

Ms. Workie confirmed that the Department's position is that passengers are entitled to a refund in the event of a cancellation or significant schedule change but there is no affirmative obligation by the airline to inform the passengers of that right.

Ms. Vercelli stated that it is the obligation of the airline to ensure the policy on refunds is clear and public. She stated that there is no need to require airlines to inform passengers of rights they should already be aware of. She summarized that any additional recommendations by the Committee would be outside the scope of the committee's review.

Attorney General Carr agreed that the Committee should remain within the scope of the statute to review the issue. He noted the marketplace often addresses issues and also stated that as long as passengers are being provided the refund that they are entitled to, no additional regulation is needed at this time. Mr. Rodriguez and Ms. Smith agreed.

Ms. Workie noted that a separate provision in section 429 of the 2018 FAA Act that mandates DOT to require airlines to submit a one-page document related to passenger rights and this supports Attorney General Carr's point that the DOT has other avenues to take action.

Attorney General Carr summarized that the Committee should do no more and no less than what is required. Mr. Rodriguez concurred with that statement.

Ms. Workie summarized the discussion and deliberation by stating that the Committee has done a thorough review of the topic and considered the information presented. The conclusion of the Committee is that no specific recommendation is being made at this time. The four Committee members agreed with this summary.

Attorney General Carr asked if the report on this issue would include the actions already taken by airlines in relation to involuntary changes. Ms. Workie stated that the report of the Committee should include context to support its decision by outlining the actions already taken in this area.

The four Committee members agreed with this summary.

## Question and Answer Session

Ms. Workie opened the meeting to questions submitted by members of the public. An individual asked if there would be a discussion of the comments submitted in the docket prior to the meeting. Kimberly Graber, DOT's Deputy Assistant General Counsel, summarized that the comment was related to the COVID-19 public health emergency. Ms. Workie reiterated that the meeting was only to discuss the three topics outlined in the agenda and the Committee would not address other topics at this meeting. She recommended that individuals who are interested in having other topics discussed at future meetings contact their ACPAC representative to relay that information.

### *Disclosure of Ancillary Fees*

Charles Leocha, Travelers United, stated his view that, on the topic of fee disclosure, the market failure is basic. "Customers need to know exactly how much a trip will cost prior to purchase and they cannot now. Drip pricing is discouraged by the FTC for other industries. DOT allows drip pricing. Transparency needs the same language. Everything is more complex and impossible to understand for consumers. Consumers need competition not confusion. Hiding resort fees is 'creating a better widget?'"

Ms. Workie responded that the Department is committed to ensuring transparency of ancillary fees and does not believe any entity is in favor of hidden fees. She indicated that the point being made is that it might take work by the consumer to determine the fee that would apply to a given ticket.

Attorney General Carr clarified that his comment regarding widgets was relating to similar fees he has seen charged by other industries, but he did not mean to suggest that hiding a resort fee was "building a better widget."

Imad Ennasser commented that "frequent changes made by airlines to their websites make finding information about ancillary fees on the airline's own website (such as fees for checking in a surfboard)." He further stated that sometimes, an airline displays contradictory information about the same fee on different pages on the same website. "It is essential to help the consumer be informed about all the fees in order to avoid surprises about ancillary fees (such as checking in a bag) once a ticket has been purchased."

Ms. Workie stated that if a consumer finds that an airline is displaying different prices for ancillary fees on the airline's website, the consumer should inform the airline. The consumer could also let the Department know about this potential issue. Ms. Workie summarized that she does not believe that this is a significant issue. Ms. Vercelli concurred with Ms. Workie's statement.

Bill McGee, Consumer Reports, asked a question of Ms. Smith: do you believe that consumers should receive full and complete fare, fee, and tax information prior to purchase, regardless of booking channel, (online or offline) directly through the airline or through a third party?

Ms. Smith responded that she believes consumers should receive full information if they go to either an airline or a ticket agent's website. Ms. Smith commented that she was unsure at the intent of the question.

Ms. Vercelli responded that her understanding of the purpose of the question was focused on the entity which sells the ticket.

Ms. Workie summarized that the Department requires airlines and ticket agents to provide mandatory taxes and fees at the initial search. Ms. Workie said that the commenter did not distinguish between mandatory or ancillary fees. Ms. Workie said that there is no current requirement that ancillary fees be included in the total price to be paid at the initial search. Ms. Workie stated that the Department does require airlines and ticket agents to display specific enough information related to baggage fees to allow the consumer to determine the cost of baggage. However, as baggage fees are considered "ancillary fees," those fees are not currently required to be displayed in the total cost of the ticket.

Ms. Vercelli observed that passengers may not know what ancillary fees they need before they purchase the ticket, so the display of those fees could not happen before purchase.

Ms. Workie noted that for some types of ancillary fees, ticket agents are not required to display those fees. Airlines are required to display the fees for all ancillary fees and may display those fees as a range, as the costs of those fees could be dynamic.

Mr. Leocha stated that "knowing the full price is basic. It is the only way that the market works for cars, insurance, or refrigerators. One of the major functions of the FTC is truth in advertising. DOT needs full price truth in advertising. Now, DOT allows partial truth. That does not serve consumers."

Mr. Ennasser commented "airlines making seat selection fees depend on dynamic factors, such as demand and load factors, that can change with time makes it hard for consumers to figure out how much they will pay."

Ms. Workie observed that there is not much more to say on the previous two comments. She understands Mr. Leocha's position regarding full costs being available. Ms. Workie noted that the Department is already reviewing the area of ancillary fee disclosure and will wait for the report of the Committee to determine its next steps.

Mr. McGee followed up by clarifying when he mentioned "fees" in his question, he was referring to all fees, including ancillary fees. He also commented that his question was directed to Ms. Smith to determine how well she understands these transparency issues. He stated that if Ms. Workie and Ms. Vercelli answer on her behalf, it defeats the purpose of asking Ms. Smith her views.

Ms. Workie expressed surprise at the comment and stated that all participants are working towards a common goal. She said that we all must assume the best of each other and had not intended to speak for Ms. Smith.



Ms. Smith commented that Ms. Vercelli merely corrected Ms. Smith's misinterpretation of the question, saying Ms. Workie added more information about the subject as she is more knowledgeable on the specific aspect of the topic than Ms. Smith. In terms of transparency, Ms. Smith stated that she believes that consumers do need transparency to make an informed purchase decision. She indicated that the number of variables in play related to the purchase of air travel makes it difficult to get all the information, but this is no different than any other purchase of goods. Ms. Smith said that she understands the consumers view of wanting a simple transaction but the complexity of the industry does not always lend itself to simplicity. She indicated that its incumbent upon the consumer to search for the information they need related to their own purchase.

Paul Hudson, Flyers Rights, commented that aside from confusion about ancillary fees, some airlines now charge "gotcha" punitive fees now based on costs that would be considered excessive and prohibited by most state price gouging laws. He noted that examples include Delta checked baggage fees of \$40 first bag, \$80 for the second bag, and \$170 for third bag, plus extra fees for over bags over 50 or 70 lbs. or extra fees for size. He noted these fees are similar for American Airlines. He commented that Spirit has over 70 "optional" fees in addition to airfare that are nearly impossible to avoid, similar for Frontier and Allegiant. Mr. Hudson asked at what point, if any, does the ACPAC feel that excessive fees or price gouging should be regulated?

Ms. Workie noted that if there are concerns about the fees related to a specific airline, consumers should reach out to the Department. She noted that she is not familiar with the specifics of the "gotcha" fee issues mentioned by Mr. Hudson and that the Department does not regulate the price of ancillary fees, but there is an expectation of transparency for the fees. She requested that specific concerns be relayed to the Department.

#### *Involuntary Changes to Passenger Itineraries*

Andrew Appelbaum, Flyers Rights: Since last April, what steps, if any, have the Committee members taken to address the concerns raised by consumer groups that DOT complaint numbers do not accurately reflect how often issues, including this one, are occurring? Certainly 140 complaints do not capture what is happening.

Ms. Workie said that the Department has continued to monitor complaints received by consumers since the last meeting. She indicated that the vast majority of received complaints involve refunds for cancellations, not involuntary changes. The Department has a low level of complaints on this topic.

Mr. McGee commented that he would like to clarify the record in response to repeated comments that change fees have been addressed and "are gone now." He noted that the recent "permanent" elimination of change fees by United, Delta, and American include significant caveats. They do not include Basic Economy fares, and they do not include international fares, where change fees can range as high as \$750. And in some cases, the difference in lower fares is no longer credited to consumers. The DOT should not accept these statements as factual.

Ms. Vercelli responded that her comment was to highlight the competitive nature of the industry and the market factor. She indicated that passengers have options in selecting an airline. She indicated that while there are caveats, the elimination of domestic change fees has been uniform across the airlines. She said that while these changes do not solve every problem, it has alleviated some of the issues faced by passengers.

Ms. Smith provided her contact information in response to a request.

Mr. Ennasser noted that complaints from consumers related to refusal of some airlines to issue cash refunds following involuntary charges have exploded since March, especially with regards to foreign airlines operating flights to/from the U.S. He inquired if the Committee or the Department will try to address the situation.

Ms. Workie noted that the Department has received a high volume of complaints, most of them related to refunds. She indicated that the Department is actively monitoring and trying to address these issues.

**The meeting was concluded at 3:00 pm.**

## APPENDIX

### Committee Members Present

Christopher Carr, Attorney General of Georgia, Chairman  
 Mario Rodriguez, Executive Director of Indianapolis Airport Authority  
 Frances Smith, Competitive Enterprise Institute  
 Patricia Vercelli, General Counsel of Airlines for America  
 Blane Workie, DOT Assistant General Counsel for Aviation Consumer Protection, Designated Federal Officer (DFO)

### Members of the Public Present

1	Name	Organization
2	Stuart Hindman	U.S. DOT
3	Andrew Appelbaum	Flyers Rights
4	Jessica Ilich	U.S. DOT
5	Kimberly Graber	U.S. DOT
6	Robert Gorman	U.S. DOT
7	Mike Liptak	Travel Technology Association
8	Fred Taylor	Southwest Airlines
9	Lisa Bierman	Indianapolis International Airport
10	Kahla Elliston	Spirit Airlines
11	Benjamin Lewis	Spirit Airlines
12	Zeenat Iqbal (Guest)	Former U.S. DOT Staff
13	Paul Hudson	Flyers Rights
14	Thomas Canfield	Spirit Airlines
15	Alex Taday	U.S. DOT
16	Jason E. Maddux	Garofalo Goerlich Hainbach PC
17	James A. Thumpston	KMA Zuckertt
18	Amanda Klinge	U.S. DOT
19	Kevin Mitchell	Business Travelers Coalition
20	Brittney Zemlicka	Frontier Airlines
21	Nick Nadarski	U.S. GAO
22	Graham Keithley	Airlines for America
23	David Gates	Federal Bureau of Investigation
24	Robert Hockenbury	U.S. DOT
25	Charlie Leocha	Travelers United
26	Lori Barringer	U.S. DOT
27	Johnson, Eva	United Airlines
28	Norman Strickman	U.S. DOT
29	Molly Harris	Delta Airlines
30	Julie Moser	Republic Airways
31	Rich Swayze	Delta Airlines
32	Krupnick, Matt	Sabre Corporation

33	Donald Day	U.S. DOT
34	Judy Kaleta	U.S. DOT
35	Maren Matal	Southwest Airlines
36	Caitlin Harvey	U.S. DOT
37	Liv Vaughn Chapman	U.S. DOT
38	Eric Felland	Eckert Seamans
39	John Kloosterman	United Airlines
40	Eben Peck	American Society of Travel Advisors
41	Keith Berlen	Indianapolis International Airport
42	Whitney Zimmerman	Republic Airways
43	Vinh Nguyen	U.S. DOT
44	Paul Aussendorf	U.S. GAO
45	Bill McGee	Consumer Reports
46	Christopher Miller	U.S. DOT
47	Siliva Funke	Condor Airways
48	Melissa Swearingen	U.S. GAO
49	Jana Leonard	Allegiant Airways
50	Doug Mullen	Airlines for America
51	Charles Hunter Williams	Kirstein & Young
52	Kimberly Hargett	U.S. DOT
53	Maegan Johnson	U.S. DOT
54	Daeleen Chesley	U.S. DOT
55	Natalie Harvey	Southwest Airlines
56	Donnell Keels	U.S. DOT
57	Omar Guerrero	U.S. DOT
58	Darlene Hutchinson	U.S. DOJ
59	Dulaney Logan	U.S. DOT
60	Imad Ennasser	
61	Gary McTavish	
62	Seiden, Steven	Delta Airlines
63	David Kirstein	Kirstein & Young
64	Stephen Shur	Travel Technology Association
65	Jamie Brown	Duane Morris LLP
66	Timothy Kelly	U.S. DOT
67	Jayne Deerwester	U.S. A Today