



*Record of Meeting*

*August 2012*

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# **Second Meeting of the Advisory Committee on Aviation Consumer Protection**

*Prepared by CENTRA Technology, Inc.  
Arlington, Virginia 22203*

*Program Manager: Kristen Best, 703-894-6953*

*CENTRA Technology, Inc.*

**RECORD OF MEETING**  
**Second Meeting of the Advisory Committee on Aviation Consumer Protection**

**Meeting Date:** August 7, 2012

**Meeting Time:** 9:00 a.m. to 5:00 p.m., Eastern Time

**Meeting Location:** U.S. Department of Transportation, Conference Rooms 8, 9, and 10.  
 1200 New Jersey Avenue SE, Washington, DC

**Public Notice:** The Office of the Secretary (OST), Department of Transportation (DOT) informed the public of the Advisory Committee meeting in a Federal Register notice published 23 July 2012 (77 FR 43135).

**Attendees:**

<b>Last Name</b>	<b>First Name</b>	<b>Affiliation</b>
Ale Flint	Deborah	Committee Member
Berg	David	Committee Member
Best	Kristen	CENTRA Technology, Inc.
Bibbo	Donna	NovoNordisk
Bishins	Bruce	Association of Retail Travel Agents (ARTA)
Blackston	Elizabeth	Office of Illinois Attorney General
Blaney	Jim	British Airways
Brewer	Monte	Formerly Air Canada
Carroll	Julie	National Council on Disability
Corbett	Jack	AirlinePassengers.org
Corbett	Molly	N/A
Davidson	Jim	Farelogix
DeMay	Tom	Travelport
Doernhoefer	Gary	International Air Transport Association (IATA)
Downey	Shane	Global Business Travel Association (GBTA)
FitzPatrick	Beth	Eckert Seamans Cherin & Mellott, LLC
Garner	Cory	American Airlines
Gosain	Carol	N/A
Grunewald	Lyndsey	N/A
Gustafson	John	US Airways
Harvey	Heather	Spirit Airlines, Inc.
Heimlich	John	Airlines for America
Higginbotham	Patty	Global Business Travel Association
Hunter	Christopher	Advocacy Solutions LLC
Jansen	Bart	USA TODAY

Kass	Howard	US Airways
Kenney	Peter	Delta
Kopf	Curtis	Alaska Airlines
Kroeger	Chris	Sabre/ITSA
Lenza	Al	Lenza Group
Leocha	Charles	Committee Member
Maddux	Jason	Garofalo Goerlich Hainbach PC
Madigan	Lisa	Committee Member
Mandarino	Elizabeth	World Travel, Inc.
Markert	Alissa	United Airlines
McElroy	Deborah	ACI-NA - Airports Council International
Mitchell	Kevin	Business Travel Coalition
Montalto	Darla	Major League Baseball
Myers	Monty	Eureka Software Solutions, Inc.
Parikh	Ruchi	Department of Justice
Payne	Jessica	CENTRA Technology, Inc.
Pinkerton	Sharon	Airlines for America
Podberesky	Samuel	Department of Transportation (DOT)
Reck	Robin	Interactive Travel Services Association (ITSA)
Rivken	Robert	Department of Transportation (DOT)
Rubin	Burt	AirlinePassengers.org
Ruden	Paul	American Society of Travel Agents (ASTA)
Schwarte	Dave	Sabre/ITSA
Semanchik	David	Air Line Pilots Association, International
Shiotani	Kenneth	National Disability Rights Network (NDRN)
Slocum	Ben	US Airways
Stein	Doug	N/A
Stokes	Amanda	CENTRA Technology, Inc.
Tello	Jim	Law Offices of James W. Tello
Terry	Shelly	Sabre
Thumpston	Jim	Zuckert, Scoutt & Rasenberger
Vande Beek	Dirk	Travelport

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## MEETING PROCEEDINGS

### ***Welcome and Housekeeping Matters***

*Samuel Podberesky, Department of Transportation (DOT), Assistant General Counsel for Aviation Enforcement and Proceedings*

Mr. Sam Podberesky, DOT, opened the meeting at 9:00 a.m. He welcomed the attendees to the second meeting of the Advisory Committee on Aviation Consumer Protection (ACACP) and thanked them for their attendance. Mr. Podberesky reviewed the agenda and noted that the Committee had time for questions throughout the day, but the agenda was especially full. He covered housekeeping matters with details on location of restrooms, procedures for evacuation, and escort requirements throughout the DOT building.

Mr. Podberesky then turned the meeting over to The Honorable Lisa Madigan, Chairperson of the Committee.

### ***Introductory Remarks***

*Lisa Madigan, Attorney General (AG), State of Illinois, Chairperson of the Committee*

Committee Chair AG Lisa Madigan welcomed the Committee and attendees. She reiterated Mr. Podberesky's comment on the fullness of the agenda. AG Madigan made note of recent media coverage on the hassles of flying from the consumer perspective. She pointed out the relevancy and importance of the task which U.S. Congress has charged the Committee.

AG Madigan then introduced the other three members of the Committee, Charles Leocha, Deborah Ale Flint, and David Berg.

With no remarks by these three members, AG Madigan welcomed to the podium Ms. Kathleen Blank-Riether to continue her presentation which she had begun at the first meeting of the Committee on June 28<sup>th</sup>, 2012.

### ***Continuation of Presentation regarding Disability Rights Enforcement and Initiatives by Office of Aviation Enforcement and Proceedings***

*Kathleen Blank-Riether, Senior Attorney, DOT Office of Aviation Enforcement and Proceedings*

Ms. Kathleen Blank-Riether began her presentation on civil rights statutes and regulations. She reviewed the fact that the Air Carrier Access Act (ACAA) focuses on the responsibility air carriers have to passengers with disabilities. When enacted in 1986, the ACAA required non-discrimination only from U.S. carriers against a qualified individual. Congress amended the act in 2000 specifically to include foreign air carriers as well.

Ms. Blank-Riether reviewed the definition of an individual with a disability as someone who has a permanent or temporary physical or mental impairment that substantially limits one or more life activities, someone who has a record of such impairment, or someone who is regarded as

having such an impairment. She specifically pointed out that the definition includes both temporary and permanent impairments. Ms. Blank-Riether commented that it was important to note that the regulation is quite detailed with a broad spectrum of inclusions; for this presentation, she would simply address the key provisions. Specifically, Ms. Blank-Riether broke out 14 Code of Federal Regulation (CFR) Part 382 and the subsets therein.

Subpart C focuses on information. It specifies that airlines must provide information for passengers on the accessibility of the aircraft and services available on a particular flight. This includes, for example, the location of seats with movable armrests, or the availability of level-entry boarding. Telephone reservation and information services available to the public must be accessible to those with hearing impairments (text telephone). All of this information must be available at the airport to anyone who asks and must also be disclosed on the airlines' websites. Any discounts or specials offered on an airline's website must also be offered over the phone to passengers whose disabilities prevent use of the website.

Subparts D and E focus on accessibility. Airlines must ensure the accessibility of the aircraft and airport facilities under the airlines' control. Contracts and leases with airports must allocate these responsibilities. This is more limited in foreign airports though it was noted that U.S. carriers who operate at foreign airports are still subject to these same regulations. Sections on cabin accessibility include provisions for accessible lavatories, priority stowage space for one folding wheelchair, and high-contrast captioning on all audio-visual displays played for safety and informational purposes both on the aircraft and in the terminal.

For persons with hearing impairments, air carriers must provide access to the same information they provide to other passengers throughout the travel process. There is a joint responsibility for carriers and airports in ticketing areas, customer service desks, and at kiosks. Staff must provide assistance to passengers with disabilities who cannot readily use airport kiosks or allow them access to the front of the check-in line.

Subparts G, H, and I focus on assistance. Airlines must provide assistance to passengers with disabilities, upon request, within the airport terminal, during enplaning, deplaning, connecting, and on the aircraft itself. This includes access to service animal relief area(s). Airlines must have written and signed agreements with airport operators. The airlines and airports are jointly and severally liable for implementing said agreements. Airlines may rely on assistance services provided at foreign airports. However, if that service does not meet Part 382 requirements, then the airline must supplement those.

Committee member Leocha interjected a question at this point regarding the DOT's capacity, outside of disability policies, to regulate airport operations that affect passengers. Ms. Blank-Riether answered that the Federal Aviation Administration (FAA) has some capacity in this area. Mr. Podberesky also answered that, according to Section 504, any airport that receives funds from the DOT must meet all requirements outlined by the Americans with Disabilities Act. For example, Part 382 of the ACAA requires lifts to assist the disabled, so DOT funds only those airports with lifts. These are two sets of regulations that impose the same responsibility.

Committee member Leocha then restated his question on whether DOT regulates other specific areas regarding how an airport should operate. Mr. Podberesky further clarified that the FAA enforces safety standards at airports and revisited his comment on grants. DOT can stipulate how airlines should spend the money they receive from the Federal Government. Or, if an airport does not comply with regulations—for example, not allowing signage that the FAA requires—grant assurance provisions can result in taking the grant away.

Ms. Blank-Riether then continued with her presentation, revisiting Subpart I. Assistive devices must not be counted toward the limit of carry-on baggage and carriers must permit passengers to stow assistive devices in the aircraft cabin. Passengers who take advantage of preboarding may stow their manual wheelchair with priority over other items in the cabin.

Airlines must give priority to wheelchairs for stowage in cargo areas in order to make them among the first items retrievable upon landing. Return of checked assistive devices must be prompt and the liability for damage to these devices does not fall under domestic baggage liability limits. The original purchase price of the device is the basis for liability calculation.

Committee member Leocha asked for more information on a rulemaking currently ongoing, or perhaps proposed, to track damage to wheelchairs and assistive devices. Ms. Blank-Riether affirmed that this is part of a Notice of Proposed Rulemaking (NPRM) and DOT is currently evaluating whether wheelchair damage/delay should be tracked. The NPRM also proposes tracking the number of assistive devices transported in the cargo hold overall.

Ms. Blank-Riether continued her discussion of Subpart I by stating that airlines must permit use of portable oxygen and electronic respiratory devices that are FAA-approved on flights. Carriers must provide certain information to passengers inquiring about medical oxygen when making reservations.

Moving to Subpart H which focuses on assistance on the aircraft, Ms. Blank-Riether specified airlines must assist those with a disability in reaching aircraft seats, stowing and retrieving carry-on items, use of on-board wheelchairs to move to and from the lavatory, and preparations to eat. Committee member Leocha noted to Ms. Blank-Riether that, in his experience, flight attendants seem to refuse to help in stowing and retrieving carry-on items overhead. He asked whether this relates to this rule. She responded that whether a passenger is elderly or disabled, anyone with a physical limitation can request help onboard and that flight attendants are obligated to help. If a passenger does not have a limitation, and, for example, does not feel like stowing his bag, this rule would not apply.

Ms. Blank-Riether transitioned to discussing service animals next. Airlines must permit a service animal to accompany a passenger with a disability. This includes service animals trained to assist persons with disabilities or animals for emotional or psychiatric support. Airlines may require advanced notice for passengers traveling with emotional or psychiatric supports service animals including requiring medical documentation. Airlines are not required to accommodate certain unusual service animals such as snakes. Airlines can require that large animals be transported in the cargo hold.

Subpart J of Part 382 details training requirements. Airlines must provide appropriate training to all personnel that deal with the traveling public and ensure the same for their contractors. Employees must be proficient concerning the rules appropriate to their duties, maintain the safety and dignity of passengers with disabilities, and be aware of appropriate responses to different types of disabilities. Some examples of service to passengers with disabilities may include, reading information out loud to individuals with vision impairment and writing notes to communicate with passengers with hearing impairments. Sign language knowledge is not a requirement of this training. An employee refresher every three years is required to maintain proficiency in required areas.

Subpart K, the last section reviewed by Ms. Blank-Riether, pertains to complaint resolution and reporting. Airlines must adhere to required procedures for complaint resolution and reporting. Each airline must train and make available a Complaints Resolution Officer (CRO) to assist passengers with disabilities at each airport the airline serves, by telephone or in-person. A CRO must be available when passengers raise concerns about unresolved disability-related matters and that CRO must have the authority to resolve the issue. Airlines must send a dispositive written response to any written disability complaint within 30 days of receipt. This response must either admit or deny violating Part 382 and advise the passenger of his/her recourse to contact DOT. U.S. and foreign carriers must record all written disability-related complaints received and categorize the complaints by type. Carriers must also submit an annual report to DOT summarizing completion.

In closing, Ms. Blank-Riether reviewed pending and new disability rulemakings. In the Fall of 2012 a final rule on website and kiosk accessibility is expected. DOT is working on a Supplemental Notice of Proposed Rulemaking (SNPRM) on the provision of medical oxygen, accessible in-flight entertainment, and service animals. Also, DOT is currently drafting an NPRM on requirements for airports to work with airlines to provide captioning on displays, service animal relief areas, and lifts. Another NPRM exists on allowing seat-strapping methods in transporting wheelchairs in aircraft passenger cabins. Lastly, there is a recently revised Technical Assistance Manual and Model Training Program that was published in the Federal Register for public comment.

At the conclusion of this presentation, Committee Chair AG Madigan opened the floor to questions from the Committee.

Committee Chair AG Madigan asked to revisit the matter of CRO's: how they handle complaints, and what oversight their annual complaints reports solicit from the DOT. Ms. Blank-Riether replied that airlines investigate and make a determination on each complaint. DOT has authority to make a determination as well, but there is no private right of action. DOT can monitor carriers for patterns of violations. After a pattern has been identified, DOT can initiate enforcement action.

Committee Chair AG Madigan followed up by asking what part DOT takes in compliance investigations. Mr. Podberesky replied that the ACAA amendment from 2000 that included



foreign air carriers in the regulations also required DOT to investigate every complaint. There are approximately 450 to 700 complaints per year received by the consumer protection division. DOT sends the complainant a notification of receipt, conducts an investigation, makes a determination, and asks the carrier to respond. DOT issues a warning to airlines that have violated a regulation. If the violation was egregious, or a pattern or practice of violations is found, DOT initiates further action. Mr. Podberesky continued by explaining that the airlines have to keep categorized records of complaints, which he estimated to be about 15,000 annually. They are categorized by the type of violation—for example, wheelchair or boarding assistance.

Furthermore, DOT takes a proactive role by going out to the major carriers, conducting on-site investigations, and reviewing the complaints while ensuring required procedures are in place. If an investigator stops at a ticket counter, he or she checks for the documentation and signage that is required for compliance. Investigators question gate personnel on their knowledge of procedures. DOT estimates that disability-related complaint resolutions take up about forty percent of the staff time per year.

Ms. Blane Workie, DOT, also responded to Committee Chair AG Madigan's question on complaint resolution. Ms. Workie clarified that the FAA inspects airports to check for Section 504 compliance. The DOT has an informal working relationship with the FAA. The FAA checks for compliance with the regulations in Part 382 while conducting inspections. For example, FAA inspectors check to see if there are the appropriate service animal relief areas and then supplies that information to DOT. This step is not necessarily within FAA's jurisdiction, but the two organizations work together.

Ms. Workie also mentioned that while some complaints do not involve violations, they still may prompt further action. One of the reasons the SNPRM on the provision of medical oxygen exists is because of previously filed complaints. DOT recognized a pattern in complaints and a need for further rulemaking on this issue.

Committee member Berg questioned whether the FAA has the authority to enforce the rules being discussed. Ms. Workie clarified that they do not. The FAA sends the information to DOT and FAA's responsibility ends there. It is then the responsibility of DOT to follow up.

Committee member Berg mentioned that FAA inspectors are raising issues about the ability of airlines to take off under a minimum equipment list. Ms. Workie clarified that these are two separate issues and this does not correlate to DOT's checklist on aircraft accessibility. The DOT is working with the FAA on this and whether the disability equipment should be deemed "essential" for operation. Mr. Podberesky also added that the enforcement of Part 382 is by the DOT, not Department of Justice (DOJ), and under DOT's statute is subject to civil penalties.

Committee Chair AG Madigan asked for the top complaint categories. Ms. Blank-Riether responded that wheelchair assistance, and the failure to provide timely assistance, or any at all, is the top complaint received and comprises about fifty percent of all complaints received. The complaints range from individuals who ordered wheelchairs that never came, to those who requested one at the last minute and could not get one. Ms. Blank-Riether guessed that peanut

allergies were the next largest complaint area, but was not sure. Ms. Workie disagreed and DOT offered to check the exact statistics and report back to the group after lunch.

As promised, Mr. Podberesky reported later in the meeting that in 2011, there were 21,372 written complaints received by U.S. and foreign carriers. Over fifty percent of those, or about 11,000, alleged failure to assist travelers in wheelchairs. The second-most common complaint regarded seating accommodations; the third-most common related to damaged assistive devices, most of which were wheelchairs; and the fourth-most common related to the delay in returning assistive devices.

Questions then continued for Ms. Blank-Riether following her presentation. Committee member Leocha questioned whether Subpart K allowed emails as “written” complaints. Mr. Podberesky confirmed that all emails are considered written as well. He clarified that Subpart K does not count verbal complaints in person at the airport. Rather, it requires the passenger to follow up with a written complaint if he or she wishes for DOT to investigate the complaint. Related to this point, Mr. Leocha mentioned the DOT hotline available to consumers, who are able to call from the airport to DOT employees who are available from 9:00 a.m. until 5:00 p.m. on weekdays to help resolve real-time issues. Carriers are also required to have a Complaint Resolution Official (CRO) available at each airport where they operate to resolve disability issues. Most airlines have multiple CRO’s available, both at the airport and at their operations centers.

Committee Chair AG Madigan revisited the issue of peanuts. She acknowledged this is a growing issue in the United States not just for the airline industry, but also in schools. Ms. Blank-Riether answered that DOT is not permitted to regulate in this area per Congress. DOT has communicated to air carriers that if they do not follow any of their own officially stated policies on peanuts or peanut allergies, then DOT will find them in violation by providing misinformation. This does not address the peanut issue itself, but is an attempt to provide guidance within the parameters placed by Congress. Mr. Podberesky added that DOT more than a decade ago sent a letter to the larger carriers suggesting they create a buffer zone in the few rows around any passenger who complained of a peanut allergy. He also commented on the fact that Congress then specifically prohibited DOT from regulating this specific issue.

At this time the Committee did not have further questions for Ms. Blank-Riether. Committee chair AG Madigan welcomed to the podium Ms. Julie Carroll from the National Council on Disability.

***Perspectives on Disability Issues in Air Travel by Representatives of the Disability Community***  
*Julie Carroll, National Council on Disability (NCD)*

Ms. Julie Carroll thanked the Committee for soliciting the viewpoint of people with disabilities. She introduced NCD as an independent federal agency purposed to promote policies, programs, and procedures that guarantee equal opportunity for all individuals with disabilities since 1978. Individuals with disabilities encounter unique problems during air travel, many of which could be remedied with customer service training of airline personnel and their subcontractors.

Heightened security concerns since 9/11 have worsened the hassles for individuals with disabilities traveling by air and complaints are increasing.

The NCD provides an annual report to Congress. The organization's October 2011 report recommended that Congress revisit the ACAA, its regulations and enforcement, to determine why airlines are not following these rules. NCD recommended that Congress hold a hearing to examine the experiences of travelers with disabilities in order to develop corrective actions.

This hearing rendered examples of key issues people with disabilities encounter when they fly. Some of the issues include the following:

- Lack of curbside check in, more common since 9/11, makes it difficult and/or impossible for people with disabilities to locate personnel to assist in getting from the airport entrance to the ticket counter.
- Kiosks are not accessible for people with certain disabilities.
- Air carrier websites are not accessible for people with disabilities and when those individuals contact the carrier by phone, the incentives and discounts available online are not always offered.
- Airline personnel often communicate with the disabled traveler's companion and/or escort instead of communicating with the traveler directly. In some instances important documents, such as a passport or boarding pass, are turned over to someone other than the disabled traveler, and in some cases, this person is not affiliated with the traveler.
- Subcontractors who provide escort services are not properly trained in how to interact with disabled persons. There are some escorts, for example, who will insist that a visually impaired person sit in a wheelchair in order to proceed. Escorts often are not aware of where service animal relief areas are located.
- Announcements for pre-boarding on PA systems in gate areas do not effectively communicate the gate location for individuals with vision impairments, who cannot identify the direction of the voice and thus miss the mandated opportunity for pre-boarding.
- Seating remains an issue. Airline personnel often insist on picking the seat for people with disabilities. Passengers traveling with service animals are commonly seated in the bulkhead even though this area provides less room for the service animal.
- Many airports do not have service animal relief areas.
- Announcements in the gate area are typically not accessible for those who are deaf or hard-of-hearing. Information about gate changes, reasons for flight delay, and calls for volunteers to be bumped when a flight is oversold are only provided audibly.

- Similarly, verbal in-flight announcements are not conveyed to those who are deaf or hard-of-hearing.
- In-flight entertainment is typically not captioned.
- Airlines often damage wheelchairs.
- During layovers, airline personnel often refuse to bring customized wheelchairs to passengers with mobility disabilities. Passengers needing a customized wheelchair are given airport wheelchairs, which the passenger may not be able to operate independently.
- Airlines often require passengers with customized wheelchair or seat cushions to count these items as carry-ons, even though the cushion takes neither floor nor overhead space.
- Airlines do not know how to treat Personal Care Attendants (PCA) assisting passengers with disabilities.
- Though the ACAA requires that air carriers have available, upon request, at all times, a CRO to handle complaints of air travelers with disabilities in real time, passengers report that when they have requested the assistance of a CRO, air carrier personnel are not familiar with the term.

Ms. Carroll concluded her testimony by quoting an excerpt from NCD's 1999 report to Congress, which, she added, is regrettably still as apt today as it was when written:

“When they fly, people with disabilities still face uncertainty about whether air carriers will provide accommodations such as effective communication of flight information, accessible seats, appropriate boarding assistance, and careful handling and stowage of their wheelchairs and other assistive devices.”

Committee Chair AG Madigan then opened the floor to questions from the Committee.

Committee member Leocha asked Ms. Carroll what the DOT response has been to NCD's reports regarding, for example, the availability of CRO's. He followed with an additional question on whether she felt the publicizing of the 800 number is helping people with disabilities. Ms. Carroll responded that airport personnel need to be trained on CRO's (who they are, what they do, etc.). She noted the comment earlier in the morning about the fact that the real-time assistance is available daily 9:00 a.m. to 5:00 p.m. That window neglects a large amount of travel time.

Mr. Leocha asked for Ms. Carroll's recommendation on how the gate announcement issue could be remedied for those with vision impairments. Ms. Carroll suggested that the airlines should come and escort such persons to the gate for pre-boarding. She also demonstrated how gate personnel could simply re-state pre-boarding announcement away from the PA so that an

individual could follow the direction of the voice. Announcements from overhead do not allow the individual to tell where the person is physically standing.

Committee Chair AG Madigan asked for further explanation on the issues regarding PCA's. Ms. Carroll commented that this issue is most common during flight connections, during which PCA's are less commonly available.

Committee member Leocha clarified that while wheelchairs and walkers are not counted as carry-on baggage, seat cushions sometimes are counted. Ms. Carroll affirmed this fact.

Committee Chair AG Madigan asked if the NCD complaints reported to Congress are being addressed. Ms. Carroll affirmed, but added that the ACAA rules and amendments exist now but are inconsistently enforced.

Committee member Berg questioned whether there were specific statistics for all of these complaints. Ms. Carroll replied that there are not.

Committee Chair AG Madigan returned to the issue of service animal relief areas. She asked whether a person has to exit and re-enter through security in order to provide relief for a service animal. Ms. Carroll affirmed that this is often the case and that since 9/11, security procedures have exacerbated delays in returning from these. During connections, these delays often mean the individual will not have enough time to reach and return from a service animal relief area. The Transportation Security Administration (TSA) does allow individuals traveling with a disability to be expedited to the front of the security line, however if that individual is travelling with others, or with a PCA they are sometimes denied this expedition of the process. Ms. Workie added that DOT is working with TSA on this issue. DOT does ask questions on where service animal relief areas are located and how people are escorted to and from those areas. There should be a DOT final ruling coming out at the end of 2012 or early 2013 on this issue.

At this time the Committee did not have further questions for Ms. Carroll. Committee Chair AG Madigan welcomed to the podium Mr. Kenneth Shiotani from the National Disability Rights Network.

*Kenneth Shiotani, National Disability Rights Network (NDRN)*

Mr. Kenneth Shiotani thanked the Committee for the opportunity to speak. He identified himself as the Senior Staff Attorney with the NDRN, a membership organization of the protection and advocacy programs in each of the 50 states and U.S. territories. NDRN provides advice and referral, self-help advocacy information and training, as well as legal representation to individuals with disabilities throughout the country.

Mr. Shiotani addressed the large market and proportion of Americans who have disabilities. The most recent U.S. Census reported 57 million Americans have a disability, which is approximately 18.7 percent of the U.S. population. The same Census report revealed that people

with disabilities have \$200 billion in discretionary spending each year. Airlines should be encouraging, not discouraging, the travel and spending by these individuals.

People with disabilities want the same access and opportunities to choose their air travel options as those without disabilities. A particular barrier for individuals with vision impairments is website accessibility. Individuals with visual disabilities do not have the same opportunities to compare airlines, airports, flight schedules, and fares unless airline and travel websites are accessible to people who use technology (screen readers) in order to be able to use those websites. Mr. Shiotani was aware of proposed regulations from September 2011 by DOT to require this but acknowledged that the airlines can accomplish the accessibility of websites without a regulation. He was not sure if third party websites, Orbitz.com for example, would be governed by the same regulations as airline websites.

Mr. Shiotani expressed hope that these pending regulations result in rapid implementation by the airlines—including airline mobile sites—so that individuals with visual disabilities will have the same opportunities to be able to compare flight information and fares, receive delay notices, and instantly change or upgrade their flight options from their phones. Today most individuals possess and use smart phones on a regular basis, including the disabled community.

The pending DOT rulemaking also includes the subject of self-service kiosks. Airports are currently moving towards this self-service platform and the technology exists, for example in ATM's, to provide inputs for headsets that provide voice prompts for individuals with vision impairments. Voice control is another available solution. Additionally, airlines should design their kiosks for use by individuals with disabilities. For example, the height of the kiosk would be of particular concern for individuals in wheelchairs.

Next Mr. Shiotani revisited a point made in the first ACACP meeting and pointed out that his organization agrees with other consumer advocates that the consumers' ability to enforce their rights needs to be expanded. He cited cases against United Airlines and Jet Blue, both of which were dismissed on the grounds of pre-emption, which limits the consumer. The NDRN does not think this is the way to proceed; federal law sets the floor of rights, but if states choose to give additional rights, consumers should be able to enforce their rights under state law as well.

Mr. Shiotani closed by stressing that airlines need to focus on customer service. People with disabilities do need, at times, minor adjustments in policies and procedures in order to travel safely and comfortably. He shared, as an example, the experience of a colleague who uses a wheelchair. This individual booked a flight, choosing a specific route which allowed her a layover that did not require deplaning. The colleague chose to thus gate check her customized wheelchair through to her final destination. At the layover location, a change required the passengers to transfer to a separate aircraft unexpectedly and further delays followed. The colleague was left in a gate-issued wheelchair that she could not operate independently even after requesting her wheelchair be returned to her during the delay. For six hours this individual had to endure discomfort and immobility because the airline personnel at the gate failed to accommodate her request. Mr. Shiotani concluded that good customer service was the only thing

missing in this scenario and that stronger enforcement by both DOT and private individuals is needed when customer service fails.

Committee Chair AG Madigan opened the floor to questions from the Committee. There being none the group was dismissed for a fifteen minute break.

### ***Tarmac Delay Rule and its Enforcement***

*Livaughn Chapman, Senior Attorney, Office of Aviation Enforcement and Proceedings*

Returning from the break, Committee Chair AG Madigan called the meeting to order. She welcomed to the podium Livaughn Chapman from DOT.

Mr. Chapman began his presentation by outlining his points for the Committee. He then proceeded to provide a history on the Tarmac Delay Rule. Lengthy tarmac delays hit the national spotlight in 1999 when flights were delayed in Detroit for 8.5 hours during a severe blizzard. After that event, Congress held hearings on whether to enact a *Passenger Bill of Rights*. Following these hearings, airlines agreed to adopt customer service plans to meet essential needs during long onboard delays, to prepare contingency plans to address such circumstances, and to establish a task force of representatives to develop and coordinate contingency plans to deal with lengthy delays. Although this task force formed, efforts never materialized as priorities shifted after 9/11.

The winters of 2006 and 2007 brought delays back to the forefront when severe thunderstorms in the Dallas Fort Worth area and snow and ice in Chicago shut down airport operations in those cities and delayed and stranded some passengers for over nine hours on the tarmac. Also, in early 2007 a Jet Blue flight kept passengers on the tarmac of JFK airport in New York for 10.5 hours. It should be noted that Delta and Comair experienced similar problems. That day there were 52 aircraft grounded due to inclement weather and only 22 gates available to service those aircraft. DOT received numerous consumer complaints as a result of these incidents.

U.S. Transportation Secretary, Mary Peters, requested a report from the DOT Inspector General (IG) investigating delays and providing recommendations. The IG issued an Audit Report in September 2007 that recommended that DOT establish a task force to deal with lengthy tarmac delays. DOT established this task force in January 2008. In November 2008, the task force completed its investigation and recommended the development of contingency plans by airports and airlines for lengthy onboard ground delays to Secretary Peters.

DOT went beyond the recommendation in rulemakings on airline passenger protections which dealt with tarmac delay issues. Consumer Rule I became effective April, 29, 2010, following the Advance Notice of Proposed Rulemaking (ANPRM) in November 2007, the NPRM in December 2008, and the final rule issuance in December 2009. In the preamble of Consumer Rule I, DOT listed a number of areas it was considering addressing in a future rulemaking, which became Consumer Rule II. Consumer Rule II was effective for tarmac delays on August 23, 2011, after the NPRM in June 2010 and the final rule issuance in April 2011. Following both Rules, the Enforcement Office published a Frequently Asked Questions (FAQ) document.

Consumer Rule I applied to U.S. carriers, and Consumer Rule II expanded the rule to include foreign carriers that operate to and from the United States. The Rules do not apply to airports directly, just air carriers. The required adoption of tarmac delay plans (14 CFR 259.4) applies to covered U.S. and foreign carriers at large, medium, small, and non-hub airports. The requirement to adopt and follow a plan applies only to tarmac delay events that occur at a covered U.S. airport, not at foreign airports.

The contingency plans drafted by the air carriers must include, at a minimum, time limits of three hours or less for deplaning on domestic flights and four hours for international flights. The clock for this begins when the aircraft door closes or passengers are no longer allowed to deplane. The contingency plans also cover provisions for adequate food, potable water, operable lavatory facilities, and adequate medical attention while on the tarmac.

The contingency plans also cover notifications. Carriers must notify passengers regarding the status of the delay and of the opportunity to deplane. Mr. Chapman noted that this has been something that has been a problem lately. He stated that DOT does not require carriers to re-board a passenger who elects to deplane and, as such, encourages carriers to announce to passengers that deplaning is at their own risk and the flight could depart without them.

Air carriers must provide assurances to DOT that there are sufficient resources to implement their plans. They must also assure that they have coordinated the plan with airport authorities, U.S. Customs and Border Protection (CBP), and the TSA. Regarding code share responsibility, the carrier whose code covers the marketed service governs unless the marketing carrier specifies in its contract of carriage that the operating carrier's plan governs.

A carrier's failure to comply with the assurances required by this rule and contained in its *Contingency Plan for Lengthy Tarmac Delays* will be considered to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 that is subject to enforcement action by DOT. Covered carriers must retain, for at least two years, information about any on-ground delay that lasts at least three hours. The records must include information about the length and cause of delay, the steps taken to minimize hardships for passengers, whether the flight ultimately took off or returned to the gate, and an explanation for the tarmac delay.

Each U.S. air carrier and foreign carrier that has a website marketed to U.S. consumers and that is required to adopt a contingency plan for lengthy tarmac delays, shall post its current contingency plan on its website in an easily accessible form.

Prior to the Tarmac Delay Rule, DOT has taken action on carriers forcing customers to remain on aircraft for extended periods of time. Mr. Chapman recalled an incident in Rochester, Minnesota in 2009 where a Continental Express aircraft operated by ExpressJet Airlines was diverted from Minneapolis. The aircraft sat approximately 50 yards from the terminal facility and passengers were not permitted to deplane for over six hours because a ground agent erroneously believed the passengers could not enter the airport. DOT addressed this with \$175,000 in civil penalties.



Since DOT has issued the Rules, it has conducted inquiries in response to over 300 investigations of reported violations of various provisions. The sources of reports are varied. A vast majority of complaints came from the public, filed directly with DOT, though some notifications also come from the FAA and the news media.

DOT reviewed notable orders and warning letters regarding enforcement. There was a penalty against American Eagle in May 2011 with \$900,000 assessed in civil penalties when 608 passengers were delayed on the tarmac for more than three hours at O'Hare International Airport.. United and Pinnacle Airlines have also had reporting violations where the reported length of the delay was not the actual length of the delay. DOT has issued warning letters to five carriers involving multiple flights and multiple aspects of the Tarmac Delay Rule.

Mr. Chapman showed a chart of reported Bureau of Transportation Statistics (BTS) data by month from October 2008 to May 2012 that showed tarmac delay times of over three hours. A line on the chart denotes the first full month after DOT adopted the Tarmac Delay Rule. The chart shows a drastic decrease following that time with only 20 reports in the first 12 months following, as compared to 763 for the year prior. A second line after August 2011 denotes when DOT enacted Rule II, which included all tarmac delays for both domestic and international flights for the first time.

The FAA Modernization and Reauthorization Act of 2012 required U.S. carriers and operators of large hub, medium hub, small hub, or non-hub U.S. airports to submit tarmac delay contingency plans to DOT for review and approval. To date, DOT has received 390 airport plans and 61 carrier plans. These plans require DOT review and approval/changes within 60 days of receipt. DOT required that airports submit these plans within 90 days of the enactment on February 12, 2012. This is a sizeable effort from DOT that is close to completion.

Mr. Chapman mentioned in closing that critics have argued that these rules impact flight cancellations, since large fines prompt air carriers to be more conservative in deciding how inclement weather may impact flights. Supplemental review and analysis of the impact of the Tarmac Delay Rule are currently underway within DOT and results are expected at the end of summer 2012.

Committee Chair AG Madigan opened the floor to questions from the Committee.

Committee member Leocha clarified that while the original Tarmac Delay Rule only applied to air carriers, the FAA Reauthorization Act required airports and airlines to coordinate. He inquired whether DOT has to investigate and enforce against the violations as well. Mr. Chapman replied that Part 259 requires carriers to coordinate with airports and DOT can assess penalties for statutory violations. Mr. Podberesky affirmed that, for the first time, DOT has authority over airports for violations of their contingency plans. Committee member Leocha also asked about the fines for violations and whether they are ever split between airports and airlines. Mr. Podberesky commented that it depended on the case. Mr. Chapman added that the maximum penalty is \$27,500. He noted that is the maximum, however, and the fine could be less.

Mr. Leocha questioned whether contingency plans published as pdf.files—inaccessible to consumers using some smartphones at the airport—truly addressed accessibility of the contingency plans. Mr. Podberesky clarified that the main criteria during review of accessibility was evidence of an easy-to-find-and-interpret pull-down menu on the carrier’s website. Almost any document can be hard to view on a phone, so when reviewing they did not consider smartphones.

Committee Chair AG Madigan asked to revisit the slide displaying the BTS tarmac delay data from the presentation. She wanted to know, of the 300 on-going investigations, what was the time period? Mr. Chapman clarified that the 300 investigations were due to reports of violations of the tarmac delay rules. The complaints date back to May 2010 which is when DOT began to track complaints. Mr. Podberesky supplemented that many of the consumer complaints pertained to delays of two hours or less, time period that did not violate the rules.

AG Madigan asked to explore this further, asking whether DOT investigated complaints about delays less than three hours. Mr. Chapman confirmed that while every consumer complaint receives a response within 60 days from the air carrier, not all complaints are specifically for tarmac delay; that is only part of the rule. Some complaints may also relate to access to food and water, for example.

At this time the Committee did not have further questions for Mr. Chapman and Committee Chair AG Madigan welcomed to the podium Mr. John Heimlich from Airlines for America.

***Current Economic and Financial Conditions Facing Air Carriers***

*John Heimlich, Vice President, Chief Economist, Airlines for America (A4A)*

Mr. John Heimlich addressed the Committee and offered an overview of his presentation on the nascent recovery of the U.S. airline industry and its benefits to the nation. The industry is climbing out of a huge financial hole to modest profitability. Diversification of revenues and improved alignment of revenues generated with costs incurred have been critical elements of the nascent recovery. However, a heavy dose of new and proposed regulations in 2012 threaten the recovery. A financially healthy airline industry means job growth and service reinvestment. Presently, operational performance is strong and improving, reflected by a remarkably low complaint rate – especially compared to other industries with smaller volumes.

The value proposition for U.S. air travelers is alive and well. A chart with inflation-adjusted numbers from 1990 through 2011 displayed steadily improving fuel efficiency, relatively even on-time rates, declining fares, and a drastic decrease in fatal accidents over the years.

Regarding profits, the cumulative net loss for U.S. passenger airlines from 2001 to 2011 was \$62.3 billion followed by modest profits from 2010 to 2011. However, one or two years out of the red do not come close to erasing the deficit carried over from the past 10 years. To date, for 2012, the airline industry is showing a net loss of \$1.1 billion.

A focus on 2011 finances alone showed a bigger picture, displaying a slim margin of net profit of \$0.81 per enplaned passenger. This number is tallied after accounting for \$211.93 in operation costs, offset by revenues totaling \$212.73—the sum of \$8.06 ancillary, \$159.53 airfare, and \$45.14 cargo/other (Source: BTS).

An examination of investor return on capital (return on invested capital minus weighted average cost of capital) showed that, historically, the airlines have not generated a positive return on investment. Data show that among other members of the value chain, including manufacturers, lessors, airlines, Computer Reservation System (CRS)/Global Distribution System (GDS), and travel agents, airlines were the only segment in the red for the two full industry cycles displayed.

According to Standard and Poor's (S&P), only one U.S. passenger airline has investment-grade credit of BBB- or better. S&P rated Southwest airlines at BBB-, which designates them among issuers with relatively high levels of creditworthiness and credit quality. The airline industry's financial condition is improving, but is far from stellar. Among speculative grade credit ratings are a large number of U.S. airlines with ratings ranging from BB to D, based on the same S&P data. S&P describes speculative grade companies as issuers with an ability to repay but facing significant uncertainties, such as adverse business or financial circumstances that could affect credit risk.

A chart displaying a sample of new regulations on U.S. air carriers revealed an approximation of \$3.3 billion in annual costs, equated to almost 39,000 airline industry jobs. Existing regulations displayed included full-fare advertising, flight and duty time, other consumer mandates, and fuel-tank inserting. Proposed regulations required carriers to provide training, airport hydrant fueling systems, and lithium batteries. This data implies that in a scenario of regulatory costs versus jobs, over time the airlines will employ fewer people to support operations if there is no corresponding revenue to offset these costs.

Committee member Leocha questioned Mr. Heimlich on how advertising full-fares could cost the airlines 12,407 jobs or an equivalent of \$1.04 billion (referencing extrapolated data from the chart displaying samples of new regulations). Mr. Heimlich replied that this is an estimated deleterious effect from the rule, assessed by a consultant on behalf of A4A. Committee member Berg added that this is an ongoing cost to the airlines.

Mr. Heimlich continued to his next slide. Data demonstrates how improved airline finances have translated to 18 consecutive months of job growth. U.S. passenger airlines have been able to reinvest in equipment and increase airline jobs added during a time of high national unemployment.

Mr. Heimlich displayed data on the rising costs and constraints on revenue production translated to air service cuts. Domestically, the United States has a nine percent smaller airline industry than five years ago. One way to cope with a decrease in revenues and increase in financial

pressures over the years is to fly less. Specific data displayed 186.2 billion seat miles available<sup>1</sup> in the fourth quarter of 2007 versus 169 billion in the fourth quarter of 2012.

Another chart reviewed various goods and services over the past 11 years relative to inflation. According to the BLS data, air travel in the United States remains well below the percentage increase in cost to the consumer for products such as eggs, college tuition, gasoline, and baseball tickets, just to name a few. This is with or without the inclusion of ancillary fees included in the air travel. Meanwhile, the costs faced by U.S. passenger airlines are up by 95 percent.

Committee member Leocha inquired about an earlier chart showing fuel efficiency sky-rocketing. He asked how much fuel efficiency was taken in to account to mitigate costs to air carriers. Mr. Heimlich answered that the costs on the chart compared to inflation were just straight cost comparisons and fuel efficiency was not a factor there. Fuel efficiency is a factor with which airlines cope operationally. When the price of gasoline increases, for example, you can drive less or buy a more fuel efficient car. The option to fly less is not factored into the price of gasoline on this chart.

A slide comparing the Consumer Price Index (CPI) in key states (California, Illinois, and Massachusetts) from 2000 to 2011 compared to the price of domestic air travel showed that average fares in these states rose less than inflation. While the “average basket of goods” rose 30.6 percent over this period, the fares showed California up 16.8 percent, Illinois up 7.7 percent, and Massachusetts down 2.9 percent. These numbers are based on all-in fares and include ancillaries such as average bag and change fees.

Examining U.S. airline operations over the past five years, BTS and DOT data show a substantial improvement. So far in 2012, on-time arrivals are up 11 percent, involuntary denied boarding are down 19 percent, mishandled bags are down 57 percent, and flight cancellations are down 51 percent over the same data from 2007.

Following evidence of improved operations in the past five years, Mr. Heimlich showed data on customer complaints received across a broad spectrum of the transportation industry. U.S. passenger airlines were at the lowest end of the spectrum with 1.18 complaints received per 100,000 customers.

Mr. Heimlich concluded his presentation by summarizing that the U.S. airline industry is climbing out of a huge financial hole, to modest profitability. New, proposed, and/or looming regulations in 2012 threaten this financial recovery and jobs. A financially healthy airline industry means job growth and service reinvestment. Lastly, operational performance is strong and improving, which is reflected in a remarkably low complaint rate – especially compared to other industries with smaller volumes.

Committee Chair AG Madigan opened the floor to questions from the Committee. There being none, AG Madigan accepted a question from audience members on whether the numbers from

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<sup>1</sup> An available seat mile is one seat flown one mile.

the slide with customer complaint ratios and percentages comprised complaints filed with the government. Mr. Heimlich replied that the U.S. passenger airlines data was extrapolated from DOT data, but the others came from each group's respective websites.

At this time there were no further questions for Mr. Heimlich and Committee Chair AG Madigan welcomed to the podium Mr. Jim Davidson of Fairlogix.

### ***Demonstration of Airline On-line Air Travel Shopping Capabilities***

*Jim Davidson, Fairlogix*

Let it be noted that throughout this presentation there was ongoing clarification and discussion among the Committee on the exact parameters the Committee expected the presentation to cover. Conversations revealed that Committee member Leocha and Committee member Berg had different expectations and understandings based on conversations that occurred while preparing the meeting agenda. Committee Chair AG Madigan ruled that the presenters should proceed with their presentation and address any outstanding questions from the Committee in the afternoon as necessary.

Mr. Jim Davidson, CEO of Farelogix, took the podium. He outlined the shift of the airline industry to a consumer-centric shopping process, both on the parts of the airlines and travel agencies. The travel agency is an important channel for many airlines. The commoditized offer of available fare and schedules in the past is now moving to an array of more unique and differentiated products and services. The aim of airlines to shift toward these new and better travel experiences for the consumer is happening against an entrenched business model that serves the GDSs but leaves consumers to fend for themselves. The Internet has given new search power to consumers, providing them knowledge of the base fare. Airfare needs to be transparent so that consumers can make educated decisions and benefit in today's retail world, where options abound for extra leg room, seat upgrades, and other ancillaries. Mr. Davidson stressed that there is no basis for DOT to propose additional regulations regarding ancillary products and services and stated that the demonstration will show how allegations that airlines are hiding fees and avoiding comparison with competitors will melt away.

Mr. Davidson summarized the air shopping experience for the end consumer as two sides. On one side was the legacy model from a GDS-centric perspective. A flow chart demonstrates how an airline host system (OAG) inputs schedule data and ATPCO inputs fare data to a GDS system in order to generate an offer to the travel agencies upon a customer request. With this model, airlines often do not know who the customer is until much after the sale. On the other side was the new consumer-centric model offering real-time communication directly with the airline. The airline creates a customized offer for the consumer based on frequent flyer status, travel history, and available inventory.

Committee member Leocha asked where IATA and Google fit into this equation. Mr. Davidson replied that they fit into the consumer-centric side of the model. When also asked by Committee member Leocha whether this comparison was suggesting that the GDSs cannot do the same thing, Mr. Davidson concluded that they are two separate models and stated that he was not

suggesting that the GDS model does not work, but rather that they are two separate approaches. He acknowledged that competition is great on both sides of the equation.

Mr. Davidson then introduced Cory Garner from American Airlines to demonstrate a consumer-centric airline product shopping model.

*Cory Garner, American Airlines*

Mr. Cory Garner prefaced that two-thirds of American Airlines customers buy their tickets through travel agencies. It is his objective and job to make these individuals happy. He continued by describing the fully transparent offer of preferred seats via Priceline. Priceline is the second largest Online Travel Agency (OTA) in the United States and the first to sell airline preferred seats directly.

Mr. Garner began his demonstration, displaying the OTA webpage with a query for a one-way fare. Search results showed in a side-by-side comparison of price and airline. Mr. Garner's assistant (controlling the demonstration computer) selected an itinerary and clicked on the seat map. The next page displayed pricing for preferred seats (green seats) as well as no-cost seats (blue seats). Seats displaying an "x" were no longer available. The assistant selected a blue seat at no extra cost and continued the booking. The next screen required passenger vital data and frequent flyer number, if available. Mr. Garner applied his frequent flyer number, which in turn granted him platinum status. When his assistant clicked the seat map after entering these details, the site displayed new pricing—namely that certain seats were now free based on Mr. Garner's flyer status.

Committee member Leocha asked whether the seat map and pricing information is available to the consumer up front. He questioned why a consumer should have to enter personal details in order to see this information and whether entering frequent flyer data at this point was a TSA regulation, or a way for the consumer to be "sucked in." Mr. Garner responded that Priceline may display seating information this way because its website does not solicit frequent flyer numbers up front. One reason for this is that preferred seats may not be available; a website would not display prices for products that are not available. Mr. Leocha asserted again that the consumer cannot acquire necessary price information up front and Mr. Garner countered that this information is on the screen prior to the purchase step.

Mr. Garner pointed out further attributes of the Priceline website. The display takes into account the customer's relationship with the airline, which makes it personalized. With Priceline's launch of more efficient technology, it could communicate with the airline to offer the consumer a 20 percent discount. This is not available on the GDS platform. Mr. Garner suggested that it is in the airlines' best interest to implement a model like this in order to drive revenue at a lower distribution cost. The airlines will not be in a position to support any mandate to report ancillary fee information to GDS systems until the GDS systems acquire more efficient technology.

Committee member Leocha raised a question on baggage fees and whether a consumer could pay for these on Priceline. Mr. Garner replied that American Airlines does not offer payment for

baggage through Priceline because customers have indicated they do not know how many bags they will check for a trip at the point of booking. If the customers did pay up-front and then ended up checking less baggage this could add additional waiting time at the ticket counter. It is better for American Airlines to offer transparent pricing information for baggage on its website and have customers show up at the airport ready to pay those prices. Mr. Garner further explained that the airline is not opposed to offering the payment of baggage fees on Direct Connect – there is no holding back on that pricing.

Committee Chair AG Madigan asked to see where the baggage fee link was earlier on in the demonstration. Mr. Garner’s assistant displayed the slide with the link labeled “baggage fee”.

Attendee Darla Montalto, representing Major League Baseball (MLB), commented that a large group of consumers, such as baseball teams, for example, travel with large groups on commercial airlines. These groups commonly know how many bags they will have. If a third party is paying for the airfare, then the bags cannot be directly charged to that payer up front. The only option is for the team administrator to pay for the bag fees one-by-one upon check-in at the airport and later submit lengthy reimbursement requests. She questioned why groups like this cannot pay ahead in order to consolidate expenses.

Mr. Garner stated that usually groups of that size can work directly with their Groups and Meeting Department in order to negotiate the waiving of a certain number of baggage fees. Ms. Montalto acknowledged that she knew about this option, but argued that the requirement to provide printouts and proof of waived fees at the ticket counter still created a hassle.

Mr. Davidson then resumed his stand at the podium and began a similar demonstration of the same scenario through the channel of a travel agency. In his demonstration, Mr. Davidson used the booking tool, SPRK. After specifying travel dates and destinations, Mr. Davidson pointed out where the website displayed options to pay for upgraded services. Additionally, he showed a seat map displayed in real-time directly from the airline website. The seats displayed through Priceline at \$10 now appeared \$14, which is the price in the OTA catalogue. Mr. Davidson explained that the data from the Priceline page was from an earlier date and that the sale had ended, returning the seat back to the original price. After entering frequent flyer information, Mr. Davidson showed that the system returned data showing the same seats at no cost. Mr. Davidson noted that this technology is not widely available to the general consumer and there is a corresponding DOJ investigation on the blocking of this technology from consumers.

Mr. Davidson demonstrated in another example that two travelers of different frequent flyer status and different preferences could be booked in the same transaction. Airlines are beginning to provide this technological capability on their own websites as well.

Committee Chair AG Madigan asked whether she could conduct a similar search from home. Mr. Garner replied that she would not be able to yet, but would in the future. The third party vendors need to acquire the technology, but two of the largest OTAs are owned by the GDSs, which creates a problem. AG Madigan proposed that Mr. Garner return in the afternoon to

demonstrate live how a consumer, from his or her home, could gather all the fee data necessary to make a booking decision.

Attendee Paul Rudin, from American Society of Travel Agents (ASTA), asked whether the Priceline demonstration compared ancillary costs to other carriers. Mr. Garner answered that American Airlines is the first to offer this through Priceline. Mr. Rudin supplemented that other airlines offer these fees, but Priceline does not show them. Mr. Davidson weighed in adding that airlines can do more with their own websites than the travel agency—Priceline in this example—can do. He added that 60 percent of worldwide sales are made through travel agencies for airfare, so they are far from being counted out of the equation.

Committee Chair AG Madigan at this time welcomed to the podium, Mr. Bruce Bishins for comment.

***Association of Retail Travel Agents (ARTA) Comment***

*Bruce Bishins, Managing Director*

Regarding ancillary distribution, Mr. Bruce Bishins made the following points:

- ARTA members do not want the DOT to promulgate regulations of what content and functionality should be in the GDSs.
- Airlines and GDSs (just as other travel technology providers) should themselves come to terms as part of commercial negotiations.
- ARTA members do not want any terms mandated by the DOT which could impact their contractual obligations and may prompt GDSs to charge increased fees to subscribers.
- Let the marketplace dictate what content is available for sale or functionality.

He added that there are unintended consequences of suppliers and travel agents not coming to terms on their own. Not all content is in a GDS. There are huge content gaps missing from small operators, low cost carriers, non-Airline Cargo Resources (ACR)/Business Sales Processing (BSP), and niche products. Also, blended displays are restricted, giving rise to distorted supply and inventory.

In conclusion, Mr. Bishins affirmed that ARTA is concerned with parallel efforts by the DOJ to assess the GDS sector. He mentioned ARTA's concern over a recent announcement by SABRE Holdings to acquire Prism and the fact that DOJ is looking into this. Mr. Bishins suggested DOT be mindful of this effort as the assessment expands. Additionally, ARTA is concerned about GDSs' willingness to share strategic information with one another. In summary, no new regulations are required in the GDS marketplace. It is a mature market and the airlines and travel agents will work things out.

Committee Chair AG Madigan at this time announced the break for lunch.



## *Afternoon Session*

### *GDS Issues – Air Carrier Perspective*

This session began with a general comment from Douglas Lavin, Regional Vice President for the International Air Transport Association, North America (IATA-NA). He asserted to the Committee that consumers can comparison shop by looking at individual airlines' websites. But, the ability to comparison shop across all airlines on one Amazon-style website is not possible. He argued that it would be a waste of the Committee's time to ask airlines to attempt to demonstrate this live.

*Sharon Pinkerton, Head of Policy, Airlines for America*

Ms. Sharon Pinkerton, Head of Policy for Airlines for America introduced the presentation on the air carriers' perspectives. She noted that the DOT's Consumer Rule mandates that airlines be transparent and make consumers aware of their prices prior to purchase. Airlines want the ability to customize their product for the benefit of passengers, but contractual provisions are preventing GDS from releasing all this information available. GDS markets use market power to charge airlines competitive fees and prevent entry of new market forces. A mandate forcing carriers to provide content to GDSs is unnecessary and will raise costs for consumers and stifle innovation.

*Monte Brewer, Former CEO, Air Canada*

Mr. Monte Brewer, Former CEO of Air Canada, continued the presentation, explaining how information flows in the airline industry from the airlines, to the GDSs, to the travel agencies, and to the consumer. Airlines buy distribution services from GDSs in the amount of \$7 billion annually. GDSs incentivize travel agencies to use large volumes of their data.

Under the airline industry's legacy business model, third parties provide information to the GDSs, who offer the products to consumers. The airlines do not know which consumer is purchasing their products until a sale is made and thus cannot tailor its product offerings to that consumer. Under the new airline-controlled business model, the airlines know the consumer and can tailor their offerings based on factors such as consumer loyalty.

With the advent of the Internet, low cost carriers, such as Southwest, have been able to avoid using GDS-developed websites and communicate directly with the customer. This has resulted in these carriers bringing their innovations to the marketplace faster, thus creating competition.

But, the rise of technology and Internet-based shopping has also led to two simultaneous battles:

1. The *fight over distribution costs*, in which:
  - Airlines pay supra-competitive distribution fees (~\$7 billion per year);
  - GDS fees represent \$12.00 to \$20.00 per ticket;

- There is a growing cost divide between carriers that sell through their websites and those using the GDS;
- GDSs resist new solutions that offer 80% cost savings;
- GDS payment model incentives are in the wrong place; and
- Customer ends up paying the cost.

2. The *fight over innovation and revenue*, in which:

- Airlines compete on product differentiation;
- Airlines, learning to be retailers, desire to customize offerings to the needs of individual customers, including personalized pricing (free baggage, VIP service, etc.);
- Dynamic integration with airline-owned data (e.g. loyalty status; history; inventory) is essential;
- The GDS channel—faced with massive investment in updating their platforms—is slow to respond;
- The “product gap” is increasing between carriers relying on websites and those using GDS; and
- Customers do not have access to new products designed to meet their travel needs.

Mr. Brewer then provided a real-life example demonstrating the value of the airline-controlled business model. In the early 2000s, WestJet was Air Canada’s number one competitor. WestJet offered lower fares, but without refunds, food, or seat assignments. While Air Canada was able to match the low fares, it could not reduce the high costs of its products. WestJet transacted directly with its customer through its website and therefore collected better market data. Air Canada needed a customer-driven response. In the spring of 2003, Air Canada made fare families available, each with more entitlements. As a result, over 45 percent of customers purchased a higher priced product in exchange for increased flexibility and selection. Through its website—a direct link to the consumer—Air Canada was able to customize its products and offer lower fares.

*Monty Myers, Eureka Software Solutions, Inc.*

Mr. Brewer transitioned the presentation to Mr. Monty Myers, a technology expert at Eureka Software Solutions, Inc., who began by asserting that personalization and tailored offers are well-established in the marketplace as demonstrated by companies such as Amazon, Groupon, and Netflix.

Mr. Myers then contrasted the new airline business model and the legacy model.

The new model, based on Direct Connect, offers:

- Personalization technology/capabilities enabled by the Internet and technological advancements (e.g., audio and video shopping options);
- Improved transparency;
- Efficient and robust comparison shopping; and
- Timely support for airline innovation and evolution.

At this point in the presentation, Committee member Leocha questioned why there was a discrepancy between airlines and GDSs with regard to whether airline product data was open and transparent. Mr. Myers responded that airlines do make this data available but that his focus was on whether technology exists to support the data. Both Committee member Leocha and Mr. Myers agreed that more information and available choices is better for consumers.

Mr. Myers continued his presentation, stating that the legacy model—standing on technology from the 1960s—has resulted in:

- Slow innovation that has not taken advantage of the power of Internet;
- Limited adoption by airlines worldwide;
- No support to true consumer-centric personalization, dynamic, up-to-the-minute relevance for consumers, or robust comparison shopping/booking; and
- Stifled innovation due to airline standardization/commoditization.

Putting airlines in a position to force this legacy model does not allow them to compete and put their best foot forward.

Committee member Leocha interjected a point that by code sharing, airlines are commoditizing and telling consumers that seats on various airlines are exactly the same. Mr. Myers responded that code-sharing does not mean airlines are commoditizing their products but that customers should have the option to buy commoditized fares.

Mr. Myers continued to contrast the new and legacy models. The new model promotes:

- Advanced shopping and pricing engines;
- Widely accepted Internet technology;

- Fast changes and response time;
- State-of-the-art mainstream software and hardware core technologies;
- Ready availability of talented software and hardware engineers; and
- More robust ecosystem of third-party tools and technologies.

The legacy model maintains the GDS' role as gatekeeper and results in:

- Substantial increases in the amount of data uploaded to GDS;
- Large delays in uploading and processing data in antiquated model, resulting in latency;
- A lack of personalized and transparent shopping early in shopping process; and
- GDSs openly pushing to control even more of airline data (e.g., detailed information about customers).

One audience member interjected here that her personal experience with airline shopping is that GDS pushes data in minutes. Mr. Brewer countered that this data does not include the latest fares.

*Al Lenza, CEO, Lenza Group*

Mr. Myer then turned the presentation over to Mr. Al Lenza, CEO of Lenza Group, who focused on how market dynamics affect adoption. Travel agencies generally have not adopted data on ancillary products because GDSs are incentivized to be the sole owners of this data, making it difficult for third parties to transfer this information and consumers. Travel agencies misrepresent this problem as a result of inefficient technologies, but the real issue is that the GDSs are not providing the data.

In response to emerging competition, GDSs have used incentive fees to create restrictive contracts that lock in travel agencies and airlines. These contractual limitations prevent new entrants to the airline industry. GDSs have not invested in the requisite technology to support full personalization for fear of losing market control to lower-cost competitors. Deals between airlines and GDSs have yet to produce meaningful results.

Contracts between GDSs and airlines or travel agencies often require near exclusive use of a single vendor, penalize airlines' or agencies' use of new technologies outside of the GDS platform, and restrict comparisons of GDS and non-GDS product information. As a result of these contracts, airlines must provide all published fares and inventory and thus cannot offer lower fares via less expensive channels. They also cannot incentivize travel agencies to use non-GDS technology or share with them the cost of GDS booking fees.

Mr. Lenza concluded by noting that there are a number of sensitive negotiations with GDS underway in the next 18 months that could cost the airline industry another billion dollars. Airlines want the same outcomes as customers, but forcing a technology or platform will stifle growth and will not answer the Committee's goals.

Committee member Leocha responded to the presentation with a question on why the airlines are not making the cost of ancillary products transparent on their own websites. Mr. Lenza explained that this information is available but the challenge for the airlines is when to include this information in the shopping experience, given that the cost can change depending on the identity of the customer. Offers and schedules come and go; this cost information is not static. But the airlines do not oppose transparency and do not restrict customers from receiving this information.

Mr. Leocha then questioned how the airlines could claim that contracts with GDSs are one-sided since any negotiation is between *two* parties. Mr. Lenza explained that as costs have risen, airlines have accepted these contracts because of financial constraints.

Committee Chair AG Madigan interjected to ask about the duration of the contracts between airlines and GDSs. Mr. Lenza responded that they typically last five to seven years. To this, Committee Chair AG Madigan commented that this period was a "lifetime in terms of technology."

*Gary Doernhoefer, International Air Transport Association (IATA) General Counsel*

To conclude the presentation, Mr. Gary Doernhoefer, General Counsel of IATA, addressed consumer expectations and what airlines can provide.

Consumers should expect:

- A choice of competitive services related to air travel;
- To know the choices and services available to them;
- To know the cost TO THEM of each choice;
- To be presented with offers that are designed to meet their particular needs;
- The ability to choose the services they want and not pay for what they do not want; and
- To know the cost of the entire trip BEFORE they purchase the ticket.

Consumers cannot expect an airline to market its competitor's products. It is the role of the travel agent to provide the price comparisons for the consumer. Through their own and travel agents'

websites, airlines can offer personalization of ancillary products, and thus an additional revenue stream.

The technology that moves data about personalized ancillary products from the airline to the travel agent is critical. Airlines do not perceive that GDSs are the best or only way to transmit this data. At least one startup company has provided a link from the agent to the data that is preferable to anything the industry has seen before. As a middleman or gatekeeper of airline data, GDSs are not mandated to display data from all airlines. They do not have to disclose to travel agencies which airlines' data is not available. If a question arises about products, GDSs do not have to consult with the airlines. But, the airlines want to bridge this gap between their information and that which is available to the travel agents.

The proposed DOT mandate would result in a static set of “core” services that will limit consumer choices, result in confusion during comparison shopping, preserve the GDS legacy business model and give GDSs leverage in negotiations with airlines, lock in high costs, and fail to open the market to new innovation.

Consumers are best served by choice and a lower cost of distribution. GDS involvement limits choice, inhibits transparency, and increases costs. Airlines, contrastingly, are investing to provide choice through their own websites, travel agencies, but not through GDSs. The airline industry is looking for alternatives against market barriers.

There are some GDS deals with airlines that are beneficial to both sides, but this trend is slow-growing. Airlines want more of these deals faster. The proposed mandate would only slow forward progress.

At this point, the Committee amended the agenda to allow GDS vendor perspectives to follow.

### ***GDS Issues – Vendor Perspective***

*Chris Kroeger, Sr. Vice President, SABRE Holdings*

Mr. Kroeger, Senior Vice President at SABRE Holdings, began the presentation by stating that SABRE's primary focus was on the travel consumer. The consumers—categorized as either leisure or corporate travelers—can use a plethora of booking tools including airline websites, meta search websites, online and offline travel agencies, and corporate booking tools. With each booking option, consumers use the shopping engine provided by that vendor. Consumers want to know the total price.

At this point, Committee member Berg wanted to clarify whether Mr. Kroeger's point was that consumers are not seeing the full price when they shop on airlines' websites. Mr. Kroeger explained that his point was only to express that consumers have many options and should see the total prices across all options.

Mr. Kroeger continued explaining that DOT has already stepped in to ensure transparency of this pricing information. Taxes and fees, fuel surcharges, and baggage fees are transparent to

consumers. GDS providers are now able to show applicable fees. The next step is disclosure of ancillaries and transactability.

*David Schwarte, Special Counsel, SABRE Holdings*

Next, Mr. David Schwarte, Special Counsel at SABRE Holdings, took the floor. He opened by stating that he has been in the airline industry for 40 years. His focus was to shed light on the problem and explain why DOT can solve it. Consumers pay enormous amounts in ancillary fees: \$22 billion in 2011, \$11 billion of which was to the four “big” U.S. carriers. In the past four years, airlines have only disclosed base fares, not the other fees (baggage, reserved seats, early boarding, etc.). This technique, known as “shrouding,” reduces competitive pressure and allows airlines to increase prices. At this point Mr. Schwarte referenced the GAO report from July 2010.

Airlines claim that they are making prices available to consumers, but a multitude of consumers disagree. Airlines have avoided consumer laws and the Federal Statute that DOT administers does not afford any private remedy or the ability to sue. There is no discipline, therefore, on consumers’ ability to sue and get redress. Consumers in air travel do not have the rights that consumers in other industries have. The Federal Trade Commission (FTC) acknowledged this problem and opened up a workshop on “drip pricing.” The FTC Chairman made a statement to promote price competition while acknowledging that “drip pricing,”—advertising only part of price—can mislead and harm consumers. If the DOT enforces a regulation to restore fair and honest disclosure, it could lead the way in solving this problem.

Mr. Kroeger took over the presentation at this point to explain that SABRE is the first electronic travel marketplace and enables buyers, including global agencies and government, to access sellers’ products. Sellers, in turn, can collect data from SABRE’s sales in order to differentiate their products.

Committee member Berg interjected a comment that any agreement between GDSs, airlines, and travel agencies, involved an exchange of rights. Mr. Kroeger stated that he would dispel certain myths surrounding that point later in the presentation.

*Shelly Terry, Senior Director of Airline Merchandising, SABRE Holdings*

Ms. Shelly Terry, Senior Director of Airline Merchandising, SABRE Holdings, took the floor next to present a live online demonstration of the SABRE Red workspace—the application agencies use to shop, book, and service travelers.

The SABRE Red workspace allows agents to retrieve data on approximately 400 airlines. At the heart of the workspace is the shopping engine which holds data on schedules, fares, and inventory/availability.

Schedule information is core to the shopping process. Agents must know which airlines fly between any two points. Schedule data are published through certain vendors, but airlines can also directly update their schedules into SABRE’s shopping engine at any time.

Fare information is the next core ingredient. Through these data, airlines advise about monetary components, rules, penalties, and discounts. Typically, fare vendors such as ATPCO publish these data, but up to 25 percent of data comes as a direct file share from airlines.

The third data component is inventory. These data are the result of interactive connectivity with several hundred airlines around the world to determine last-seat real-time inventory status. If inventory data are not available, the agent cannot quote or buy for the listed fare. Airlines have sophisticated controls for this inventory.

For all three shopping ingredients, the airlines have direct control over their data and whether a GDS receives it. With the SABRE Red shopping engine, SABRE is able to process and transmit the data to the travel agent as a simple search matrix of results across multiple airlines.

Through this system, comparison shopping across airlines is possible and works by leveraging IATA's standards. Airlines participated in the creation and development of these enhancements to the comparison shopping experience.

During the "Settlement" step in the SABRE Red workspace, consumers can shop, book, and pay all fees through SABRE, which then delivers an e-ticket.

Mr. Doernhoefer of IATA asked at what point the SABRE Red workspace allowed the airlines to know the consumer's identity in order to communicate tailored price offerings through the agent. Mr. Kroeger responded that SABRE sends consumers' frequent flyer numbers directly to the airlines during the "inventory" stage of the shopping process to retrieve tailored pricing information.

Ms. Terry continued with her demonstration, conducting a fare-led live online search through SABRE Red. On the main page, she clicked the "Air Extras" button to show how SABRE allows the travel agent to select the consumer's requested ancillaries such as baggage, meals, medical services, pet services, and services for unaccompanied minors.

SABRE Red delivered 50 search results in low to high order, inclusive of base fares, taxes, surcharges, and ancillaries requested. The agent can select an airline—for the purposes of the demonstration Ms. Terry selected US Airways—to view a full breakdown of ancillary fees (provided the airline has disclosed this information to SABRE).

Committee member Berg questioned where SABRE collects the data on ancillary fees. Ms. Terry responded that the data comes from the SABRE Red shopping engine, where it was uploaded directly by the airlines or from third party vendors such as ATPCO, which also collect the data directly from the airlines. Mr. Kroeger added that where there is a discrepancy in data available, SABRE could address this through a commercial agreement.

Ms. Terry continued with her demonstration, showing through the SABRE Red workspace where the travel agent could enter the consumer's name and display a graphical seat map. At this stage,



the agent can enter the consumer's frequent traveler information to deliver tailored seating information from the airlines. Ms. Terry explained that, as evident in the demonstration, US Airways had not yet distributed to SABRE its tailored seating information, but that SABRE is in negotiations with US Airways to exchange that information.

SABRE provides comparison shopping services to any OTA. Contrastingly, if a consumer shops directly from an airline's website, information is not displayed as clearly. Ms. Terry demonstrated the shopping experience on the American Airlines website as an example. On this website, the consumer must click "Baggage and Optional Service Charges," and read through a matrix of information in order to determine basic ancillary costs. Ms. Terry then portrayed American Airline's seating graphic and noted that it did not display any pricing information at this point. The consumer can only view the pricing information on the seating chart after selecting a fare and inputting his or her frequent traveling number. Ms. Terry explained that the SABRE Red workspace can display the difference between a paid or free seat as long as the airlines have disclosed this information.

Next, Mr. Kroeger took over the presentation again, with the stated intention of dispelling IATAs and some airlines "false claims" about SABRE, which include:

- SABRE uses old technology,
- maintains high prices,
- cannot handle ancillaries, and
- operates as a monopoly.

Mr. Kroeger addressed these claims by explaining:

- SABRE invests hundreds of millions of dollars in new technologies each year. The average age of SABRE's technological equipment is less than three years.
- SABRE's \$7 billion price tag represents only one percent of airlines' expenses. For major U.S. airlines, SABRE's fees have declined in the past 10 years. SABRE booking fees have declined by a number that SABRE has disclosed to DOT but is confidential to the public.
- Hundreds of airlines, including WestJet, use SABRE to distribute data because they derive value from the services SABRE delivers.
- SABRE does not charge consumers extra for providing ancillary fees.

While airlines contest that there is no need for DOT action to improve transparency, SABRE and consumers disagree.

Mr. Kroeger explained that SABRE is requesting transparency on airlines' total prices, especially on *essential* ancillaries. He differentiated essential ancillaries from non-essential as those items that are critical to a travel purchase decision (e.g., baggage fees). This does not include ancillaries such as blankets, pillows, and meals. A DOT regulation will help achieve transparency of this information.

At the conclusion of this presentation, Committee Chair AG Madigan allowed for questions from the Committee.

Committee member Berg commented that airlines mostly agree with SABRE's concluding remarks. On behalf of the airlines, he asserted that the airlines' ability to be completely transparent with pricing information depends on whether or not they can negotiate reasonable contracts with GDSs to provide this information to travel agencies. He asked: if DOT issues a mandate for airlines to provide this information to the GDSs, how does SABRE respond to the consequent imbalance in the contracting power between SABRE and the airlines?

Mr. Kroeger responded with the question: are consumers' rights negotiable? He explained that SABRE does not charge airlines anything for data on ancillaries. DOT's proposed mandate would not require airlines to participate with GDSs; rather, it would require full disclosure of fares from the airlines that choose to participate with the GDSs.

Committee member Berg reasserted that there is not balance in market power between GDSs and the airlines. To this, Mr. Kroeger responded that the airline industry is highly competitive. When airlines owned GDSs, 80 percent of ticket sales were conducted through these transactions. Today, the industry is more competitive and only 50 percent of ticket sales occur through GDSs.

Mr. Schwarte of SABRE joined the discussion at this point to address the argument that airlines have no leverage with GDSs. He pointed to statements from major airline executives elaborating on good business deals with SABRE. He also stated that a history of negotiations have shown that airlines successfully negotiate and put pressure on GDSs to receive deep discounts. He asserted that if GDSs had all the leverage, SABRE would not have to provide discounts; rather the competitive industry has forced companies like SABRE to resort to this. Mr. Schwarte also stated that SABRE is cooperating fully with investigations by the DOJ and is confident the investigations will conclude that SABRE's practices are legitimate. He concluded by pointing out the irony of airlines accusing GDSs of anti-trust violations after several of them have plead guilty to criminal price-fixing in the past.

At the conclusion of this question and answer period, the Committee amended the agenda to insert the individual airline comments at this point in the afternoon's proceedings.

### ***Individual Airline Comments***

*Cory Garner, American Airlines*

In response to the SABRE presentation, Mr. Garner stated that on American Airlines' website, all fees are transparently listed on the first page; he contested Ms. Terry's earlier comment that

this information was not available by explaining that she did not scroll down to display the full page.

Mr. Garner explained that since Ms. Terry had already demonstrated the American Airlines website, he would now perform a demonstration of the Travelocity website, which retrieves its data from SABRE technology. Using the same search term Ms. Terry used, Mr. Garner demonstrated that Travelocity does not display the same results as SABRE Red workspace. Rather, Travelocity pulled the graphics directly from American Airlines' website. Mr. Garner explained that through this demonstration, he intended to show that SABRE unfairly demonstrated its capabilities. SABRE portrayed more information on its own workspace than what is provided to Travelocity.

Committee member Leocha asserted at this point that neither American Airlines nor SABRE had demonstrated that complete transparent data is available to the consumer *today*. Mr. Garner responded that American Airlines' ideal for transmitting data is not possible today but that the data are available, transactable, and that SABRE has the power to post them to its shopping engine today. American Airlines wants the choice to be able to use a cheaper alternative to GDSs.

*Peter Kenney, Delta Distribution Systems*

Mr. Kenney began by stating that Delta has no interest in hiding its ancillary services and that to suggest that Delta is trying to withhold these data is ludicrous. He urged the Committee to consider, rather, that airlines are working with GDSs to establish economic and technological conditions for transmitting this information. Delta is in agreements with Amadeus and Travelport to distribute ancillaries; this requires significant work from Delta to be able to achieve agreements that will work within commercial terms acceptable to the airlines.

Mr. Kenney stated that if DOT imposes regulations, it will interrupt the process of negotiating commercial terms that work. He added that airlines are not in a position to negotiate reduced rates and ancillary packages with GDSs. It costs airlines three times as much to conduct ticket booking with GDSs as with their own websites. These costs are still too high and airlines want to be able to conduct meaningful negotiations without government interference.

Committee member Leocha questioned whether Delta was prioritizing itself over consumer rights. Mr. Kenney responded that this was a "ridiculous claim." The alternative outcome—the initialization of the mandate by DOT—would result in prioritization of GDSs, rather than consumer rights. Delta's view is that GDSs are arguing for transparency as a cover for asking DOT to interfere with market negotiations. Delta is not trying to hide information; it does not want unhappy customers. Delta had been filing its data with full transparency to ATPCO for years.

*Curtis Kopf, Alaska Airlines*

Mr. Kopf acknowledged that Alaska Airlines is a small airline relative to American Airlines and Delta. He stated that even as a smaller airline, Alaska Airlines' experience negotiating with major GDSs is an example that a competitive environment exists for ancillary services. This

negotiation resulted in a business relationship with GDSs that supported consumer needs. That outcome came with no government interference.

Mr. Kopf explained that these negotiations were long and complex, but successful, because they forced both parties to focus on the issues that mattered, and the business needs of the airline, the GDS, and the consumer. The negotiating parties challenged each other and arrived at the right result. A true negotiation is meaningful because either party has the right to walk away. DOT interference would undermine this basic negotiation principle. A DOT mandate would give GDSs the advantage, which is not the right outcome for airlines, GDSs, or consumers.

Mr. Kopf added that Alaska Airlines conducts its business primarily through its own website. Here, the most important conversation happens daily between the airline and the consumer through a survey. Customers tell Alaska Airlines what they want daily and as a result, the content of the website is highly rated.

After Mr. Kopf concluded his comments, Committee Chair AG Madigan asked about the length of the contract term Alaska Airlines had negotiated with the GDSs. Mr. Kopf responded that he could not reveal specifics but could state that contracts could last up to five years.

Committee Chair AG Madigan then opened the floor to comments from the Committee. There were no further comments.

Committee Chair AG Madigan then opened the floor to audience members for questions and comments.

Mr. Paul Ruden of the American Society of Travel Agencies commented that he was interested in Mr. Kopf's view and questioned why Alaska Airlines was able to negotiate satisfactory agreements with GDSs while other airlines could not. Mr. Kopf responded that his point was only that the process of negotiation is the right way to resolve the transparency issue between airlines and GDSs, not regulation.

Mr. John Gustafson of US Airways commented that his airline is working closely with SABRE on delivering data on seating pricing and hoped to provide this data before the end of 2012. He conceded that the majority of travel agencies use their own preferred booking interfaces rather than the tools SABRE is developing. Although US Airways has sold preferred seating on its website since July 2010, the GDSs have not been able to get this information to the consumer and airlines do not know where the data goes.

To this comment, Mr. Kroeger of SABRE responded that when DOT first required that travel agencies and airlines display baggage fees, SABRE could only collect this information from one-third of airlines. Over time this number has grown. Online travel agencies faced with the challenge of finding this information can collect it more efficiently from SABRE. SABRE has the information, but the OTAs need time to build the capabilities necessary to display the information.

Bruce Bishins, ARTA, called attention to SABRE's contention that airlines will not pay to deliver ancillaries. He then asked who would pay, asking specifically if the travel agencies would have to pay a premium contract fee with the GDSs.

Mr. Kroeger responded that SABRE requires \$0 from the buyer or seller to obtain ancillary fees. Rather, SABRE itself pays for these data by making hundreds of millions dollars of investments yearly to enable the availability of this data.

Mr. Bishins responded that Travelport and Air Canada struck a deal for data that required travel agencies to contribute financially. He asked SABRE to express their views on whether or not GDSs will eventually charge buyers and sellers for the technology necessary to provide data on ancillaries.

Mr. Kroeger responded that he would not comment on other GDSs and stated that the industry is competitive.

Mr. John Gustafson of US Airways commented that SABRE currently has the data that it will shortly roll out to subscribers. US Airways pushed to include Travelocity in this group of subscribers but does not believe Travelocity has the intention to display preferred seating costs in its system. He commented that individuals could influence their own respective travel agencies to distribute this data to consumers.

Mr. Kroeger added that SABRE is in private discussions with US Airways and Travelocity to make this happen; the negotiation has come down to the remuneration model between the airline and OTA.

Ms. Donna Bibbo, Travel Manager at NovoNordisk, commented that travel managers need an easy way to collect all available information and control costs.

Ms. Elizabeth Mandarino, President of World Travel, Inc., explained that her company's deals with GDSs do not prohibit it from introducing new technologies. She stated that World Travel, Inc. is pleased with its GDS platform. Direct Connect does not get traction because it does not work. GDSs incentivize companies to enter deals with them, but Direct Connect attempts to do the same.

Ms. Darla Montalto, MLB, commented that she was one of few corporate representatives attending the meeting. The argument that there are only four to five GDSs with which to negotiate is ironic given that there are also only four to five airlines in the same negotiations. In this capitalistic society, airlines have to negotiate with GDSs to avoid regulations. The end consumer just needs to know the fees. If corporations have to ask the government to step in to get this information, they will.

Ms. Patty Higginbotham, General Counsel and Vice President of Government Affairs at the Global Business Travel Association, stated that all distribution channels should include ancillary

fees. Airlines and GDSs must come to the table to negotiate. Corporate travel buyers are caught in the middle and do not want DOT to step in and impose a mandate.

Mr. Kevin Mitchell, Chairman of the Business Travel Coalition, indicated his agreement with the previous travel buyers but made the key point that the airline industry is a broken market. He asserted that only intervention by DOT would break the stalemate. We have encountered many fees since 2008; corporations are paying the price and consumers are harmed because the marketplace is not disciplining these fees. The market has failed to bring GDSs and airlines together to make the necessary deals.

Committee Chair AG Madigan concluded the afternoon discussion by thanking the audience for the comments and acknowledging that the question at hand is a very difficult issue. She spoke on the Committee's behalf that it was enlightened and would follow up on these issues at a third meeting in September.

Mr. Podberesky provided the following closing remarks:

DOT will publish a notice for the third meeting of the Advisory Committee at least 15 days in advance of the meeting date, targeted for the end of September. DOT will provide the agenda one to two days in advance of the meeting. The contractor, CENTRA Technology, Inc. will provide a copy of the third meeting notice to attendees of the second meeting in advance.

Transcripts from the first meeting on June 28<sup>th</sup> are still under review and will be posted to the docket by CENTRA. CENTRA will also post copies of presentations and minutes from the 2<sup>nd</sup> meeting to the docket.

## COMMITTEE MEMBER BIOGRAPHIES

### **The Honorable Lisa Madigan**

Ms. Madigan is Attorney General (AG) of Illinois and officially chairs the Advisory Committee on Aviation Consumer Protection. AG Madigan serves as a representative of state and local governments with the Committee. She was elected the first woman Attorney General of Illinois in 2002 and won a third term in 2010. As Attorney General, her priorities have included protecting consumers from financial fraud and unsafe products, as well as protecting seniors in nursing homes.

### **Deborah Ale Flint**

Ms. Ale Flint serves as a representative of airport operators with the Advisory Committee on Aviation Consumer Protection. She was appointed Oakland International Airport's Director of Aviation in 2010. Ms. Ale Flint is the primary executive responsible for the operation, management, and development of the airport. She previously served as manager of the airport's airside operations where her responsibilities included noise abatement and environmental compliance.

### **David A. Berg**

Mr. Berg serves as a representative of air carriers with the Advisory Committee on Aviation Consumer Protection. He was named Senior Vice President, General Counsel and Corporate Secretary for Airlines for America (A4A) in 2011. At A4A, Mr. Berg is responsible for the association's legal affairs and has been involved in a variety of aviation issues, including passengers with disabilities and airport landing fees.

### **Charles Leocha**

Mr. Leocha serves as a representative of aviation consumers with the Advisory Committee on Aviation Consumer Protection. He is Director of the Consumer Travel Alliance (CTA) which he formed in 2009, following a career in journalism where he specialized in reporting on travelers' rights. Since beginning CTA, his advocacy for travelers has included meeting government officials, testifying before Congress and developing travel information and resources.