

U.S. DEPARTMENT OF TRANSPORTATION

Public Hearing on the Enhancing Transparency of Airline
Ancillary Service Fees NPRM
March 30, 2023, Hearing Minutes

INTRODUCTION

The public hearing on the U.S. Department of Transportation’s Notice of Proposed Rulemaking (NPRM): Enhancing Transparency of Airline Ancillary Service Fees, was held on March 30, 2023, using the Zoom virtual platform.

The hearing consisted of a morning and afternoon session, which included presentations and an opportunity for discussion. The recording of the hearing is available at:
https://www.transportation.gov/airconsumer/AirlineAncillaryFeeNPRM/March30_Public_Hearing_Recording

Welcome and Introductory Remarks

The hearing began at 9:00 am ET, with Blane Workie, Assistant General Counsel for the Office of Aviation Consumer Protection (“OACP”) at the U.S. Department of Transportation (“Department” or “DOT”) as the hearing officer, calling the hearing to order. Ms. Workie welcomed everyone and noted that the hearing was being held in accordance with the regulation that allows for a public hearing in certain rulemakings which address unfair or deceptive practices in air transportation. She stated that this hearing was requested by Airlines for America, the Travel Technology Association (Travel Tech), and Google. She continued by stating that the hearing was an opportunity for the organizations and members of the public to provide their input on the proposed rule to the Department and to address specific issues which have been identified in the petitions and referenced in DOT’s notice announcing the public hearing.

Ms. Workie noted that there were three issues being discussed:

- (1) Whether Consumers Are or Are Likely to Be Substantially Injured or Misled by Airlines’ Current Disclosures of Ancillary Service Fees;
- (2) Whether Disclosures of Itinerary-Specific Ancillary Fees at the Time of First Search Will Result in the Display of Incomplete or Inapplicable Ancillary Fee Information, Cause Consumer Confusion, and Distort the Marketplace; and
- (3) Whether Requiring Fee Disclosures on the First Page of the Itinerary Search Selection Process Would Be Technically Infeasible.

Ms. Workie noted that the intent of the hearing was to ensure that the Department hears from the petitioners and other interested parties regarding the issues that were raised in the petitions. She stated that the proposed rule is available on the Office of Aviation Consumer Protection website (www.transportation.gov/airconsumer), as well as www.regulations.gov under docket number

DOT-OST-2022-0109. Ms. Workie stated that the rulemaking docket is currently open for comments until April 6, 2023.

Ms. Workie noted that anyone who made an advanced request to speak would have an opportunity to do so for the time that was requested during the specific portion of the hearing relevant to the topic or topics which were requested. She clarified that speakers would be called in alphabetical order by last name for each topic. Ms. Workie stated that members of the public, including speakers, were welcome to file comments in the rulemaking docket if they wished to provide rebuttal to any remarks made during the hearing. She stated that if time permitted at the end of the hearing, an opportunity might be provided for individuals who did not make an advance request to speak and provide their comments.

Ms. Workie stated that copies of presentations used for the hearing would be posted on the rulemaking docket at the conclusion of the hearing. She advised that the hearing was being recorded and that the recording would be posted on the website shortly after the hearing.

Topic 1: Whether Consumers Are or Are Likely to be Substantially Injured or Misled by Airlines' Current Disclosures of Ancillary Service Fees

Ms. Workie started the morning session by introducing the first topic of discussion: Whether Consumers Are or Are Likely to be Substantially Injured or Misled by Airlines' Current Disclosure of Ancillary Service Fees.

1.1 Presentation

Andrew Appelbaum, FlyersRights.org

Mr. Appelbaum stated that there are four injuries that passengers experience from the lack of transparency of airline ancillary fees: (1) additional time spent searching for price information; (2) wasted time, as airline drip pricing reveals a different pricing than advertised; (3) additional money spent and value lost in not choosing the ticket best suited to the passengers' requirements; and (4) increased fares. He stated that up-front disclosure would lead to competition and result in lower fares across the industry.

Mr. Appelbaum stated that current market conditions reward those airlines that hide the ball the most at the expense of those airlines that are more transparent. He noted that the average passenger, who flies once a year, if at all, will be deceived into thinking that an airline with a maze of fees would be cheaper than a more transparent airline. He commented that this deception is unfair for passengers and airlines alike. He continued by stating that consumer confusion about ancillary fees after purchase harms competition by incentivizing more airline misbehavior, drip pricing, and "gotcha" pricing.

Mr. Appelbaum stated that he presented on this topic in June 2022 and noted how many clicks it took to determine flight-specific checked baggage fees from the first page where the base fare

was quoted on each airline's website. He noted that, since then, Spirit Airlines had complained that it does not take 21 clicks to find flight specific baggage fees on its site. Mr. Appelbaum noted that Spirit pointed to another method he had previously highlighted in that same presentation. He stated that it took nine or ten clicks to find specific bag fees with that alternate method.

1.2 Presentation

John Breyault, National Consumers League

Mr. Breyault stated that before he began his presentation, he would note for the record that NCL believes the impetus for the hearing was not to clarify matters of specific, scientific, technical, economic, or other factual issues that are genuinely in dispute, which were adequately addressed in the regular comments, but rather that the hearing was requested by certain regulated entities to slow down the rulemaking because the rulemaking has the potential to result in increased competitive pressures on their businesses and in order to create a record that can be cited in litigation.

Mr. Breyault stated that the answer to whether consumers are likely to be substantially injured or misled by airlines current disclosure of ancillary service fees is an unequivocal yes. He noted that a 2010 survey by the Consumer Travel Alliance, the Business Travel Coalition, and the American Society of Travel Agents found that 66% of respondents stated that they had been surprised at the airport by unexpected fees for items such as checking bags, requesting a seat assignment, getting extra leg room, or flying standby. He stated that 65% of those respondents reported that such fees placed some or a great deal of unexpected financial strain for their trip, and 26% stated these fees placed a great deal of unexpected strain on their trip. He continued by noting that, due to the increase in prevalence of ancillary fees in the airline industry since 2010, NCL believes that the harm and potential for consumers being misled has only grown. Mr. Breyault stated that current industry practices regarding the disclosure of ancillary fees are a classic example of drip pricing, which is the practice of partially advertising the product's price up front and revealing additional charges later, when consumers go through the buying process. He noted that drip pricing has been well documented to harm consumers' decision-making, including by the White House Economic Council, which examined the impact of drip pricing including in the airline industry in 2016. Mr. Breyault noted that the NEC found that drip or partition pricing can be understood as the exploitation of consumers' cognitive biases when it comes to making purchasing decisions.

He provided the example of the University of London College's study on the impact of drip pricing on consumer decision-making, performed in 2015, which found that out of multiple pricing displays studied, drip pricing was the most harmful for consumers, as it wipes out 22% of consumer surplus. He stated that a 2020 study published by the Journal of Economic Behavior and Organization found that drip pricing resulted in consumers overpaying in comparison to inclusive pricing displays. Mr. Breyault concluded by stating that current industry practices related to ancillary services are a clear form of drip pricing, and there is voluminous evidence

from academic and government studies reflecting that this leads to consumer injury. He stated that DOT must conclude that the petitioners' claim that there is insufficient evidence of harm from current ancillary disclosure practices is simply untrue.

1.3 Presentation

Laura Chadwick, Travel Technology Association (Travel Tech)

Ms. Chadwick stated that Travel Tech members include online ticket agents, metasearch engines, global distribution systems, travel management companies and short-term rental platforms.

Ms. Chadwick thanked the Department for granting Travel Tech's petition for a hearing regarding DOT's proposal that critical ancillary fees must be shown on the first page of search results. She stated that Travel Tech filed the petition due to their strongly held belief that Travel Tech member companies are best positioned to determine how ancillary fee information should be presented to consumers.

Ms. Chadwick stated that Travel Tech supports this rulemaking. She stated that before addressing issues related to how critical ancillary fees can be presented to consumers, the critical ancillary fee data itself must first be discussed because the transparency of ancillary fee data is impossible without permanent access to the data itself. Ms. Chadwick stated that Travel Tech and its member companies strongly agree with the Department's finding that consumers are or are likely to be substantially injured or misled by the airlines' current disclosure of ancillary services fees. She continued that they likewise agree with the Department's proposed requirement that critical ancillary fee data must be provided by airlines. She commented that it is unfair and deceptive that consumers who are purchasing tickets through the indirect channel do not have guaranteed access to critical ancillary fee information. She noted that ticket agents cannot provide information to consumers that they do not have themselves.

Ms. Chadwick explained that Travel Tech strongly believes that the Department must alter the proposed rule and require airlines to provide critical ancillary fee data to all intermediaries that the airlines use to distribute their schedule and fare information, including Global Distribution Systems (GDSs). She added that travel agents of all sizes greatly rely on the GDSs to provide schedule and fare information from 400 airlines operating worldwide. She stated that it is difficult to overstate how essential GDSs are in facilitating comparison shopping on the Travel Tech members' sites. Ms. Chadwick added that allowing airlines to skip distribution through GDSs and provide ancillary fee data directly to ticket agents would cause a tremendous impact on ticket agents' ability to display critical ancillary fee information on the first page of search results. She added that ticket agents today have no existing infrastructure to match ancillary fee data with the schedule and fare data provided by GDSs and that it will take years and massive investments, to build the required capabilities, as opposed to the six months the Department has proposed. Ms. Chadwick concluded her presentation by stating that the years of work necessary would greatly delay the achievement of the overall goal of the rulemaking: providing transparency of critical ancillary fees to consumers.

1.4 Presentation

Bill McGee, American Economic Liberties Project (AELP)

Mr. McGee stated that, in the view of AELP, whether consumers are injured is not a question of “likely”; it is an everyday occurrence which affects millions of air travelers and is both unfair and deceptive. He stated that DOT’s most current monthly air consumer reports available for 2021 show that fares were the third most common area of complaints, and fees undoubtedly comprised a significant percentage of complaints regarding fares. He added that, in 2015, Scott Kirby, then-president of American Airlines, advised that 87% of their consumers fly less than once a year. He added that AELP suggests that this be the driving principle in all of the airlines’ consumer policies: that 9 out of 10 passengers do not know about the intricacies of flying and are most certainly confused by ancillary fees.

Mr. McGee stated that, in his work at nonprofit organizations, he has seen hundreds, if not thousands, of complaints about what the industry calls ancillary fees, but consumers call “junk fees.” He added that he has heard from air travelers who were unaware of seat selection fees and many other fees charged by the ultra-low-cost carriers, like fees for boarding cards and carry-on baggage. He continued that in one case, a passenger on Spirit Airlines mentioned that he was forced to leave his carry-on bag in his car at the airport while checking in, as he did not have enough money for the fee and assumed that only checked bags incurred fees.

Mr. McGee continued that by far the greatest injury is due to the “egregious” family seating fee, which he stated is quite misleading. He stated that airline lobbyists would likely claim that there are no such fees as family seating fees, although there are seating fees that apply to families. He continued by stating that in September of 2008, when he worked at Consumer Reports, they filed a Freedom of Information Act request to examine complaints received by the Department on family seating, and Consumer Reports found that the fees were quite misleading and transparency was at the root of those complaints. He stated that in many cases, families were unaware about such fees, or assumed that the fees were not applicable. He added that it is a health threat, a criminal threat, and a safety threat for children to sit alone. He added that, even in cases where consumers saw that there were fees for seat selection, they never assumed those fees were applicable to young children.

1.5 Presentation

Doug Mullen, Airlines for America (A4A)

Mr. Mullen noted that his comments did not include the views of Southwest Airlines.

Mr. Mullen explained that A4A supports consumer protection regulations in which DOT places maximum reliance on competitive market forces, which he stated is an essential statutory obligation of the Department under airline deregulation. Mr. Mullen stated that regulations that empower consumers to make intelligent choices in a competitive marketplace are consistent with

the airline deregulation, but regulations that stifle innovation and interfere with a thriving marketplace, such as those proposed in the NPRM, are fundamentally inconsistent with the airline deregulation and will ultimately harm consumers. He added that competition is the most reliable and efficient means to ensure that air carriers deliver high-quality service, choice, and value to their customers. Mr. Mullen stated that, thanks to the current post-deregulation pricing structure, which is built on unbundled, non-refundable fares, inflation adjusted average domestic air fares are now 10% lower than in 2010, 12% lower than in 2010 when adding ancillary fees. He stated that this is an important indicator of how competitive the airline market is today.

Mr. Mullen stated that there is an equally important and related question to the first hearing question: will DOT's proposal substantially injure or mislead consumers more than current airline practices? Mr. Mullen stated that the NPRM will absolutely and substantially injure and mislead passengers more than current airline practices and added that the amount of unwanted and unnecessary information forced on passengers by the NPRM will cause confusion and frustration. He stated that when customers are looking for flights, they are not primarily concerned with ancillary options, but rather with the date, time, and fare cost. He stated that customers understand that they may need to review what is included in the core fare. Mr. Mullen stated that based on current and transparent information from airlines, consumers can quickly determine additional costs of any ancillary services to determine what works best for their travel needs. Mr. Mullen commented that DOT must agree, stating that the regulatory impact analysis estimates that this rule only benefits 1-6% of passengers. He added that these estimates are generous and likely excessive, given the extremely low level of complaints that DOT receives in this area and added that the competitive market is clearly working to consumers' benefit.

Mr. Mullen stated that the answer to the first hearing question is a decisive "no": it is unlikely that consumers will be substantially injured or misled by the airlines' current disclosures of ancillary service fees. He added that nearly all of the data sought by the Department in the hearing notice seeks only to support what the Department has proposed, as opposed to getting complete and objective information to answer the hearing questions, which will undoubtedly demonstrate that DOT should not regulate in this area. Mr. Mullen stated that petitioners met the high standard of a clear and convincing showing that granting the petitions was in public interest and that the proposed rule is dependent upon conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are generally in dispute, and so the Department should want to obtain all relevant data, not only data that supports the NPRM.

Mr. Mullen noted that the Department asked several questions about complaints received by carriers regarding ancillary fees that passengers were asked or made to pay. He stated that A4A members receive very few complaints regarding ancillary fees, consistent with the low number of complaints received by DOT. He stated that the premise of DOT's request is flawed, as carriers do not ask or make passengers pay for ancillary fees. He continued that passengers do not need to pay any ancillary fees. He added that passengers may choose the ancillary options that best fit their needs; it is an "only pay for what you need" pricing model. He stated that there

are many passengers who travel without the need for the so-called critical ancillary services, do not pay for them, and are happy with the services they receive.

Mr. Mullen concluded by adding that the other data requested in the hearing notice, including the number of views of carrier ancillary fee web pages, has nothing to do with the central question of whether passengers are substantially injured or misled by carriers' current disclosures, and that, in fact, the opposite is true: exponentially more passengers substantially benefit from the carriers' current fare plus disclosed ancillary fee pricing model.

1.6 Presentation

Doug Lavin, International Air Transport Association (IATA)

Mr. Lavin stated that in a January 2023 survey commissioned by Airlines for America of more than 5,000 adults who had flown commercially, 70% visited one or more airline mobile applications or websites to research travel options prior to making their purchase, 38% researched via an online travel agency, and 38% researched via a metasearch company. He stated that nearly 80% of air travel consumers consulted one or more sites, two-thirds spent an hour or less researching flight options, and more than 70% of domestic personal flyers booked through an airline website or mobile application.

Mr. Lavin noted that IATA polled their members regarding the number of complaints by passengers who were surprised or confused by the fees for ancillaries that the Department deemed critical, and while most airlines do not track consumer surprise, one large international carrier's response proved to be instructive and consistent with the airlines that did provide data. He stated that the carrier found that 98% of the visits to the airline's websites exposed passengers to the ancillary pages with fees on baggage, seat selection, and refund policies. He added that the remaining 2% of visitors did not go far enough in the booking flow to see these fees.

Mr. Lavin stated that in 2022, 3.64% of airline complaints related to baggage, with a vast majority pertaining to baggage fee refunds. He added that .1% of overall complaints focused on change or cancellation fees, and .0029% involved seating fees for children 13 or younger. He added that these results strongly suggest that consumers are not substantially injured by current ancillary disclosure practices.

Mr. Lavin stated that, in its final rule on fair and deceptive practices, the Department noted that substantial harm does not include "trivial or speculative harm," and he continued that the suggestion that consumers are harmed by clicking two or three times to get the total cost of their ticket and optional ancillaries is trivial or speculative. He stated that all evidence suggests that, 14 years after airlines introduced ancillary fees, most passengers are aware that baggage and seat selection are optional services offered by airlines and are aware of the potential cost associated with changing or cancelling reservations, particularly for nonrefundable fares. He added that, for the very few consumers who are unaware, the Department already requires that airlines disclose the existence of those fees via a link on the carrier's homepage. Mr. Lavin stated that frequent

flyers choose to fly with a particular airline because they are aware they will receive complimentary ancillaries. He added that it is unsurprising that DOT was unable to quantify the cost savings to consumers under the proposed rule.

Mr. Lavin stated that the vast majority of passengers do not need to make changes to their reservations and a substantial number of passengers prefer to carry their bags onboard and save on bag fees. He stated that ancillary fees are not junk fees. He added that any substantial harm or injury to consumers from current airline ancillary disclosure procedures will pale in comparison to the harm that the proposed rule would cause, including significant costs that would be passed on to consumers. He stated that DOT offered no data supporting its conclusion that the ancillaries identified in the NPRM are the most important to consumers.

Mr. Lavin added that DOT risks distorting competition if it requires airlines whose business models offer passengers choices in ancillaries to present an overly complicated search page but allows other airlines that include these services in their base price to maintain their current customer interface. He stated that passengers who visit one or more mobile app or website enjoy the ability to quickly view multiple options for the items they consider most important: fare and availability. He added that requiring airlines to include for each itinerary quoted costs, first and second checked bag, seat fees, and change or cancellation policies will likely overwhelm and confuse consumers. He stated that the cost to airlines and agents associated with fundamentally changing their distribution systems to meet the requirements of the NPRM would ultimately be borne by the passenger through higher fares. He added that the first screen requirement would significantly slow website loading due to the complexity of calculating the cost of ancillaries for every fare displayed, and he stated that studies have shown that for every second of loading performance, there is an equivalent drop in customer presence and sales. He stated that baggage allowances and their associated fees are determined based on the full itinerary searched, the most significant carrier, and other factors. He noted that for seat selection, travel agent websites would require new digital connections between travel agents and airline websites, and this transactability would require years of IT development. He added that developing solutions to meet the NPRM's requirements on mobile sites would also be challenging and expensive.

Mr. Lavin stated that airlines currently provide full information on all optional services available, and the minimal number of complaints reflects that consumers are comfortable with obtaining ancillary fee information within two to three clicks after the initial selection, before the final purchase. He added that if the consumer is unsatisfied with the final price, they can avail themselves of the 24-hour refund rule to void their purchase. He stated that agents are increasingly able to display rich ancillary fee content to better support their customers and connect them to airline websites via the NDC standard.

Mr. Lavin concluded by stating that a government mandate will slow progress as both airlines and agents will need to divert significant resources that they would otherwise use to modernize distribution to meet DOT's requirements. He added that this would be particularly true if the final rule requires airlines to share ancillary data with the GDSs. He stated that the pre-internet

standard utilized by the GDSs is incapable of supporting the content called for in the proposal, and a DOT mandate to use GDSs would lead GDSs to invest in old technology and tilt the playing field in the GDSs' favor in negotiations.

Ms. Workie asked Mr. Lavin if he had a comment on ticket agents' websites and availability of ancillary fee information on those sites.

- Mr. Lavin stated that due to the lack of a direct connection between ticket agent websites and airline websites, the agents are limited to only some of the ancillary information. He noted that the primary challenge is that airlines are unable to share information because there is not a direct connection, and sharing information with the GDSs will not solve the problem because EDIFACT will not support it.

Ms. Workie requested confirmation that when focusing on the availability of ancillary service fee information in his presentation, Mr. Lavin was focused on airlines having the fee information available on their websites.

- Mr. Lavin stated that this was correct.

1.7 Presentation

Jay Richmond, Amadeus

Mr. Richmond stated that, in 2022, approximately 396 million airline bookings were made on the Amadeus GDS, including through its ancillary services solution, which enables the dynamic display of airline schedules, fares, and ancillary service fees. He stated that this allows robust comparative shopping for consumers, and that this technology has been in place for over a decade. He added that airlines are fully capable of sharing ancillary fees in industry standard formats that the GDSs can receive and use.

Mr. Richmond stated that Amadeus is not a consumer-facing business, and, therefore, does not have statistical data on consumer complaints.

Mr. Richmond stated that to effectively compare airline prices, passengers must have access to comprehensive and accurate information on airfares and fees for related services. He added that fare information provided without fee information is inherently misleading in Amadeus's view. He noted that airline unbundling of fares has caused many elements of a passenger's air trip to be available as "option-only", or ancillary, services. He continued by stating that although ancillary fee information is now critical to passengers, not all airlines provide it to GDSs or other intermediaries. He stated that this lack of information confuses and misleads consumers who are shopping and booking their trip through indirect channels, as they are unaware of the full cost of their trip and are unable to do an accurate comparison of competing airline offerings.

Mr. Richmond noted that, as of the end of December 2022, there are approximately 450 airlines who participate in the Amadeus GDS. He added that, notwithstanding Mr. Lavin's comments

regarding the ability to display ancillary fees through the GDS, half of the airlines do provide information on ancillary service fees through Amadeus' Ancillary Services Solution; however, half still do not. Mr. Richmond stated that those numbers include some U.S. airlines, as well as other airlines that serve the U.S. market.

He stated that as long as airlines are not required to provide critical fee information to GDSs and other ticket agents and distribution intermediaries, consumers will not have the complete pricing information and will be misled at times about which airline would be best for their particular journey. He added that, unless the fee information is provided to travel agencies by airlines in a transactable format, consumers will be burdened to visit two different websites to complete a transaction they should have the ability to complete on the agency's site without the risk of paying a higher fee later.

Mr. Richmond stated that Amadeus supports the Department's proposal to require airlines to provide ticket agents with complete and timely critical ancillary fee data, which will enable the transparent display of transactable critical information that is not currently universally available to consumers. He added that Amadeus recommends changes to the proposal to better serve the consumers. He stated that: (1) airlines should be required to share fee details with all ticket agents, which includes GDSs, and (2) DOT's display requirements should be revised to require the transparent display of relevant fees early in the search process, prior to final booking.

Mr. Richmond stated that the Department determined that the GDSs are ticket agents in 2004, and, therefore, the Department's final rule should require that airlines provide ancillary service fee information to GDSs because without that requirement many consumer-facing ticket agents will not be able to display critical fee information. He noted that almost all travel agencies rely on third parties, primarily the GDSs, to build and maintain the tools which allow travelers to search, compare, and book airline flights, and GDS are the most efficient source for comprehensive fare, schedule, and availability information. He stated that travel agencies would incur significant and prohibitive additional costs if forced to build connections to multiple systems to obtain this information. Mr. Richmond stated that most travel agencies will not have the ability to handle the technical complexities and associated costs that come with integrating this amount of content.

Mr. Richmond stated that, while DOT would like to avoid interference with the airline/GDS contract negotiations, the handling of ancillary fees is one of many issues being discussed in those negotiations, and the negotiations would be affected by DOT's rule on ancillary fees. He added that mandating that travel agencies display ancillary fees without airlines providing the information to GDSs would provide airlines with tremendous leverage in withholding such fees. He noted that airlines will retain substantial leverage in negotiations even if the rule requires airlines to provide fees to GDSs and stated that consumer protection must be prioritized above any industry stakeholders.

Ms. Workie asked if half of the 450 airlines currently providing ancillary fee information do so through Amadeus, and, if so, what ancillary fee information covered by the proposed rule do airlines provide to ticket agents.

- Mr. Richmond answered that, out of the 450 airlines who distribute fare and availability information through Amadeus, approximately half provide ancillary fee information using the Amadeus Ancillary Service Fees Solution, while the other half do not. He offered to take note of the question and return with more detailed information on the nature of the services and fees.

1.8 Presentation

Lauren Wolfe, Travelers United

Ms. Wolfe noted that she was echoing what many of the consumer groups had stated: the more disclosure, the better. She added that there are serious issues when consumers are unaware of the required fees when booking a flight. She stated that there is a need for more time to adequately analyze the new technology that the NPRM will require. She continued that they have waited nearly a dozen years since the last real debate regarding ancillary fees and another few months can make a major difference.

Ms. Wolfe stated that we are currently at the threshold of new technology, which will change how airfare searches are conducted, and bold innovation is necessary. She continued that DOT should not squander the opportunity to do something big—make the fees truly transparent—so that the consumer is fully aware of what their flight will cost prior to making that purchase.

Topic 2: Whether Disclosures of Itinerary-Specific Ancillary Fees at the Time of First Search Will Result in the Display of Incomplete or Inapplicable Ancillary Fee Information, Cause Consumer Confusion, and Distort the Marketplace

2.1 Presentation

Andrew Appelbaum, FlyersRights.org

Mr. Appelbaum stated that disclosure of baggage fees, change and cancellation fees, and fees for parents to sit with their children aged 13 or under will not cause consumer confusion or distort the marketplace. He stated that, instead, disclosure will decrease confusion and allow airlines to compete on fees in the total price of a ticket. He added that disclosure will allow the market to work, as informed consumers are necessary for market competition.

Mr. Appelbaum added that there are many parallels to airlines' comments opposing the full fare advertising rule in 2010, noting that airlines argued in that rulemaking that listing the full price that included taxes would cause increased confusion among passengers. Mr. Appelbaum stated that many airlines also displayed fare taxes and mandatory fees, adding information beyond the full fare rule's requirements that the airlines presumed were a benefit to consumers. He continued that airlines' arguments that the full fare rule would be less transparent, hide the cost

of government taxes, and not generate the proposed benefits were incorrect and that the full fare rule has provided substantial benefits to consumers and competition. He stated that airlines understand what information consumers want and need and are choosing to display only the information that benefits the airlines. He concluded by stating that current confusion and deception harms competition, consumers, and airlines.

2.2 Presentation

Barry Biffle, Frontier Airlines

Mr. Biffle stated that Frontier Airlines believes that the NPRM is a solution in search of a problem. He stated that there is no consumer confusion, and the proposed rule is not about consumer protection. Mr. Biffle referenced a slide deck throughout his presentation that is available in the rulemaking docket.

Mr. Biffle stated that Frontier is an ultra-low-cost carrier (ULCC), and its business model is based on unbundling. He continued that this model allows people to only pay for what they want or need, and Frontier believes it is a more transparent model, as well as the most economically efficient, which lowers the cost of travel for all.

Mr. Biffle stated that, regardless of the airline, baggage is not a free service. He stated that bags are not essential and that over 40% of Frontier's passengers do not have baggage or use pre-assigned seating services. He stated that if those passengers were required to pay more, they might be unable to fly.

Mr. Biffle noted that, as reflected on slide four of his presentation, fewer than 30% of Frontier customers checked a bag, fewer than 5% checked a second checked bag, fewer than 20% had paid carry-on bags, and fewer than 10% paid for change or cancellation fees.

Mr. Biffle noted that Frontier is one of the very few airlines to get the checkmark for fee-free family seating on DOT's dashboard, which they are proud of.

He stated that Southwest Airlines is the only carrier that would be compliant with the proposed rule and quoted an SEC filing by Southwest Airline included on page 6 of his slides, which noted competition to Southwest from ULCCs, which they found interesting. He quoted the Southwest filing by stating, "Even before the pandemic, the Company's low-cost position had been challenged by the significant growth of Ultra-Low-Cost Carriers, which in some cases have surpassed the Company's cost advantage with larger aircraft, increased seat density, and lower wages. ULCCs have further introduced "unbundled" service offerings which appeal to price-sensitive travelers through promotion to consumers of an extremely low relative base fare for a seat, while separately charging for related services and products. In response, most major U.S. airlines now offer expanded cabin segmentation fare products, such as 'basic economy' and 'premium economy' products. Also, in response to ULCC pricing, some carriers removed fare floors for certain routes, leading to a lower fare offering across the industry."

Mr. Biffle quoted United Airlines as stating that the proposed rule would “disproportionately harm ULCCs and will harm consumers by causing a global increase in ticket prices.”

He said that ULCCs have had the effect of reducing the prices for all consumers, while driving a much higher benefit relative to their size in the market. He stated that the three largest airlines are now very unbundled, similarly to Frontier.

Mr. Biffle stated that Frontier provides fares to consumers who, in many cases, could not afford to fly otherwise. He added that the rule was an attack on less privileged consumers and would price them out.

Mr. Biffle stated that consumers prefer unbundling, as it saves them money. He cited comments from the Departments of Justice and Transportation about the benefits of the ULCC model.

Mr. Biffle stated that Frontier’s fare revenue per passenger in 2022 was \$54, and all additional fees are optional. He stated that over 90% of customers are using Frontier’s website or mobile application prior to traveling, and they are therefore aware of associated fees, which Frontier does not hide from consumers. Mr. Biffle stated that the current disclosure requirements are already protecting consumers, and there are links available that reflect optional services and existing regulations that require that a ticket cannot be sold unless those options have been presented.

Mr. Biffle stated that the rule would unnecessarily complicate and impair the consumer’s ability to compare itineraries based on what is most valuable to them. He added that schedule and fares are most important, and reducing the screen space available for schedule and fares in order to satisfy other disclosure requirements will reduce consumers’ comparison abilities.

He continued that there are high costs associated with the proposal and that all of Frontier’s IT resources would have to be diverted to work on an addressing an issue that is virtually nonexistent. Mr. Biffle stated that the proposal would overload the customer with information. He added that the Department had not adequately considered how complicated the displays would be on mobile devices.

Mr. Biffle referenced slide 17, which Frontier used to show an example of what compliance with the proposed rule could look like. He stated that the display demonstrated that search results would be cut in half, and the example still would not comply with all the rules.

Ms. Workie asked Mr. Biffle if his statements that the rule would result in airlines no longer offering unbundled products was due to his view of the impact on screen space and the cost to comply.

- Mr. Biffle stated that no one will be able to comply with the NPRM, as the technology does not exist. He stated that the consumer would be confused and unable to see the price

and schedule, harming competition and innovation. He stated that consumers were not complaining about the issues addressed in the rule, and that DOT should instead focus on issues that consumers care about. He stated that if the rule was finalized, either airlines would have to re-bundle and hurt consumers through higher costs, or airlines would not be able to display as many flight options, which will only benefit one airline. He stated that the rule would increase costs to consumers either way.

Ms. Workie asked Mr. Biffle if his concerns about risks the rule poses on unbundling and presenting issues with screen space was due to the proposed requirement to display the critical ancillary fees at the time of first search and whether his view would change if the requirement did not apply at the time of first search, but instead was early in the booking process.

- Mr. Biffle stated that the fee information was already required to be provided before booking.

Ms. Workie clarified that the current requirement is to provide information for optional services on the airline's website and to provide a link for baggage fees.

- Mr. Biffle stated that the reason that airlines provide a range is that many fees are dynamic and not static. He added that calculating exact fees would significantly slow websites.

2.3 Presentation

John Breyault, National Consumers League

Mr. Breyault stated that previous presentations had not provided clarification on scientific, technical, economic, or other factual issues that have been disputed following the public comment period required by 14 CFR 399.75. He urged Ms. Workie, as the Hearing Officer, to ensure that the hearing, as well as future hearings, are conducted under the Department's rules, so they are not used as an opportunity for regulated entities to promote their business models, address unrelated topics, and have another proverbial "bite at the apple" after the public comment period has closed.

Mr. Breyault stated that the National Consumers League does not believe that DOT's rule will necessarily lead to the display of inaccurate and confusing ancillary fee information or the associated market distortions claimed by the petitioners. He added that nothing in the proposed rule prevents air carriers or ticket agents from collecting information prior to the price display that would allow for accurate and non-confusing disclosure. He stated that carriers and ticket agents are already collecting a significant amount of information prior to fares being displayed, including departure and destination locations, whether to include nearby airports, the desired date and time, whether travel dates are flexible, the number of passengers, if the passenger wants a one-way, roundtrip, or multi-city itinerary, the fare class, meeting or promotional codes, any usage of miles for the purchase, or if a refundable fare should be displayed. He noted that air

carriers and ticket agents already use this pre-display data to reflect the parameters input by the passenger.

Mr. Breyault stated that carriers can comply with the proposed rule by requiring passengers to include the number of checked bags and whether they will be traveling with young children, and then incorporating the fees incurred based on the choices selected and displaying the total cost for the consumer. He added that the proposed rule will not lead to the confusion predicted by the petitioners and would instead create a level playing field that rectifies information asymmetry that causes difficulty for consumers and enable consumers to make more accurate comparisons when looking at the fare cost among air carriers. He added that the comparison pressures are what regulated entities are likely trying to avoid with the petitions.

2.4 Presentation

Laura Chadwick, Travel Technology Association

Ms. Chadwick expressed Travel Tech's deep concerns regarding the Department's proposed first-page search results requirement, which would specifically ban the use of rollovers or web links. She reiterated her previous statement by noting that Travel Tech member companies are best positioned to determine how ancillary fee information should be presented to consumers. Ms. Chadwick highlighted what other organizations, beyond Travel Tech, as well as airlines, commented regarding on the proposed rule and what their opinions were regarding first page results. She stated that the U.S. Chamber wrote that "Without the ability to display fee information via pop-ups or rollovers, the strict restrictive requirements on the NPRM would bombard consumers with irrelevant fee and fare information on a single web page, making the ticket agent web pages difficult to navigate and cluttered." She continued that U.S. Travel stated additionally, that "More and more consumers are utilizing mobile devices, rather than web browsers to make travel plans, increasing the amount of required information to be shared during the purchase process on smaller screens, will lead to an inferior user experience, increased consumer frustration, and the type of information overload that diminishes consumer interest and comprehension." Furthermore, she continued that the Global Business Travel Association is, "Concerned by the sheer volume of proposed ancillary fee information on the first page, which will create confusion for travelers, as the requirements include information on the first page may actually have a negative impact, as screen real estate is consumed by ancillary fee information." She noted that AARP submitted comments and wrote, "Without additional guidance, there is the potential that displaying all fees in the same place as the fare, could be visually overwhelming for some consumers, adding confusion, rather than reducing it." She added that there were further comments noting concerns regarding the first-page search results beyond what was being presented.

Ms. Chadwick stated that Travel Tech was submitting a letter signed by U.S. Travel, the U.S. Chamber of Commerce, The American Society of Travel Advisors, The Global Business Travel Association, Hopper, and Sabre concerning the first page requirement.

Ms. Chadwick stated that Travel Tech was curious about DOT's statement in the NPRM that consumers who travel infrequently may be unaware of critical ancillary service fees, and so, Travel Tech conducted an online survey of more than 1,000 U.S. consumers from March 24-26. She noted that Travel Tech weighted the results to represent the overall population. She stated that their survey found that nearly 90% of all U.S. adults were aware of the possibility of paying additional fees for optional services beyond the cost of their airline ticket. She added that this included Baby Boomers at 92% and 87% of the "Silent Generation" (adults 78-95). She added that the survey found that 60% of U.S. adults had used travel comparison sites, and, of those who likely used Travel Tech member sites, 96% were aware of the possibility of paying additional fees for optional services beyond the cost of their ticket.

Ms. Chadwick stated that the survey found that consumer satisfaction with travel comparison sites was closely related to how fares are currently presented and the ability to obtain relevant flight information quickly and easily. She noted that consumers stated that they use travel comparison sites to compare airline flight costs and that consumers reported their reasons for no longer using websites, with 50% citing difficulty navigating a website, 49% cited lengthy page loading, and 40% cited difficulty using a website. She added that 86% stated that they would like to purchase ancillary services using the same comparison sites where they purchased airline tickets.

Ms. Chadwick stated that the results provided clear evidence that although consumers travel once a year, or less, they are aware of the existence of critical ancillary fees. She closed by stating that it is unnecessary to overload first-page results with the additional information this rule would require.

Ms. Workie stated that she assumes that Ms. Chadwick will file the survey under the docket and asked if the survey asked about ancillary services generally or if it was specific to baggage, change or cancellation, and seating fees.

- Ms. Chadwick stated that the survey said "ancillary fees" and used those items as examples.

Ms. Workie asked if there was any question on the survey regarding awareness of the amount of the fee or only awareness of the potential additional fee.

- Ms. Chadwick stated that there was no inquiry regarding the amount of the fee.

Ms. Workie asked Ms. Chadwick if it was her view that information should not be displayed at the first search result at all or if it was her view that, if information is displayed on first search, the Department should allow rollovers and pop-ups, as well as provide the option to consumers on what they want to see.

- Ms. Chadwick stated that Travel Tech's position is that its members are best positioned to decide what their consumers must see, and they were advocating for flexibility, which would allow innovative displays.

Ms. Workie asked if Travel Tech's view is that the information should be required to be displayed, but that the regulated entities should choose how they display it prior to ticket purchase.

- Ms. Chadwick stated that this data was necessary, and Travel Tech members would like to share it with consumers but lack consistent access to it. She noted that they have no issues with displaying the information; the concern is with where it is displayed.

2.5 Presentation

James Byers, Google

Mr. Byers stated that Google Flights is a metasearch service, which Google believes is a unique business model serving users who are looking for quick and easily accessible snapshots of flight options, as well as information about airlines, fares, times, details on nonstop or connecting flights, and other relevant information. He stated that Google's users value quick access to sometimes complex queries, which require Google to compute millions of flight combinations per hour.

Mr. Byers stated that metasearch sites focus on prompt comparison of flight options, rather than booking or transacting tickets. Mr. Byers provided quotes from several third parties highlighting the value provided by metasearch sites, including Google Flights in particular. Mr. Byers stated that Google Flights displays information for 180 airlines flying from, to, or within the U.S., as well as 700 airlines globally. He continued that Google Flights does not sell, broker, or arrange air transportation, but rather provides links to airlines and online travel agents for booking. He added that Google does not collect payment or obtain personal information from consumers. He noted that airlines and online travel agents do not pay Google for their participation or for website referrals, and that Google offers a free and open ecosystem.

Mr. Byers stated that, on Google Flights, consumers select itineraries by segment, which means they select only the first part of their journey on the first results page. He added that Google follows the segment-based approach in order to narrow down the myriad of itineraries that a user may see for easier and faster comparison. He stated that proposed rule would upend this business model as it would inhibit the ability to compare options quickly and easily and would make the display cumbersome, especially on mobile devices. He stated that Google believes the proposal would overload users at a stage where they do not need or care for this information.

Mr. Byers stated that Google believes the rule would impose a requirement that metasearch sites are unable to comply with without extensive additional data that is not yet available. He added that, even if the data were made available, it would take years of negotiating, technical design, and engineering efforts to create the necessary infrastructure and provide a good user experience.

Mr. Byers stated while Google supports transparency, it believes the burden of the proposed rule would jeopardize the metasearch comparison business model. Using slides, he compared screenshots of the current Google Flights site as displayed on a mobile device with an example of a display adding ancillary fee data, stating that, in the example showing fee data, the fee information occupied a significant amount of space. He stated that the example demonstrated that horizontal and vertical scrolling would be required for a user to see the full data and fees under the NPRM.

Mr. Byers noted that 68% of Google Flights users browse on mobile devices. He stated that Google believes that the amount of information required by the NPRM would increase user confusion.

Mr. Byers stated that 1.3% of users currently use the baggage filter in Google Flights. He stated that this reflects that, while baggage is important for travelers, baggage information may be important at different point in their journey, closer to the time of booking. He added that users were surveyed and asked when they would consider baggage during their shopping journey and flight booking, the stage after itinerary search, had the highest response in the survey. He added that survey participants noted that bags and seating were rarely considered when beginning their search.

Mr. Byers stated that Google Flights relies on over 100 separate data sources, which include ATPCO, airline direct channels, data feeds from online travel agents, and a variety of feeds from third-party providers. He added that it was unclear from the proposed rule how metasearch providers would acquire ancillary fee data and how the data would be provided consistently. He stated that the proposal would require metasearch providers to renegotiate agreements with many data providers, which would take years with some providers.

Mr. Byers stated that the practicality of the rule is an additional concern. He added that if Google is unable to provide users with a consistent view of data, Google would be unable to provide consumers with the best information to make an effective flight choice, in conflict with the metasearch business model.

Mr. Byers stated that there is a significant cost associated with data acquisition, and new data ingestion pipelines and content moderation systems would need to be developed and maintained in order to receive, process, and display the information. He added that costs continue as systems are maintained.

Mr. Byers stated that metasearch services, such as Google Flights, do not sell, broker, or arrange air transportation. He added that transparency is critically important to Google, as it underlies the metasearch business model; however, as drafted, the proposed rule overloads users with information at the incorrect time in their journey. He added that Google could not comply with the proposed rule without access to extensive, standardized data-sharing from the countless providers used to power its service. He noted that, even with well-defined and broadly adopted

standards, compliance would take years and impose momentous consumer and industry costs. He concluded by stating that the user experience would disrupt the core value of metasearch, which is a quick and simple comparison.

Ms. Workie asked Mr. Byers if the concern about information overload for consumers was based on the proposed requirement that certain fee information be available at first search and if his view changes if the flexibility that Ms. Chadwick previously mentioned is made available.

- Mr. Byers stated that Google believes that providers, especially metasearch providers, should have the flexibility to accurately and consistently display all kinds of information to users. He added that Google would need to carefully review other proposals regarding where in the consideration, shopping, and booking flows this rule may apply. He stated that Google believes that the later in the flow, the more relevant this complete and transparent data would be.

Ms. Workie asked Mr. Byers if he could share information regarding the data he previously referenced. She asked if Google only looked at baggage or also other ancillary fees. She asked when in the process, based on the review performed, he believed that consumers were interested in receiving baggage fee information.

- Mr. Byers stated that the data gathered was that baggage information was critical at booking time. He added that Google could follow up with additional comments on the nature of the survey.

Ms. Workie stated that it was unclear whether the term “at booking” meant when the consumer clicks “purchase,” or if a different point is being discussed. She added that whatever data Google had available could be added to the docket.

- Mr. Byers stated that Google would provide the data requested.

2.6 Presentation

Kimberly Ellis, Travel Management Coalition (TMC)

Ms. Ellis stated that while the Travel Management Coalition supports the Department’s overall goal of strengthening consumer protections and enhancing transparency, their members are concerned that the proposed requirements do not reflect the unique role of corporate travel agents. She noted that corporate travel agents facilitate transactions between airlines and corporate clients, not the general public. She stated that corporate travel agents should be exempted from the rule because not providing an exemption would cause customer frustration and distort the marketplace by creating unnecessary and potentially costly burdens on corporate travel agents.

Ms. Ellis stated that the systems that the Travel Management Coalition and its business customers use are different than those used by airline websites and online travel agency sites available to the public. She added that their customers are frequent travelers, often using the

same routes, and are highly familiar with ancillary fee information. She stated that their customers rarely check bags or travel with children. She stated that there is no harm to business travelers alleged in the rulemaking, and business travelers are much different from the infrequent traveler using a public website. She added that requiring Travel Management Coalition's members to provide ancillary fee data upon first search would be unfeasible and unnecessary and would increase customer frustration as customers would need to review information they are already familiar with, which would not enhance consumer protections for the business traveler.

Ms. Ellis stated that Congress recognized the distinction between corporate and public travel in the 2018 FAA reauthorization, creating an exemption from compliance for certain large ticket agents if the sale of an airline fare was made pursuant to a corporate contract.

2.7 Presentation

Katie Hinchin, Skyscanner

Ms. Hinchin stated that Skyscanner empowers consumers by providing the broadest range of travel options across hotels, flights, and cars for direct providers, like airlines, as well as indirect providers, like online travel agencies, which ensures consumers are offered choice and transparency and drives competition. She noted that Skyscanner strongly agrees with the NPRM's goal of more transparent critical ancillary fees. She added that, as a metasearch service, Skyscanner's core objective is creating easy comparison for travelers by offering a wide range of flight options and partners, which enables comparison based on total cost.

Ms. Hinchin stated that Skyscanner strongly supports the proposal to require U.S. and foreign airlines to provide usable, current, and accurate data regarding critical ancillary fees. She added that Skyscanner relies on airlines to provide the proper information so that the content may be organized and displayed to consumers.

Ms. Hinchin stated that Skyscanner has major concerns about the requirement to display all critical ancillary fees on the first search page. She noted there are two central issues: (1) the information would be overwhelming for consumers on metasearch sites, and (2) Skyscanner has concerns about the feasibility of producing correct fee information due to the dynamic and complex nature of ancillary fees.

Ms. Hinchin noted that Skyscanner is concerned that displaying all critical ancillary fees on the first page of flight search results would cause a staggering amount of clutter and make it difficult for consumers to process various ticket options. She added that consumers do not come to Skyscanner with specific flights or itineraries in mind, but instead with the intention to explore the widest possible travel options.

Ms. Hinchin stated that the volume of information displayed on the first page under the NPRM increases from an airline to an OTA to a metasearch site, in that order, because metasearch sites display information from multiple airlines and ticket agents simultaneously. She stated that the

NPRM would require adding the details for three different types of ancillary fees to each flight and partner option, all while maintaining website operation, which may be feasible for airlines but not for metasearch sites. She added that the issue was even more problematic for Skyscanner's many mobile device users.

She stated that the proposal treats three classes of ancillary fees equally, with the assumption that travelers equally weigh their value during first search. She stated that, based on its user research, travelers' main focus on the first page is flight schedule. She explained that, while some travelers have shown interest in baggage allowance, for many travelers the other ancillary fees are not a primary concern when selecting a flight. She added that Skyscanner believes that consumers would greatly benefit from the progressive disclosure of ancillary fee information, meaning consumers would see more information as they progress through their search journey.

Ms. Hinchin stated that, if provided ancillary fee data, Skyscanner would disclose the information to consumers as early as possible in their search process, providing travelers with data in the most absorbable format within their decision-making journey. She added that the proposed display rules would cause an adverse impact on Skyscanner's ability to make search results user friendly and informative. She urged DOT to allow flexibility in the display of the fee information.

Ms. Hinchin stated that certain ancillary fees in the NPRM, such as change and cancellation fees, are highly dynamic and depend on multiple factors, typically unknown during first search. She stated that the cost to change a flight is made up of two parts: (1) a fixed fee to change the flight and (2) any difference in fares. She added that while it might be possible to reflect the fixed fee, the true price would depend on the consumer choice on the additional flight, which would be unknown at the time of search. She stated that Skyscanner feels that providing incomplete costs would cause confusion.

Ms. Hinchin stated that asking consumers to compare the copious flight options and prices from airlines and online travel agencies, and adding ancillary fees, all within the first search page, would undermine simple comparison and cause confusion. She added that DOT should consider the major challenges for metasearch sites to share accurate change, cancellation, and seating fees due to their business model, and alter the rule accordingly to implement a truly beneficial set of rules that advance transparency for consumers.

Ms. Workie asked Ms. Hinchin if Skyscanner had any data on when consumers find information on baggage, seating, change, or cancellation fees useful.

- Ms. Hinchin stated that Skyscanner had conducted user research and would be happy to share the findings. She added that Skyscanner plans to run broader research and noted that early indications reflect that baggage is a higher priority than the other ancillary fees mentioned. She further noted that, in early research, that can change for consumers based on the type of flight or travel booked.

Ms. Workie added that if comments are submitted on seat assignments, it would be helpful to clarify whether they are looking at seat assignments generally or if the results are specific to family seating.

- Ms. Hinchin stated that they would do so.

The meeting was adjourned for 10 minutes.

2.8 Presentation

William McGee, American Economic Liberties Project

Mr. McGee stated that the heart of issue two is consumer confusion and price transparency, adding that these issues are not miniscule, trivial, or speculative, as suggested by other presenters. Mr. McGee stated that the statistic from American Airlines that 87% of passengers fly less than once a year should be the guiding principle for all discussions about the rule. He stated that it must be understood that most consumers are not cognizant of these issues.

Mr. McGee stated that the quantity of complaints should not guide how DOT responds to the family seating issue. He added that children sitting alone is a serious issue: there are health issues during COVID, safety issues during emergency evacuations, and criminal threats due to in-flight sexual assaults.

Mr. McGee stated that a recent study by Nielsen Norman Group on “eye tracking,” which is the study of how humans scroll through websites, found that 74% of viewing time was spent on the first two screens. He added that while ultra-low-cost carriers charge more “junk fees,” they ironically do a better job detailing such fees. He stated that Spirit Airlines, for example, gathers all of the available optional services in a single place so that it is easier to locate and noted that other carriers do so similarly. He added that U.S. major carriers will often make it much more difficult. He noted that on United, for example, a traveler cannot obtain the cost of baggage unless they input the origin, destination, travel date, and flight number. He further stated that it should be possible to find a full list of ancillary fees for any flight before payment.

Mr. McGee stated that many consumers seem to be unaware that they need to conduct ancillary fee searches when flying with ultra-low-cost carriers and experience serious sticker shock when they realize the true cost of flying. He added that a recent report from the Idea Works company reflects that the U.S. and Canada led the world with \$39.3 billion in ancillary revenue. He stated that carry-on bag fees have increased consumer confusion. He added that, while awareness of checked bag fees has risen, carry-on baggage fees continuously confound travelers. He stated that both organizations he’s recently worked for received a great number of complaints from consumers with regards to paying carry-on baggage fees, in addition to checked baggage fees. He added that locating the fee information is difficult, and having to restart itinerary searches that consumers have already begun booking greatly increases consumer errors in entering incorrect travel dates, airport, and service class.

Mr. McGee stated that such confusion applies to fees such as baggage, change, cancellation, and seating, particularly for family seating.

2.9 Presentation

Douglas Mullen, Airlines for America

Mr. Mullen stated that disclosure of itinerary-specific ancillary fees at the time of first search will result in the display of incomplete or inapplicable ancillary fee information, cause consumer confusion, and distort the marketplace. He added that some of the data sought by the Department in the public hearing notice would not answer the question at hand. He stated that DOT asked for information on current carrier ticket agent practices, but the Issue 2 question involves the impact of what DOT has proposed and has nothing to do with current practices. He added that A4A requested the hearing, in part, because consumer advocates asserted concerns regarding ancillary fees being displayed at the time of ticket purchase. He noted that A4A requested the hearing and raised the Issue 2 question partly to gain better understanding on why different consumer groups are taking different positions when it comes to the timing of ancillary fee disclosures, as well as to why the Department has chosen one position over others. He added that questions regarding the impact of the NPRM on consumers would have been a means to truly address Issue 2.

Mr. Mullen stated that some consumer groups or pro-consumer advocates did not agree with the NPRM's overly prescriptive proposal. He stated that the National Consumers League, AG Nessel in the ACPAC, and FlyersRights.org requested an opt-in system.

Mr. Mullen stated that the failure to address fundamental questions raised by Issue 2 and the differences publicly raised by those supporting regulatory action would render the hearing ineffective. He stated that they did appreciate the Department providing an opportunity for the hearing, as well as the opportunity to provide information, adding that they were looking forward to working with the Department on the issue.

Ms. Workie requested elaboration on Mr. Mullen's statement that the hearing would be ineffective.

- Mr. Mullen stated that most of the questions and most of the discussions about Issue 2 involved current practices. He added that the focus of the request for Issue 2 was instead on DOT's proposal and its impact on consumers.

2.10 Presentation

Amna Arshad, Airlines for America

Ms. Arshad stated that she would be discussing why the first search requirement is unnecessary, the significant unintended costs for consumers and industry, and specific examples of consumer confusion and market distortion that would directly result from the proposed first search disclosure rule for each of the ancillary fees that the Department has deemed critical.

Ms. Arshad stated that the rulemaking would result in less transparency and that additional, prescriptive regulation would hurt the same consumers the Department is trying to protect. She stated that unbundled prices, commonly known as ancillary fees, have been a practice for over a decade, and most consumers have enough awareness not to assume that optional services are included in the base fare. She added that many consumers today are members of loyalty programs and are familiar with ancillary structures of their preferred carrier. She stated that the Department's characterization of reasonable consumers is arbitrary and inaccurate, as it underestimates consumers and does not recognize their awareness for the pricing structures in place. She stated that ancillary fees are already transparent, and airlines are already in compliance with both the letter and spirit of the existing DOT disclosure regulations.

Ms. Arshad stated that every A4A passenger airline currently displays or has available the ancillary information that the Department is proposing to require through rollovers or links at first search results. She added that while each airline might display this differently, the information is there, and the Department has enforcement tools available for any noncompliance. She stated that any alleged ancillary transparency concerns could be addressed in a much less drastic manner through enforcement rather than through rulemaking given the lack of consumer injury. She stated that targeted enforcement at specific transparency issues would not introduce consumer confusion and market distortion, which would result from a broadly applicable rule. She added that since DOT established the consumer rules over 12 years ago, no civil penalties have been issued against any U.S. airlines for alleged violations of ancillary fee disclosure rules, which reflects the absence of market failure. She stated that the Department had previously found that additional regulation in this area is unnecessary, citing prior rulemakings in 2010 and 2014. She added that, if airline ancillary fee practices were not unfair or deceptive at that time, they are much less so today, given that during intervening years, consumers have become more accustomed to, and have come to appreciate, the greater options provided by airline carriers' unbundled fare products. She stated that rushing through a regulation without full proof of the need for rulemaking, as well as fully considering the costs and potential harm to consumers, would hurt the public interest. She added that the proposed rule would force airlines to depart from practices that have been largely responsible for the level of affordability that air travelers currently enjoy and would disrupt and would confuse consumers without off-setting benefits.

Ms. Arshad stated the rulemaking was unnecessary as DOT had not established that there is substantial harm to address through the first search requirement. She added that a practice could not be deceptive or unfair simply because pricing information is not displayed in the manner preferred by a small number of consumers or because a new requirement would provide easier comparative shopping for some consumers.

Ms. Arshad stated that a key component on whether a practice is unfair or deceptive is reasonableness. She stated that a practice would be unfair if causes or is likely to cause substantial injury that is not reasonably avoidable. She stated that a practice would be deceptive if it misled a consumer acting reasonably under the circumstances. She stated that any potential injury here would be reasonably avoidable, as the fee information is available a click away and

reasonable consumers would and do click on that link. She stated that there must be actual data supporting and reflecting substantial harm and that greater regulation would outweigh costs. She added that the few consumer complaints provided and released to date do not reflect substantial harm. She stated that most complaints concern customer dissatisfaction about the amounts of the charges and fare differences, rather than allegations that fees are not transparent. She stated that the Department should conduct a more thorough economic analysis.

Ms. Arshad stated that the proposed rule would create bad policy because too much information in the first search result would ultimately hurt consumers. As a previous example of unintended consequences, she cited the tarmac delay rule, which she said has had the unintended consequence of increased cancellations, far more than initially expected, including cancellations for flights that may have not experienced a delay. She noted that overly prescriptive regulations, as well as unclear definitions, could lead to confusion and the implementation of inconsistent application. She gave the example of the full fare rule, resulting in numerous FAQ, guidance, and clarification documents due to confusion and lack of clarity, and noted that a similar scenario was likely to occur. She added that the proposed rule would lead to consumer confusion due to cluttered displays, similar to the problem that the Department sought to address with the full fare rule.

Ms. Arshad stated that the proposed requirement to display information at first search would result in significant unintended consequences and costs to consumers. She added that consumers would likely be confused that optional services displayed at first search are mandatory, and the NPRM could cause customers to spend money on fees for things they do not want because they believe the fees are required or to abandon their travel plans due to the perceived cost. She stated that displaying constant fees alongside dynamic fees would confuse customers who do not book immediately.

Ms. Arshad stated that the first search requirement would result in decreased consumer choice because consumers would see fewer flight options. She added that mobile displays would be even more negatively impacted. She stated that the likelihood of abandoned, restarted, or refreshed searches would increase and cause the selection of less-than-optimal results.

Ms. Arshad noted that the Department of Justice, in its complaint opposing the JetBlue/Spirit merger, highlighted that not having to pay the full cost of travel during booking provides consumers with choice and control over spending preference, ultimately benefiting consumers. She stated that the proposed rule is premised on the idea that the pricing structure that the Department of Justice had cited as responsible for consumer benefits is instead deceptive and harmful to consumers.

Ms. Arshad stated that increased time for consumers to obtain relevant information was an additional cost. She stated that airline websites would have slower processing speeds under the NPRM, with multi-carrier platforms experiencing greater lag times. She stated that displaying ancillary fees as proposed would overwhelm and clutter screen space, resulting in increased

search times for consumers. She stated that all of the costs should be considered when making the determination whether this rule will benefit or harm consumers.

Ms. Arshad added that the proposed first search requirement would result in a high cost of compliance for air carriers. She stated that airline technical systems are not currently built to retrieve and display the amount of data proposed by the rulemaking. She added that the requirements of customization and personalization and real-time seat availability would require the overhaul of internal systems. She stated that there would be industry costs because the requirement to display ancillary fee data at first search to consumers to whom the service would be inapplicable or irrelevant would have the unintended effect of favoring airline business models that provide bundled products that do not charge ancillary fees. She stated that this could result in some consumers, such as those traveling without baggage, spending more when they could have purchased an unbundled fare.

Ms. Arshad stated that DOT had not considered the significant cost to the other industry participants, as well as intermediaries within the distribution chain like GDSs and metasearch systems. She stated that an overhaul of the entire ecosystem could be required, and the cost would be great.

Ms. Arshad stated that consumers who perform searches on airline websites are likely familiar with the carrier's baggage fees and policies and tend to make selections based on itinerary and price. She added that including irrelevant ancillary fee cost information would only cause confusion. She stated that in most airline website searches, bag fees do not change between itineraries, and so bag fees are not a meaningful factor for consumers to consider when choosing among itineraries. She stated that charges for a second bag are also irrelevant to most passengers, noting that one member carrier found that a second checked bag has only been purchased by 3% of consumers.

Ms. Arshad stated that the disclosure of baggage fees on the first search page would also cause confusion and distort the marketplace as most consumers do not purchase bag service fees when the ticket is initially purchased. She stated that the Department's existing regulations already guarantee the price for this service at time of travel would not increase from the booking time. She stated that displaying pricing for ancillary fees that may be paid at a later time in close proximity to fares will likely mislead consumers about what must be paid to secure their reservation and may cause cost-conscious consumers to forego a trip due to confusion that baggage fee and ticket price must both be paid at booking time.

Ms. Arshad stated that multiple airline carriers provide free checked bags to consumers who purchase tickets with an airline co-branded credit card or based on frequent flier status. She stated that an accurate price for those consumers would not be available until the end of the booking process, when the frequent flier number or a payment method has been used. She noted that the Department's prohibition on displaying price ranges in first search display would require airlines to display a specific charge at first search. She added that since the rule would prohibit

the collection of an improperly disclosed ancillary charge and airlines do not know how a consumer would be paying when the consumer conducts a search, airlines could be required to display a price inapplicable to this consumer. She stated that these circumstances would cause more confusion and lead to consumers making choices with incomplete information.

Ms. Arshad stated that the first search ancillary price requirement would distort the larger marketplace for checked baggage. She added that Google Flights allows users to search and compare flight options among carriers while specifying if they will have a carry-on or check a bag. She stated that consumers already receive baggage service fee information on first search if they so desire and noted that the lack of wider adoption of this search form provided evidence of the lack of consumer need, as well as demand for these disclosures. She added that Google Flights reported that only 1.3% of its searches utilize the bag feature, and, if such a small number of consumers use this feature, then the information is not valuable enough to be required.

Ms. Arshad added that the mandated disclosure of potential change fee charges would result in the display of incomplete or inapplicable information, cause consumer confusion, and distort the marketplace. She stated that consumers do not generally shop for airfare with the intention of changing their flight, and only a small number of consumers change their itinerary.

Ms. Arshad noted that, historically, there were two change types for which charges were assessed: changes after booking but before the travel date and changes made on the travel date. She stated that changes made before the travel date can now be made without fees on most carriers, and some carriers allow same-day standby itinerary changes at no additional cost. She stated that, although the change fee has been eliminated, consumers will still be assessed the fare difference and requiring carriers to reflect a no-cost change when consumers may still be charged a fare differential would lead to increased consumer confusion. She added that it would be impossible to display or estimate fare differences at first search, since fare differences are unknown at booking time and are dependent on the desired change, future bookings, and future demand. She stated that most of the time the only applicable change fee would be to those consumers who choose to change their flights on the travel date, changes that are only relevant to consumers who may extend a vacation by a few hours or who might return home early from a business trip. She stated that charges for said fees would be irrelevant to consumers during first search as they result from subsequent changes to travel plans, and if a consumer were aware during booking that they would prefer changing to a different flight on the same day, they would simply book the alternative. She further added that same day flight changes are subject to availability and only offered and charged if there are seats available on alternative flights during the travel date. She stated that a requirement for the disclosure of prices for future services that might not be available would mislead consumers.

Ms. Arshad stated that cancellation fees had also been mostly eliminated by U.S. carriers. She added that the few complaints about cancellation fees do not appear to be about transparency, and so the mandatory display of those fees is unnecessary.

Ms. Arshad stated that the potential for consumer confusion, market distortion, and inapplicable pricing is particularly high for family seating fees. She stated that no carrier charges a fee for family seating. She added that the proposed rule is based on a false premise that airlines charge fees for families to sit together when they do not. She stated that many A4A members have branded fare products that feature seat selection, and that basic economy products do not include seat selection. She stated that characterizing price differences among different fare products, like basic economy and economy, as a family seating fee is disingenuous and deceptive.

Ms. Arshad added that airlines are highly motivated to seat families together to the maximum extent possible. She stated that most airline websites provide instruction on securing appropriate seating for children and added that requiring disclosure of a price for “family seating” and transactability might cause a consumer to think they are obligated to pay this fee to sit with their child, when they will not have to. She added that because seats vary and certain seats may be unavailable, the “family seating” fee would depend on many variables, including booked seats and prices for available adjacent seats. She stated that it would be technologically difficult, costly, and time-consuming to calculate this cost in real-time for each itinerary option. She stated that of all the critical ancillary fees in the proposal, family seating would be applicable to the fewest number of consumers. She stated that the Department has noted the low number of complaints submitted in this area. She stated that the rule will cause consumer confusion whenever the requirements of the rule differ from a consumer’s expectation of what is required. She noted, for example, that two adult parents traveling with a child searching for flights may not understand that a family seating fee would only ensure two adjacent seats, and not three. She added that, working with the Department, most airlines had reviewed and modified seating for children since the NPRM. She continued that as a result, the Department should carve out the issue of family seating from future regulations that might be warranted on the subject. She stated that, if the Department proceeded with the family seating fee disclosure requirements as proposed, carriers might need to reassess their use of basic economy and equivalent products, which has historically allowed lower fares and greater access to price-conscious travelers.

Ms. Arshad concluded by stating that base plus ancillary pricing is a well-established practice that had resulted from robust competition in the marketplace and is widely understood to be a normal part of current air travel. She added that providing consumers with the option to pay only for the services they need and want offers them a greater choice, while allowing fares to remain low for the customers who do not require ancillary services. She stated that the existing airline policies are transparent, and consumers are well-informed about ancillary service fees at each step of the booking process because airlines want to ensure consumer expectations match what they purchase.

Ms. Arshad stated that ancillary information is provided in a manner that is not unfair or deceptive. She stated that the absence of consumer complaints and lack of enforcement demonstrate that airlines recognize this. She then reiterated that the proposed rule would have significant costs and cause confusion and unintended consequences and urged the Department to

rethink the need for regulation. Ms. Arshad stated that the Department should allow the marketplace and competition to continue meeting consumers' needs.

2.11 Presentation

Jay Richmond, Amadeus

Mr. Richmond stated that Amadeus offers its travel agency subscribers the ability to display ancillary services and associated fees, provided that the information is supplied by the airlines through Amadeus Ancillary Services Solution. He noted that this information is then made available through Amadeus's interfaces, including their travel agent web-based desktop, Amadeus Selling Platform Connect, as well as their travel API. He stated that the Amadeus API provides its travel agencies the opportunity to display ancillary fee information at the time and manner best suited for the user's experience and consumer preferences. He stated that Amadeus believes that flexibility is critical to fostering and sustaining a vibrant, competitive, and consumer-focused marketplace.

Mr. Richmond stated that Amadeus supports the objectives of the proposed rulemaking, but that the draft rules risk confusing customers. He also stated that the display of particular ancillary fees on the first search results page is not always feasible because fees vary depending on information that the consumer might not have provided early in their search process, such as the number of bags or the timing of any proposed itinerary change or cancellation. He added that providing a particular fee, as opposed to generalized fee information, would not necessarily mean that the information is accurate or relevant for the passenger who is searching. He added that the NPRM requirement that fee information be displayed on the first page without using hyperlinks, clicks, or pop-ups would substantially reduce the number of available flight options for comparison purposes. He added that this was due to the additional data on the web page or mobile device. He stated that the clutter would crowd out the number of flight options currently being displayed without the need for much vertical or horizontal scrolling by the consumer and would reduce the inter-brand competition that the indirect channel provides to benefit the consumer.

Mr. Richmond stated that the benefits of seeing more flight options must be weighed against the value of seeing ancillary fee information on the first page, noting that DOT's final rule should not mislead consumers about the number of available flight options. He added that this issue would only worsen as more consumers book through mobile devices or devices with almost no screen at all, such as wearables, that might provide search results in the form of a voice message, which is critical on all types of devices for the visually impaired.

Mr. Richmond stated that if comparative pricing on fare, taxes, and fees is made available to the passenger before booking, and the passenger can purchase their flight with the core components through their channel of choice, the rule's objective would be met. He added that the precise manner in which the information is displayed should be left to the ticket agent who operates the website, therefore stimulating consumer-focused innovation and technological development.

2.12 Presentation

Corey Vezina, Priceline for Booking Holdings

Mr. Vezina stated that recent changes in airline distribution have caused the assembly of more complex travel deals, adding that the industry has transitioned from a model that was dependent on third-party technology providers, such as GDSs, into a hybrid model where the best prices are often made available via direct connections, and these changes have required travel agents to obtain fares from multiple locations. He added that presenting multiple fare brands in a uniform way across hundreds of airlines and from dozens of supply connections to a consumer base that is increasingly shopping on mobile devices with small screens provides a comprehensive challenge to agents. He stated that an online travel agency may receive more than 50% of its business from mobile customers. He noted that each itinerary currently requires the airline name, potentially a codeshare partner, ticket price, departure and arrival times, total flight duration, any connections, and basic itinerary information. He stated that DOT's proposal to add ancillary fee availability and pricing to that already complex web of information is beyond the scope of current airline shopping technology.

Mr. Vezina stated that if a family of three considered a simple itinerary traveling from New York to Orlando, with three possible departure airports and two possible arrival airports, a simple one-way search would yield upwards of 500 itinerary options. He added that, for each of those itinerary options, there would be multiple fare brands that might or might not include a free seat reservation. He stated that ATPCO tracks over 300 million price points and processes 300 million in fare changes daily. He stated that since the beginning of the computer reservation era in the late 1950's, fare shopping was built to combine only two items: the availability and price of a plane ticket based on the fare rules filed by the airline, adding that decades of work were required to simply pull those two items together into a shopping response that could generate the 500 itinerary results within seconds. He added that a separate query would be necessary for each flight, in each of the 500 options, in order to see if a seat was available for reservation for each leg of a nonstop or connecting itinerary, adding that additionally, an agent would need to determine the seat's cost. He stated that in an overbooking scenario where 180 tickets were sold on an airplane with 175 seats, if a ticket is shopped at the last minute, the airline might have three tickets available for sale, but not have seat availability. He stated that the seat display requirement would remove that itinerary from the customer's search results set of options due to seat unavailability.

Mr. Vezina stated that airlines might not allow each seat to be reserved by an agent due to complexity in sharing seating maps across codeshare partners or other factors. He stated that industry data reflects that for every second a web page takes to load, 10% of users abandon the page. He added that the simple price and schedule availability for flights on that trip from New York to Orlando still requires 2-5 seconds to load. He stated that attempting to query all the data required by the rule would make the fare shopping results nearly impossible to decipher for an increasingly mobile customer base. He added that removing itineraries or tickets that were

available for sale, but for which no seat reservation could be provided, would result in customer confusion, and the display of incomplete information. He further added that the investment of millions of dollars to develop, and hundreds of thousands annually to maintain, an initial version of a potential solution would distort the marketplace.

He stated that for travel agents to display fee data, it must be filed by airlines and distributed by all distribution channels, both direct and indirect. He stated that the travel industry is large, and complicated, with years required for change and development, noting that the first electronic tickets were issued in 1994 and that IATA eliminated paper tickets in 2008. He requested that DOT revisit the rulemaking in question. He stated that Priceline supports the goal of making flight shopping as transparent and simple for consumers as possible, but it can only do so within the limits of the current technology. He stated that flexibility is necessary to display complex information in a manner that makes the most sense for the traveling public. He added that checking hundreds of flights for seat availability was not technically feasible and any attempt to provide even the most elementary version of this data would render the search for a family vacation much slower, more difficult, and less enjoyable for the consumer.

Topic 3: Whether Requiring Fee Disclosures on the First Page of the Itinerary Search Selection Process Would Be Technically Infeasible

3.1 Presentation

Andrew Appelbaum, FlyersRights.org

Mr. Appelbaum stated that the rulemaking was feasible and listed Google Flights as an example of a website already providing additional information, including carbon emissions, leg room, power outlets, overhead bin access, and Wi-Fi availability. He also noted that Expedia displays whether there will be a seating cost, if a personal item is included, a range for carry-on and first checked baggage fees, the presence of a change fee, whether a ticket is refundable, and price protection.

Mr. Appelbaum stated that displaying vital information in the proposed rulemaking is feasible, and airlines would likely find ways to prominently display additional information beyond the requirements of the proposed rule, as they did in 2010.

3.2 Presentation

John Breyault, National Consumers League

Mr. Breyault stated that the National Consumers League believes that fee disclosure on the first search page of itinerary searches is feasible and that the benefits to consumer welfare and competition likely exceed any costs incurred by air carriers and ticket agents. He noted Travel Tech claims in its petition that: “Critical ancillary fee information cannot possibly be displayed on the first search results page as a specific fee since the level of the fee, if any, is contingent on choices made later in the booking process.”

Mr. Breyault stated that the proposed rule would not prevent air carriers or travel agents from collecting data, prior to the display of fare information, that would allow regulated entities to comply with the proposed requirement that accurate ancillary fee information be disclosed on the first page of itinerary search results. He stated that air carriers and ticket agents already request a significant amount of information prior to the first display of fare, adding that they could comply with the proposed rule by asking whether consumers intend to check baggage or if they will be traveling with young children earlier in the search process, which would allow those costs to be included with the fare cost displayed. He stated that doing so would make any screen real estate issues for change or cancellation fee information much more manageable. He added that collecting additional data relevant to the total cost of flying prior to the first display of a flight cost could reduce the harm from drip pricing.

Mr. Breyault also noted that the Travel Technology Association's petition also argued that the proposed rule is technically infeasible. He stated that Travel Tech referred to long-running disputes among air carriers, metasearch sites, and GDSs over the control of ancillary fee data. He added that DOT has already addressed this concern with the requirement that air carriers distribute fee information for critical ancillary services to ticket agents that sell or display fare and schedule information. He noted that if such data sharing requirements will not resolve Travel Tech's technical feasibility arguments, then NCL would support modifications to the proposed rule that would require air carriers to provide information to travel agents and metasearch sites needed for compliance by these entities.

3.3 Presentation

Mariana Camacho, Computer and Communications Industry Association (CCIA)

Ms. Camacho stated that CCIA supports DOT's goal of providing consumers with the necessary information required for them to determine the full travel cost prior to purchase. She stated that it was important, however, that DOT not require aggregators or intermediaries to disclose airline fees that they might not have access to or undermine the strong consumer interest in uncluttered displays and the flight comparison options that metasearch websites provide.

Ms. Camacho stated that there were privacy and security risks in forcing metasearch providers into the role of ticket agents by requiring them to store personal and payment data. She added that the expansion of the regulation to metasearch providers would be misguided and contrary to the statute. She stated that metasearch sites are not ticket agents and do not sell or provide air transportation.

Ms. Camacho stated that metasearch entities compete based on how they display, organize, and present information. She added that consumers benefit when aggregators and intermediaries have the flexibility to produce innovative displays and requiring a rigid disclosure format would have the unintended consequence of limiting customer benefits and harming innovation.

Ms. Camacho recommended that DOT not impose ticket agent requirements on information intermediaries and stated that DOT should instead require airlines and booking agents to provide ancillary fee data to consumers prior to their actual ticket purchase, and not during the initial comparison of flight options. She stated that this would be the most direct manner of obtaining the rule's intended results, provide the most privacy protection, and impose the lowest overall cost.

Ms. Workie asked Ms. Camacho if CCIA's suggestion was that airlines and OTAs should be required to display the baggage, family seating, change and cancellation fees but have the flexibility to do so prior to ticket purchase. She further asked Ms. Camacho whether it was CCIA's view that there was no need to require airlines to provide data to metasearch entities because CCIA believes that metasearch sites should not be required to display the ancillary fee information.

- Ms. Camacho agreed and stated that because metasearch entities do not currently have fee information, the airlines should display the information during the ticket purchase.

Ms. Workie asked if the reason CCIA thinks that metasearch entities should not be required to provide fee information is because it is not provided by the airlines.

- Ms. Camacho agreed and stated that, even if airlines provided this information, it would cause additional privacy and security concerns. She stated that CCIA does not believe that such data sharing is necessary, and the additional fee disclosures should be provided by the airline.

Ms. Workie asked for confirmation that it was CCIA's belief that, even if the airlines were to share the information with metasearch entities, as long as the fees are displayed by either the airline or the ticket agent, there would be no need for metasearch entities to display fee data because they do not sell tickets.

- Ms. Camacho confirmed.

3.4 Presentation

Kevin Guzik, Hopper

Mr. Guzik stated that Hopper is only offered in mobile format, noting that customers search, book, and pay for their travel via a 6-inch screen. He added that Hopper is now the third largest online travel agent in the U.S. and continues to grow.

Mr. Guzik stated that Hopper supports DOT efforts to improve price transparency, but that the proposed rule would not do so for users of mobile devices and the proposed requirements would be infeasible on mobile devices. He stated that currently Hopper can only show basic details for five itineraries on a single screen without scrolling. He added that additional flight information is displayed in a dynamic app interface, which uses tools such as mobile app navigation and expanding boxes to allow consumers to locate and compare information.

Mr. Guzik stated that, if applied to mobile devices, the proposed rule requiring ancillary fees to be displayed on the first page of results would eliminate innovation and require Hopper to provide a cluttered result, which would force consumers into endless scrolling. He added that DOT should not extend the rule to mobile interfaces, as a rule requiring mobile disclosures prior to the time of purchase would still achieve DOT's goals and enable competing OTAs to continue to innovate in a manner that would allow consumers to access fare comparison and ancillary fee information in the manner best suited to them.

Ms. Workie asked if Hopper's concern with mobile device coverage was that DOT proposed to require ancillary fee information at the first search or if it was that DOT proposed not to allow links and rollovers.

- Mr. Guzik stated that both issues were a concern, but Hopper was especially concerned with first search disclosure. He added that Hopper would prefer flexibility in how fee data was displayed prior to purchase.

Ms. Workie asked if it was correct that consumers were using their mobile devices as a primary means of ticket purchases.

- Mr. Guzik stated that this is currently Hopper's only means of purchase.

Ms. Workie asked if Hopper's suggestion was that DOT not require ancillary fee disclosures for mobile interfaces at all, or if should it be a requirement prior to ticket purchase.

- Mr. Guzik stated that disclosure should only be required prior to purchase.

3.5 Presentation

Laura Chadwick, Travel Technology Association (Travel Tech)

Ms. Chadwick expressed her appreciation for Mr. Appelbaum's observations regarding Expedia's website but asked why the first page results provision was necessary in light of his earlier statement that he was pleased with how ancillary fee data was currently presented. She stated that Mr. Breyault had said that Travel Tech could ask for consumer data at the search input screen, but this was not what the proposed rule would require. She added that the method suggested by Mr. Breyault would face the same infeasibility issues as first page search results.

Ms. Chadwick stated that she wanted to share thoughts from another Travel Tech company that was unable to join the hearing. She reported that Glen Wallace, head of product technology at Fareportal stated: "The pricing permutations on flight schedule, fare type, cabin, and specific seats are huge. Requiring that all options, and therefore all combinations, are shown on the first page will place a huge computing and communications burden on industry systems, and lead to slower page retrieval times, larger web pages, and materially slower page loading times."

3.6 Presentation

William McGee, American Economic Liberties Project (AELP)

Mr. McGee stated that, according to Stratos, 82% of travel bookings occur without human interaction on websites or apps, and 70% of consumers research travel on a mobile device. He stated that the possibility of missing critical fee data continues to increase in the digital age, and ironically, technological advances have caused more difficulty, than less in many cases. Mr. McGee added that AELP believes that it is critical that consumers receive all of the ancillary fee data needed in order to make wise decisions, regardless of the booking channel. He stated that it is common for a family to look at a base fare and budget according to that, and then be faced with additional fees that were not budgeted for during their trip or at the airport.

Mr. McGee stated that while presenters had testified that ancillary pricing had been, “working well for years,” he stated that it might be working for the airlines but that it was not working well for consumers and issues with transparency remain.

Mr. McGee stated that family seating fees were a larger issue than has been recognized. He added that President Biden, Secretary Buttigieg, and numerous members of the House and Senate had spoken about the issue, but that airlines state that there is no such thing as a family seating fee, arguing that fees charged to families with children are not family seating fees.

Mr. McGee stated that AELP believes that all flight, fare, and fee data should be made available to all accredited ticket sellers, both on- and offline.

3.7 Presentation

Douglas Mullen, Airlines for America (A4A)

Mr. Mullen stated that A4A believes that some aspects of the NPRM would not be technically feasible and that the NPRM would result in substantial costs to consumers and airlines that would greatly exceed any theoretical benefits. He stated that information on the number of users that search and purchase tickets on mobile devices under current practices is unrelated to whether it is technically feasible to comply with the NPRM, which proposes specific disclosures at the time of first search. He stated that A4A stipulates that mobile platforms are currently one of the fastest growing segments in airline distribution.

Mr. Mullen stated that he had not seen data supporting the need for the rulemaking and that anecdotal information is inadequate to resolve scientific, economic, technical, or other factual issues in dispute.

3.8 Presentation

Kevin Healy, Campbell-Hill Aviation Group

Mr. Healy stated that Campbell-Hill Aviation Group was engaged by A4A to analyze the regulatory impact of the NPRM and prepare a cost-benefit and feasibility analysis. He stated that, to estimate costs, Campbell-Hill looked at the initial development costs using a survey of airlines

representing more than of 50% of tickets sold to, from, and within the United States, and then extrapolated those results to the industry as a whole. He stated that it also estimated the ongoing costs of the requirements, specifically costs of airlines supplying ancillary fee information to ticket agents in real time and the cost to consumers in increased research time. He noted that the cost to online travel agents or other stakeholders affected by the rule was not included in the analysis. He added while Campbell-Hill had created some illustrations, it is unclear if the proposal is technically feasible.

Mr. Healy stated that in Campbell-Hill's analysis, it used DOT's methodology for benefits, while making some adjustments, converting passengers to O&D (origin and destination) as fares and tickets sales are sold on an O&D basis, and then used 2019 passenger levels as a pre-pandemic base for projections spanning a 10-year period. He stated that, based on the methodology, benefits were about \$39.1 million over a 10-year period, while the implementation and maintenance costs would be an estimated \$33.8 billion. He added that the estimated net benefit would be negative \$33.732 billion. He stated that an easier way to explain this is that Campbell-Hill estimated \$.12 in benefits for every \$100 in costs incurred by airlines, not including costs incurred by other non-airline vendors.

Mr. Healy stated that part of the reason for the very low benefits is the extremely low number of complaints to DOT. He added that there is high awareness of ancillary fees and unbundling. He stated that travelers are most interested in fares and schedules in every survey he has seen.

As part of his presentation, Mr. Healy provided a visual illustration, which he stated was based on common features on airline websites. He observed that the illustration provided details specific to flights, such as flight performance, seat availability, and the fare products. He added that the illustration allowed the ability to click on, or hover over, each fare and provided the option to view the rules associated with the fare, the ancillaries, change, cancellation, seating, and other available options. He stated that, in most cases, a comparison of all items can be seen simultaneously, and so the information covered by the NPRM is readily available.

Mr. Healy next provided an illustration of a screen that complied with the NPRM, noting that he was unsure if it was technically feasible. He stated that in order to comply Campbell-Hill created a scroll that would be six times longer than the way the information is currently displayed. He added that this would mean a lot more time spent with more information that would not be pertinent or specifically applicable to the vast majority of consumers.

Mr. Healy stated that, to accurately assess seating cost, every single flight must be checked to see the seats available in that moment, which would be a tremendous amount of messaging that does not currently occur. He stated, currently, when seats are clicked, the information is extracted only for the flight that a passenger is interested in. He further added that under the NPRM, constant messaging would occur to obtain that information, which would involve significant resources and cause slow responses. He stated that, in some cases, the user might not be able to receive the information at all.

Mr. Healy next shared an illustration of compliance on mobile sites. He stated that the NPRM would make mobile devices nearly unusable and that it would take “forever” to locate flights.

Mr. Healy stated that, in response to hearing topic one, it is clear that consumers have a high understanding of ancillary services and related fees, and there is no clear evidence of a need for rulemaking. He added that, in response to topic two, providing itinerary-specific ancillary fees is likely to cause confusion, and might actually force some carriers to limit the number of distribution channels to ensure compliance, which would distort the marketplace and likely impact competition negatively. In response to topic three, he stated that it was unclear that the proposal was technically feasible, as the amount of back-and-forth messaging, database changes, and other adjustments would not involve a simple website change; instead, all booking tools and other systems beyond the website would also need adjusting.

Mr. Healy stated that with a cost-benefit of negative \$33.8 billion, the rule was not economically justified. He added that the NPRM would make travel planning more difficult and confusing for the vast majority of airline passengers.

Ms. Workie asked whether it was the first search result requirement that made the proposal infeasible in his view.

- Mr. Healy stated that the proposal required a lot of information to be put onto a screen without much real estate. He added another important piece is the NPRM’s requirement of real-time seat availability, which would require transmitting seat availability, along with different fees, which is a huge amount of data. He stated that, currently, all consumers have to do is roll over and check the flight they are interested in, which is a one-time transaction request. He continued that the NPRM would require too much information to return in an accurate display in a timely manner.

Ms. Workie stated her understanding that there are three areas that could potentially raise technical feasibility questions according to Mr. Healy’s testimony: (1) real-time seat availability, (2) the requirement to display ancillary fee information at the first page of the search, and (3) screen space because the proposed rule prohibits the use of links, rollovers, and pop-ups. She asked if that understanding was correct.

- Mr. Healy agreed. He added that when technical feasibility is discussed, the cost of compliance cannot be ignored.

3.9 Presentation

Eben Peck, American Society of Travel Advisors (ASTA)

Mr. Peck stated that ASTA has long believed that consumers deserve full transparency in airfares and optional ancillary service fees and the ability to purchase those services, regardless of where they book. He stated that the NPRM was a step in the right direction because it requires carriers

to provide travel agencies with fee information that is usable, accurate, and accessible in real-time, and requires transactability for family seating.

He noted that ASTA has some concerns with the rule. ASTA's primary concerns are the requirement that ticket agents disclose fees for multiple ancillary services in every offline transaction, and the exclusion of the GDSs.

Mr. Peck added that ASTA shares the concerns expressed on hearing topics two and three by its colleagues on the distribution side. He stated that providing the information required by the NPRM at the first page of search would fundamentally change the online air travel shopping experience for consumers, especially on comparison sites which display multiple airlines' schedules and fares. He stated that ASTA fears that consumers would be overwhelmed with the information and see fewer flight options on the first search page, reducing consumers' ability to compare different airline fares efficiently.

Mr. Peck noted that ASTA supports Travel Tech's position on this issue and noted that that organization's position closely relates to ASTA's concerns on the disclosure burden in offline transactions conducted via the telephone or in person. He stated that ASTA recommends that DOT use the proposal for offline transactions from DOT's 2017 proposal on bag fee disclosures, which stated that in any oral communication, a ticket agent must inform the consumer of the bag fees in question upon request. He stated that ASTA was disappointed that ACPAC dismissed this proposal during the January 12 meeting. He added that ASTA would support alternative approaches, some of which the NPRM identified, including providing the explanation that fees apply and referring the consumer to the carrier or ticket agent's website.

Mr. Peck stated that ACPAC members had recommended that the Department implement an opt-in regime so that consumers would not be overwhelmed with fee information that they do not want or need. Mr. Peck stated that this ACPAC member proposal is precisely what ASTA recommends for offline transactions. He continued that ASTA would oppose a final rule that allows streamlined disclosures in online transactions, while making offline transactions so cluttered that they would be impossible to execute. He added that ASTA feels strongly that the final rule should provide ticket agents with greater flexibility with respect to the timing and frequency of ancillary fee disclosures in both online and offline transactions. Mr. Peck stated that, if the NPRM became final as proposed, consumers would be overwhelmed with information when shopping for air travel, and the rule would threaten to drive consumers away from the unbiased service and critical support that travel agencies provide, sending them to airline websites.

Mr. Peck stated that excluding GDSs from the universe of ticket agents with whom carriers must share fee data would hinder the Department's transparency objectives. He added that ASTA's members use GDSs to search, compare, and book airfares and other services for their clients and that travel agencies have invested tens of millions of dollars in GDS integration. He stated that much of that integration work would have to be duplicated if ancillary fee information does not

flow through GDSs. He added that DOT should require airlines to provide ancillary fee information through the primary technology that travel advisors have relied on to serve their clients.

3.10 Presentation

Neil Geurin, American Airlines

Mr. Geurin referenced a slide deck during his presentation. He stated that American Airlines has a dedicated page on its website that includes every type of ancillary fee and that the website had been refined based on customer feedback.

Mr. Geurin stated that, for almost all airlines, there are situations when a customer who is shopping should not be charged a bag or seating fee because of status with the carrier, a certain credit card, or military status. He noted that American Airlines uses that information on its own website but has challenges sharing it with travel agencies.

Mr. Geurin stated that the biggest challenge with the GDS system, EDIFACT, is that American Airlines does not find out that a customer is shopping until after they purchase a ticket and, therefore, the ability to pass through the information to note that a specific passenger should not be charged baggage fees or should receive complimentary seating is not possible with EDIFACT. He continued that American Airlines has been working to move to a new standard of information sharing with their agency partners: NDC. He noted that American Airlines' content is now live through NDC in all three GDSs. He added that this provides American Airlines the ability to ensure the accurate fee is charged to the appropriate customer for any agency connected to American Airlines.

Mr. Geurin stated that on Expedia, where most fares are sold through NDC, the customer could select a seat on the plane using a seat map. He stated that carriers who do not have NDC connections yet do not have that ability. He stated that, in addition to NDC being connected to all of the GDSs, they also had direct connections with many agencies, and some travel agencies also work with NDC aggregators. He noted that NDC is not yet live across all parties in the industry, and, despite progress, there is still a long way for the industry to go.

Ms. Workie asked Mr. Geurin if he was suggesting that it was not currently feasible to share ancillary fee data with ticket agents because few entities currently use the NDC-enabled indirect channel and asked whether it would currently be possible to share that through GDSs.

- Mr. Geurin stated that one of the ways American Airlines determines that a passenger should receive a complimentary bag is due to the customer's credit card. He noted that American Airlines would expose personal information that it cannot share if it distributed specific credit card information to each travel agency. He stated that the only way that American Airlines can say that a customer receives a complimentary bag is if the transaction touches American Airlines systems in the process, which NDC allows.

Ms. Workie stated she understood those concerns to be about transactability. She asked whether it was technically feasible for an airline to share its baggage rules with a ticket agent so that the ticket agent could display the accurate fee to the passenger whether that passenger was military, holds a particular card, etc.

- Mr. Geurin stated that American Airlines shares baggage information with all travel agency partners. He added that if travel agency partners wanted to put up a page that provided the ability to view all the different fees, they could look at doing that, but the challenge would be trying to embed all of the different fee variations in the shopping result, which would be complicated.

Ms. Workie asked Mr. Geurin if her understanding was correct that, in his view, even if a ticket agent received the bag rules, along with the specific stipulations such as credit card, military, etc., it would still be difficult for consumers to get the accurate fee due to the technical issues in getting the information displayed because of the presumable information overload.

- Mr. Geurin stated that if all of those options were displayed then, yes, it would be information overload. He added that it would be necessary to go through the NDC pipeline in order to display accurate information for a specific customer.

Ms. Workie stated that for the NDC-enabled indirect channel, as she understood it, the fees would not only be displayed but that channel would also potentially allow the consumer to transact the fees.

- Mr. Geurin stated that, in NDC, American Airlines has the ability to say, “yes, the customer should receive a complimentary bag fee,” and can pass that along to the travel agency. He added that when the seat map is viewed on Expedia, a customer can see the seat that comes with the fare but can also purchase a seat with more leg room; it is transactable in the same tool being used to make a booking.

Ms. Workie asked if it would result in information overload if an airline shared its rules in the EDIFACT-based indirect channel, and the display the consumer received was only as good as whatever personal information the passenger input.

- Mr. Geurin stated that if the rule said that the information had to be provided in the initial search result, the challenge would be in adding complexity to the first page display.

3.11 Presentation

Jay Richmond, Amadeus

Mr. Richmond stated that Amadeus disagreed with the position that the distribution of ancillary fees had become a material cost to airlines and with the statement that real-time seat availability was not currently a standard offering within the airline industry, as that was a mature and efficient functionality within the Amadeus GDS.

Mr. Richmond stated that requiring fee disclosures on the first page of the itinerary search would be technically infeasible. He noted that developing functionality to address the requirement would take significant time at an exorbitant cost, and the fees varied based on information that the consumer might not have at the time of first search. He stated that, for example, the consumer might not know the number of bags they would bring or the timing of any proposed itinerary change or cancellation at the outset of their search. He added that this was not information that was generally provided by passengers doing itinerary searches.

Mr. Richmond stated that if the DOT were to adopt more flexible display requirements, it would allow for faster and cost-efficient implementation across the industry. He noted that currently websites, mobile apps, and other user interfaces display critical ancillary fees during the booking process using hyperlinks, mouseovers, pop-ups, clicks to expand information, and other shortcuts. He stated that these were efficient, user-friendly tools that were widely deployed in the digital sector, which convey important information to consumers with great efficiency in terms of screen space.

Mr. Richmond added that allowing critical ancillary fee information to be conveyed using those existing mechanisms helped avoid performance issues on web pages, and reduced the number of systems transactions, which extend computing resources and necessary time to provide search results. He noted that, under the NPRM, each search result would require several subsequent queries to different IT systems to provide separate results for each additional data point, such as the price of a first checked bag, second checked bag, carry-on, applicable cancellation fee, applicable change fee, and seating cost. He added that the inevitable delayed website performance would in turn cause frustration for consumers, impairing the benefit consumers seek when using the indirect channel. He added that Amadeus was confident that it could implement flexible solutions for its travel agency customers within a reasonable timeframe if GDSs were included in the definition of ticket agents and provided fee information by the airline carriers.

Mr. Richmond stated that it would take as long as two years for compliance if DOT did not change the proposal because there are currently no alternative means for dissemination other than GDSs, and most ticket agents would have to develop technology that was not yet available. He added that if Amadeus had flexibility to work with travel agency customers to create displays that were efficient, logical, transparent, and achieved DOT's objectives, then the compliance period would shorten.

Mr. Richmond stated that DOT should require that airlines provide critical ancillary fee information to all ticket agents, including GDSs, to ensure transparency and facilitate healthy competition. He added that GDSs were the only players capable of the required connectivity and technology for the efficient implementation of fee display requirements. He stated that Amadeus believed that the market would easily resolve the need to adapt commercial agreements between airlines and ticket agents to the rule without giving unfair advantage to either sets of stakeholders. He added that display requirements should be flexible, ensuring a reasonable balance between showing flight availability options and applicable critical ancillary fees. He

stated that the precise timing and manner of display should be left to the ticket agents that operate the website, further stimulating consumer-focused innovation and technology development.

3.12 Presentation

Michael Reilly, American Airlines

Mr. Reilly stated that he would describe some of the technical issues that caused the first search display requirement to be so arduous, using a slide presentation. He stated that his slides provide a basic outline of the airline search process, beginning with a consumer entering a flight parameter on a search site, which is then sent to a search engine. He stated that first search began with three main components, each of them complex: (1) ATPCO fares and rules, (2) OAG for schedule information, and (3) the carriers for availability. He noted that, after the customer inputs search parameters, in many cases the airlines have to confirm the accuracy and availability of some items and then display them to the consumer. He added that the computations are conducted to produce the most accurate results in the fastest time possible. He explained that search engines refine how they process data elements multiple times throughout the year in order to make the process faster and more productive for the consumer's eventual flight requirements. He stated that the modern user experiences a relatively short turnaround time to flight solutions. Mr. Reilly stated that many carriers file fees in ATPCO, and the fare rules contain some of the change and cancellation fees.

Mr. Reilly stated that, in the context of 303 million ATPCO fares promoted and transmitted to the industry, along with billions more data elements within those transmissions, passenger-specific ancillaries are more complex to display than normal fares and rules because when more factors are necessary, more data is necessary from various sources to complete the relevant search. He added that some flights may be relevant for date, time, and destination, but may no longer be relevant if ancillaries are required to be displayed on the first page.

Mr. Reilly stated that the EDIFACT system does not convey passenger-specific information, and the airline would not know any customer-specific information until later in the search after the flights had been selected. He stated that passenger-specific information would require iterative communication if it were included in the first page of search results with the relevant customer details and is impossible with EDIFACT. He added that, under NDC, the airline can actively provide this information, but under either EDIFACT or NDC querying such information for first search results would impact the reliability and speed of the e-commerce platform performance.

Mr. Reilly stated that there are many factors not in public databases that might be held privately, which in the case of American Airlines include frequent flyer status, credit card, and military status, which has to be validated by airline staff. He stated that ancillaries complicate the search process and impact query speed.

Mr. Reilly pointed to the images on page seven of his slide, noting that it reflected what could happen to the search process when adding ancillary fees to the search. He noted with ancillary fees added, seeking the relevant passenger information required going backwards to the engine conducting the search in order to iterate, revalidate, and, in some cases, throw out the original search for flights that was tentatively available for the consumer based upon their original query. Mr. Reilly stated that the search engine returns this information, which then has to be validated by the airline involved if it has to do with proprietary information, for example, before finally getting to the consumer on the first page. He stated that this can trim down the available selections to be presented initially to the consumer.

Mr. Reilly stated that the EDIFACT system is not able to handle these tasks, though the new NDC model is able to do this type of back-and-forth communication. He added that the inclusion of the ancillaries on the first page would slow providing flight results to the consumer. He stated that allowing ancillaries to be disclosed later in the process would drastically decrease the amount of information that would be pulled, assessed, processed, transmitted, iterated, validated, and displayed to the consumers. He stated that personalization and status elements are currently handled after the first page through the process, from flight selection to the purchase path. He stated that the advance of the ancillaries to be included in the first page of flight display would multiply the computation time.

In summary, Mr. Reilly stated that displaying ancillary fees at the beginning of searches compromised the number of flight solutions that might be acceptable to consumers. He stated that the effects of this on mobile devices must be considered when it comes to consumer frustration and confusion.

3.13 Presentation

Corey Vezina, Priceline for Booking Holdings

Mr. Vezina stated that Priceline did not believe that there was sufficient technological capability to provide accurate, real-time ancillary fee information at the time of first search results and added that searching for accurate seat availability on every leg of every flight to provide cost data at the time of first search was not within the scope of current airline shopping technology.

Mr. Vezina added that the proposed requirement would multiply by 1250 the number of searches done on the sample 500 itinerary results referenced in his earlier presentation and would take the one million daily customer search requests a site might receive from 24 million searches across supply sources to 30 billion searches for agents to query each source again for seat availability and cost on each flight. He noted that such volumes were not supportable by current industry infrastructure. He stated that when a customer selects an itinerary, agents have the ability to conduct additional searches for optional services for that itinerary only as part of the booking process. He further added that to the extent that that data was available and distributed, sites show ancillary seat information today in current paths for their customers. He stated that

Priceline believes that showing ancillary fee information after itinerary selection is currently feasible and the preferred method for adding optional services that customers might desire.

Mr. Vezina stated that earlier comments had suggested that agents collect static ancillary fee information before the customer search, but he stated that no agent knew the actual price of an available seat reservation until it was separately and individually queried, adding that an agent could not know which seats were open until they searched each specific leg for the exact number of passengers traveling on that trip. He added that researching and storing the lowest seat fee in advance was a useless exercise because availability was constantly changing in real time. He stated that, for those reasons, ancillary seat fee costs were not feasible to display at the first search, and flexibility was required for agents to display the information accurately at the point when the customer was choosing to add the optional service in question.

Public Participants' Questions and Comments

Ms. Workie opened the hearing for comments from the attendees on any of the three topics.

Mr. Mullen stated that, while Mr. Healy had presented three primary areas of technical infeasibility, Airlines for America would provide a full list in supplemental comments.

Ms. Workie noted that the comment period was open through April 6, 2023.

Mr. Lavin stated that he wished to respond to comments from the GDSs, particularly from the Amadeus GDS. He stated that the GDSs quoted him as stating that the rule could only be implemented by working through the GDSs. He clarified that what he meant was that the rule would require them to work with GDSs to cobble together something using antiquated technology that simply would not work. He stated that the technology does not currently exist to allow for the dynamic ancillary fees to be displayed through the GDS channel using EDIFACT. He added that while the GDSs might state that the technology exists, there is no evidence to support that statement, and IATA supported the development of NDC because the GDSs were incapable of displaying the information that the airlines have on their own websites. He stated that the regulation would have them move backwards into displaying static information that would not necessarily be accurate and might do a disservice to the airline consumer.

Mr. Leocha stated he was disappointed that there were not any comments about the rise of artificial intelligence and what is coming in the future. He stated that there had been a lot of discussion with regards to antiquated technology, and he was concerned that they should be looking more at the future. He added that he wished that the airlines were more forthcoming about how they could see AI beginning to have more of an effect on IT systems.

Concluding Remarks

As no one else requested the opportunity to make oral comments, Ms. Workie made closing remarks. Ms. Workie thanked the speakers and attendees. She stated that DOT would try its best to review the comments as quickly as possible once the comment period concluded. She stated that DOT would send a link to the recording of the hearing to everyone who had registered, post the recording on its website, and make all of the documents presented available in the rulemaking docket. She adjourned the hearing.