



Record of Meeting

June 2015

Eighth Meeting of the Advisory Committee on Aviation Consumer Protection

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

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

Meeting Date: June 23, 2015

Scheduled Meeting Time: 9:00 a.m. to 3:40 p.m., Eastern Time

Meeting Location: US Department of Transportation, 1200 New Jersey Avenue SE.
Washington, DC

Public Notice: The Department of Transportation (DOT) informed the public of the Advisory Committee meeting in a Federal Register notice issued by the Office of the Secretary (OST) on June 2, 2015, and in a News Digest item issued the same day by Office of Public Affairs.

Attendees:

Last Name	First Name	Affiliation
Agostinelli	Jeananne	Office of the Attorney General, State of Pennsylvania
Aguilera	Bruce	MGM Hotels
Ahmed	Huma	CENTRA Technology, Inc.
Arshad	Amna	DOT, Office of Aviation Enforcement and Proceedings
Atwood	Tristan	Kirstein & Young, PLLC
Baxley	Richard	FlyersRights.Org
Berg	David	Airlines for America
Blaney	James	British Airways
Blank Riether	Kathleen	DOT
Bresee	Christopher	National Consumers' League
Breyault	John	National Consumers' League
Brown	Brenda	Delta Airlines
Cacioppo	Peter	DOT
Chapman, Jr	Livaughn	DOT, Aviation Civil Rights Compliance Branch
Dols	Jonathan	DOT, Deputy Assistant General Counsel
Foglia	Jonathon	Zuckert, Scoutt & Rasenberger LLP
Foote	Fred	Airline Tariff Publishing Company
Frid	Nina	Canadian Transportation Agency
Friedman	Brian	JetBlue Airways Corporation
Graber	Kimberly	DOT, Consumer Protection and Competition Law Branch
Gregor	Shawn	Federal Trade Commission
Hainbach	Don	Garofalo Goerlich Hainbach PC
Hammer	Benjamin	Consumer Travel Alliance
Hanna	Christina	Virgin America
Hudson	Paul	FlyersRights.org
Ilich	Jessica	DOT
Jacobs	Rachel	DOT

Jennings	Vaughn	Airlines for America
Kane	Kathleen	Attorney General of Pennsylvania
Kirstein	David	Kirstein & Young, PLLC
Kloosterman	John	United Airlines
Knott	Amber	Expedia
Kresses	Mamie	Federal Trade Commission
Kronon-Schertz	Renee	Travelers United
Lavin	Douglas	International Air Transport Association
Lehman	Dayton	Capitol Biz Solutions
Lenahen	Heather	Spirit Airlines
Leocha	Charlie	Consumer Travel Alliance
Little	Cathy	DOT
Mackenzie	Lorne	West Jet
Maddux	Jason	Garofalo Goerlich Hainbach PC
Matal	Maren	Southwest Airlines
McDonagh	Michael	National Consumers' League
McFarland	Jennifer	DOT
McQuillen	Brian	DOT
Meader	Mark	American Society of Travel Agents
Minardi	Philip	Travel Tech
Moore	Thad	Washington Post
Mtambuzi	Kavaragu	Virgin America
Nadel	Judy	DOT
Nankin	Kenneth	Nankin & Verma PLLC
Patanaphan	Ryan	DOT
Peck	Eben	American Society of Travel Agents
Perkins	Ed	Tribune Media Services
Pilar	Donna	DOT
Plourde	Karen	Canadian Transportation Agency
Prater	Theresa	DOT Staff
Richens	Micah	MGM Hotels
Ruden	Paul	American Society of Travel Agents
Russell	Lisa	Federal Trade Commission
Russo	Annie	Airports Council International - North America
Schroeter	Bobby	Spirit Airlines
Semanchik	David	Airline Pilots Association, International
Siân Ried	Moira	Canadian Transportation Agency
Simmons Kendale	Lynora	DOT
Soberats	Annette	Federal Trade Commission
Strickman	Norman	DOT, Aviation Consumer Protection Division

Taylor	Fred	Southwest Airlines
Taylor-Klag	Stephanie	Airlines for America
Thumpston	Jim	Zuckert, Scoutt & Rasenberger LLP
Westfall	Sara	CENTRA Technology, Inc.
Williams	Jeffrey	Cox Media
Workie	Blane A.	DOT, Assistant General Counsel for Aviation Enforcement and Proceedings

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SUMMARY OF MEETING PROCEEDINGS
Eighth Meeting of the Advisory Committee on Aviation Consumer Protection (ACACP)

Welcome and Housekeeping Matters

Blane A. Workie, Assistant General Counsel for Aviation Enforcement and Proceedings

The ACACP Designated Federal Official (DFO) Ms. Blane A. Workie called the meeting to order at 9:10 a.m.

Introductory Remarks of Committee Members

Committee member Charlie Leocha noted that baggage, cancellation, and hotel resort fees have affected consumers for many years and observed the following:

- Such fees are getting more expensive for consumers with little or no justification.
- DOT's full fare advertising rule should apply to resort fees if hotel rooms are being packaged with airfare.
- Checking baggage has also become more complicated, especially when passengers book their travel with one airline but travel part of their trip with a partner airline. It is difficult for consumers to know which airline's baggage rules apply.

Committee member David Berg, as a representative of the airline industry, gave a brief history and overview on the issue of change and cancellation fees.

- Before deregulation, there was no price competition between airlines. Fares were calculated for a specific rate of return for the airline and assumed a low load factor, so cancelled tickets had less impact. Consequently, prices were high and air travel was not available to most Americans.
- One innovation that has emerged since deregulation is revenue management—a tool that optimizes the revenue of a flight by segmenting business and leisure travelers and having the right mix of products and fares available. Revenue management allows airlines to maximize options for consumers and the flexibility to make changes.
- Non-refundable fares benefit consumers because of their low prices and benefit airlines because they avoid the cost of a lost opportunity to sell a seat when the reservation is cancelled.
- Airlines recognize the flexibility consumers want to make changes, but there is a real economic cost when a passenger changes or cancels a ticket close to the flight date as it is unlikely that airlines will sell that now empty seat. Cancellation fees compensate the airline for that lost revenue. Cancellation fees—like fares—are market-based and vary by airlines, giving consumers options to choose the airline that has the best pricing structure for them.

AIRLINE CHANGE/CANCELLATION FEES

Government Perspective

Jonathan Dols, Deputy Assistant General Counsel, U.S. Department of Transportation, Office of Aviation Enforcement and Proceedings

Jonathan Dols characterized the Department of Transportation's policy regarding change and cancellation fees as general reliance on market forces to provide low prices, as well as variety and quality of services, unless there is compelling evidence of consumer deception or unfair methods of competition. Mr. Dols briefly summarized DOT's authority and actions taken regarding the impact of change and cancellation fees on consumers:

- In 2003, DOT received a petition for rulemaking from an aggrieved passenger wanting a rule that would prohibit domestic carriers from charging disproportionate change fees (Kaufman Petition). DOT denied this petition based on the market forces at work, a variety of available carrier choices, and its own limitations under deregulation. DOT also determined that the lower price for a non-refundable ticket is a tradeoff for passengers agreeing to restrictions that allow a carrier to manage its inventory and cash flow. In 2012, another petition was filed—the Pevsner petition—requesting a rule limiting foreign air travel change fees. DOT again denied this petition citing the same reasons as in the Kaufman Petition.
- DOT has broader authority regarding foreign air travel as it is not fully deregulated. Air carriers are required to establish reasonable rates and rules in foreign air transportation. DOT has the authority to cancel a rule that is unreasonable after notice and hearing. The United States has bilateral Open Skies agreements with over 100 states that allow each party to set prices for air transportation and DOT must take these bilateral agreements into consideration when making rules.
- DOT does require airlines to notify passengers in advance of any conditions that restrict refunds or impose monetary penalties for cancellations. There is also a 24-hour rule stipulating that carriers must allow reservations to be held at the quoted fare for 24 hours without payment or allow reservations to be cancelled without penalty for at least 24 hours after the reservation has been made, provided the reservation was made more than a week prior to the flight.

The following points were made during a question-and-answer session:

- The fact that some carriers charge no cancellation fees—such as Southwest—supports DOT's analysis that there is choice for consumers in the markets. DOT cannot, however, comment on each carrier's individual pricing structure to explain why some have high change fees and others do not. The government counterargument states that consumers

can make informed decisions about whether they want to fly with a carrier that charges fees or one that does not.

- There is a pending petition for rulemaking submitted by Flyersrights.org that DOT is considering and not yet made a determination on regarding change and cancellation fees.
- There is very little choice for consumers regarding transatlantic travel as 80 percent of that travel is controlled by three airline partnerships that match each other's fees.
- In its analysis, DOT does take into account the distance a consumer would have to travel to be able to fly on an airline that does not have cancellation/change fees to determine whether there is competition in the market.

Consumer Perspective

Paul Hudson, FlyersRights.org

Mr. Hudson made the following observations about the evolution of airline industry policies and fee structures for passenger-initiated flight changes:

- In the more than 34 years since deregulation, DOT has declined to use its authority to strike down fare rules in foreign air transportation. All foreign carriers have change and cancellation fees. Many transatlantic partnerships are given an anti-trust exception allowing them to fix prices on many routes. This price colluding of transatlantic carriers makes fares unreasonable based on DOT's rules. There is almost no cost to the carrier if someone cancels far in advance. Furthermore, change fees are often higher than purchasing a new ticket.
- DOT's insistence on letting competition alone solve all problems is obsolete. Consolidation has caused the U.S. airline industry to become incredibly concentrated and hit consumers with fare and fee hikes. The GAO has determined that the two primary drivers of recent airline success have been capacity restraint and increased ancillary fees. The free market has not corrected this problem. DOT has regulated quite successfully in other areas without disrupting the free market and carriers have adapted to new rules, such as the tarmac rules.
- Flyersrights.org has submitted a petition to the Department requesting that international change fees be capped at \$100 while still allowing airlines to charge the differential in ticket price when consumers change flights. For specific flight circumstances where airlines can demonstrate a cost greater than \$100, then DOT may approve higher fees. The onus is on DOT to act in order to protect airline passengers from excessive and unreasonable fees.

John Breyault, Vice President, National Consumers' League (NCL)

Mr. Breyault cited the following regarding the impact of the rise in airline change and cancellation fees on consumers and industry:

- In 2013, BTS reported that U.S. carriers' cancellation/change fee revenues had risen from \$915 million in 2007 to \$2.5 billion in 2012. Since then, cancellation/change fee revenues have continued to rise, reaching \$2.98 billion in 2014. Looking at the rise in cancellation/change fee revenue with the increase in the number of emplaned passengers since the recovery from the 2008 financial crisis, there has been a fairly consistent correlation between increased cancellation/change fee revenue and passenger enplanements.
- Disclosure of cancellation/change fees on major U.S. carriers' websites is needlessly difficult. On United's website, the information is located after clicking on a link in small text during the ticket buying process. The link includes all the rules that apply to the ticket in small text that would be over 20 pages when printed out. Instead of listing a specific amount, United States that change/cancellation fees range from \$0 to \$1,000. Other major airlines' websites were similar. OTA websites such as Expedia and Orbitz list the fees much more prominently.
- Current cancellation/change fee disclosure practices are inadequate given the significant fee risk that consumers face if schedules change unexpectedly.

On behalf of NCL, Mr. Breyault made the following recommendations:

- Fares cancelled or changed more than five to ten days prior to a flight should incur no fee and cancellations/changes within that window should be tiered based on the ability of the airline to resell the seat.
- If a change/cancellation fee is assessed and the seat is later resold, the change/cancellation fee should be refunded in full.
- Absent rules requiring such changes, DOT fare disclosure requirements should be amended to promote standard, prominent cancellation/change fee disclosure on carrier websites.

During the follow-up question-and-answer session, members of the public raised the following issues of concern:

- The change/cancellation fee can vary depending on the relationship the passenger has with the airline. A member of an airline's elite frequent flyer program may pay nothing to change their ticket, whereas someone flying for the first time with the airline would pay a higher fee. Such variations are the reason it is necessary to disclose a range for the fees. The specific change fee listed on OTA websites is most likely incorrect as the OTA does not share the passenger information with the airline until the ticket is booked.
- NCL's research looked at the booking process with major airlines based on a typical customer looking to make an informed decision about air travel. There are ways to improve the disclosure that could involve different language for different types of customers. Most consumers would have to do their own research to find information on airlines' fees.

- Passengers should be able to put in their information on the website as their booking to find out exactly what their change/cancellation fee would be. This cannot be done now as airlines are not releasing this information.
- Looking at Delta’s website, Committee member David Berg challenged that airline websites do not display the information on change/cancellation fees prominently. Clicking through four webpages to get to the information is not unfair or deceptive. United’s website may be more convoluted, but it is in the process of changing it.
- Flyersright.org has not done any analysis on whether change fees amongst international carriers change together; however, these fees are similar within a range. In 2013, fees amongst the three major carriers all changed within a couple of weeks of each other around \$300 on average, suggesting collusions amongst carriers

Aviation Industry Perspective

Thomas Canfield, General Counsel, Spirit Airlines (Ultra-Low Cost Carrier perspective)

Many travelers would not be able to travel without low prices that ultra-low cost carriers—such as Spirit—provide. These carriers are able to offer low prices by efficiently using aircraft, eliminating services that their passengers do not use such as first class, and unbundling their services so passengers only pay for what they use. Spirit has only offered non-refundable fares for many years and is part of the reason their base fares are so low. The company does understand that occasionally passengers need to change their tickets and has a fee from \$110 to \$120. Travelers also have the option to purchase a flight flex ticket option where they prepay for one change provided they do it within 24 hours of the flight.

Various airlines use different variables to determine change fees, including the fare level, the timing of requested changes, and if a flight is domestic or international. All airlines are trying to solve the same issue of recouping loses from unused tickets because empty seats are a spoiled product once the flight has departed. It is unfair for airlines to fully refund these seats and consumers are aware of what non-refundable means. Only a very small percentage of Spirit’s customers pay change fees and their fee pricing is consistent with their model of unbundling services. It would be unfair to consumers to include change fees as a part of all base fares.

The following points were made during a question-and-answer session:

- Whether an airline can fill empty seats depends on when the change or cancellation takes place. It is relatively easy for airlines to fill that spot if the change is made far in advance of the flight.
- In addition to the lost revenue from a cancelled or changed ticket, an airline also loses business from another passenger who decided to fly with a different airline because the cancelled seat was taken by someone else when they originally booked their ticket.

- The profit margins from change/cancellation fees are difficult to determine and depends on the season and variables such as fuel price volatility.
- Change fees are part of an airline's revenue stream to keep the company running and not just a way to make profits. Airlines lag behind many well-known consumer products in terms of profit margins.

MANDATORY HOTEL RESORT FEES

Government Perspective

Amna Arshad, Senior Attorney, U.S. Department of Transportation, Office of Aviation Enforcement and Proceedings

DOT's jurisdiction is limited to air carriers, ticket agents, and air tour operators. DOT requires that fare advertisements must disclose the full price to be paid by the customer to the carrier or agent and must include all applicable mandatory taxes and fees. This rule also applies to anything advertised in conjunction with the airfare such as hotel stays, tours, and rental cars. Taxes and fees that sellers of air transportation do not collect are not required to be included in the advertised fare. However, DOT advises sellers of air transportation that it is in their and their customers' best interest to provide customers notice of such charges.

If a mandatory hotel fee is collected by the hotel upon checkout and not by the seller of the air travel package, then the seller is not violating DOT's rules by not disclosing the fee. Taxes and fees that sellers of air transportation do not collect are not required to be included in the advertised fare.

Annette Soberts, Staff Attorney and Mamie Kresses, Senior Attorney, Bureau of Consumer Protection, Federal Trade Commission

The Federal Trade Commission Act ("FTC Act") governs advertising and marketing of most products and services in the United States. Section 5 prohibits unfair and deceptive acts or practices. An ad is deceptive if there is a representation, omission, or practice that is likely to mislead consumers acting reasonably under the circumstances, and that representation, omission, or practice is material to consumers.

"Drip pricing" is a pricing technique in which firms advertise only part of a product's price and reveal other charges later as the customer goes through the buying process. An investigation in 2012 by FTC staff confirmed that hotels were excluding resort fees from quoted total prices on various online reservation sites. Since then, the FTC has sent warning letters to various stakeholders in the travel industry encouraging them to prominently disclose resort fees upfront and to include resort fees in total price quotes.

The FTC has several guidelines regarding disclosure of resort fees including:

- Disclosing the fee as early as the room selection page during the online booking process;

- Disclosing the resort fee adjacent to the cost claim on every page in the booking process;
- Not using the word “total” unless the quoted price is the true total inclusive of all taxes and mandatory fees,
- Adding the resort fee (including the resort fee tax) to the total quoted on the checkout page; and
- No line item should be more prominent than the all-inclusive total if the price is broken down into its components.

The following points were made during a question-and-answer session:

- The FTC’s project has only focused on resorts fees thus far and has not yet looked into other fees, such as country departure fees.
- Several people noted that it was unfair that hotels do not have to disclose resort fees as part of the base rate, especially on search pages. Search pages on OTAs list hotels by price. A consumer may click on the hotel with the lowest price, but only find out later in the booking process that it is not the cheapest hotel because of the mandatory hotel fee.
- If hotels decide to separate resort fees from the base room rates, the FTC requires that they are upfront about the fees and show them prominently—ideally at the beginning of the search and on the final payment page. The FTC cannot require hotels to include the fees as part of the room rate unless it is determined to be deceptive. It would require a judgment by the commissioners of the FTC that not including them is unfair or deceptive. Rulemaking is a long, multi-year process and must be directed by Congress.
- Though the FTC has engaged in no enforcement actions on this issue, it has worked productively with companies to change their disclosure policies.
- The DOT’s full fare advertising fare rule requires all fees and taxes to be included but does allow certain taxes and fees to be disclosed in a similar way to hotel resort fees. Interpreting what is deceptive is not always easy. There has been improvement in the way these fares and fees are disclosed. DOT and the FTC are working together on this issue.

Consumer Perspective

John Breyault, Vice President, National Consumers’ League

Mandatory hotel resort fees are usually collected either at check in or check out and cover a variety of amenities including Wi-Fi, access to a gym or pool, and coffee. As surcharge fee revenue has risen in the past couple of years, so has consumer interest in this issue.

A review of hotel websites shows that hotels do a decent job of disclosing the resort fee early and prominently during the book processes. However, when using an OTA site, such as Hotels.com, the search results page does not show the fee and arranges hotels based on base room rates. This

practice is misleading to consumers who click on a hotel with the lowest price listed only to find that it is not the lowest price once mandatory fees are included.

The use of mandatory hotel resort fees is widespread and covers amenities that many consumers do not use or that have traditionally been bundled in with the room rate. Disclosure of mandatory hotel resort fees is inconsistent across sales channels. Not including these fees during the search process makes it difficult for consumers to accurately compare rates.

The National Consumers' League recommends that mandatory resort hotel fees be required to be bundled in with published room rates so that consumers can accurately compare costs across all sales channels. Avenues for consumers to seek redress for failure to adequately disclose these fees should be strengthened.

Ed Perkins, Travel Columnist, Tribune Media Services; former editor of the Consumers Union Travel Newsletter

Mr. Perkins disagrees with the FTC's findings that separating mandatory hotel fees from base room rates is not unfair or deceptive. If the fee is mandatory, then the separation is artificial. Stating that a hotel room is cheaper than it really is a deceptive practice. DOT's ruling that it does not have to force travel sellers to disclose these fees if they are not collecting it is also strange. If it is mandatory, then the travel seller is obligating the consumer to pay for it when they purchase a hotel room and therefore it should be advertised. Resort fees are the most prevalent, but other hotels also have housekeeping fees, concierge fees, and what the hotel says these fees cover bears no relationship to the cost.

The following points were made during a question-and-answer session:

- The problem with not including mandatory hotel resort fees with the base room fare is that it encourages deceptive advertising. Hotels that tried to be honest—such as Caesar's Palace—and advertise their rate that included the fee were at a disadvantage when other hotels did not include the fees and therefore were forced to conform.

Industry Perspective

Bruce Aguilera, Vice President and General Counsel, MGM Hotels and Micah Richins, Senior Vice President, Revenue Management

There are many benefits to having resort fees. They bundle commonly requested services and amenities. The resort covers many amenities that would otherwise be expensive to the consumer if priced out separately. Charging each consumer separately to use the gym, health spa, or internet would cost them well over the current resort fee. The resort fees do have value, but the hotel industry made a mistake by not being open and honest about it when they introduced them. MGM Hotels takes disclosure of these fees very seriously and has worked with the FTC to ensure that their websites prominently display the fee during the booking process.

One of the challenges of including a resort fee in the room rate is the relative value of that fee and what is provided. It is easy to say that someone adds the internet or fitness, but it is difficult to quantify the value of what that is, the quality of that experience, and what the person is receiving. For instance, if a fitness center is included in the fee, a consumer who is interested in that amenity will want to know what is offered at the center and the quality of the experience there. Since these things are difficult to quantify, resort fees vary greatly from hotel to hotel.

The following points were made during a question-and-answer session:

- The number of guests who book reservations through a hotel's website versus an OTA site varies greatly depending on the property. For MGM hotels, on average, 40 percent of guests book through the hotel's website.
- Consumers like to take advantage of bundled packages, so they do not mind paying a resort. Customers do not like to be nickel-and-dimed and would prefer paying a lump sum up front. Guests see the value to the mandatory resort fee if they use the amenities that the fee includes. If they do not, it is a waste of money for them.
- MGM found that when it switched from charging guests a separate fee to use the fitness center to an inclusive resort fee, guest use of the center increased.
- Separating the resort fee helps consumers differentiate between amenities that hotels offer. Generally, consumers do not want to be charged a large amount of small fees. It is important to make sure the disclosure of these fees is effective and the amenities provided are clear so that the consumer can decide the value of using them.
- The room rate is not the only measure of quality for hotels. Consumers consider a variety of other factors when choosing a hotel.
- Resort fees are not taxed differently than the room rate or other fees and the tax is always included in the fee price.

Paul Ruden, Executive Vice President-Legal & Industry Affairs, American Society of Travel Agents

This is a case of the first mover problem. No one in the hotel industry wants to be the first one to raise their base rate to include the mandatory resort fee. Travel agents are concerned with some pragmatic aspects of the resort fees.

Travel agents are not required by the FTC or DOT to disclose mandatory hotel resort fees since they do not collect them. Even so, it is within their best interest to do so or else they would lose customers. Online, the resort fee is usually disclosed on the room rate selection site during the booking process. DOT told him that if the travel agent was aware of a resort fee, it may in order to comply with full price rule, restate the published package price or inform the consumer of the fee that the hotel will collect. There are many problems with travel agents having to restate the price of publish air or hotel packages. Price publishing responsibility exists with the hotel and the travel agent usually does not have a relationship with the hotel. ASTA recommends that its

members disclose all fees of which they are aware to the customer. Travel agents are not getting complaints about the fees since agents are careful about disclosing the fees.

Whether the mandatory fees should be included in the base room price is an issue for the FTC. The FTC staff seems to be saying that they do not have enough evidence to claim that the failure to include the resort fee in the full price is deceptive almost all the time and therefore the separation of fees is not deceptive.

BAGGAGE ALLOWANCES, FEES, AND INTERLINING

Consumer Perspective

Charlie Leocha, Chairman, Travelers United

Baggage rules across the airline industry are confusing to consumers, especially given today's complex airline alliances in which people can travel on different airlines for segments of their trip. There are no standard rules for baggage allowances and it is difficult for consumers to understand which airline's rules apply. This is particularly true when international travel is involved. This is also an issue with carry-on baggage, as different airlines have different allowances.

In some cases, airlines will not transfer your baggage to other airlines. In this case, an interlining fee may be beneficial to the consumer. It may not be necessary for DOT to require that airlines transfer baggage, but the complex system that airlines have developed is not beneficial to consumers.

Paul Ruden, Executive Vice President-Legal & Industry Affairs, American Society of Travel Agents

The baggage rules are fairly clear and a good travel agent should be able to explain this to a consumer. The rule says that for interlining flights the first transport carriers' rules apply. If it is a codeshare flight, however, the marketing carriers' rules apply throughout. Occasionally, this is not the case as check-in and gate attendants may not be fully aware of the rules or do not have access to the proper information. The global network of interconnected flights on multiple airlines in multiple countries is complex and does present problems.

Travel agents rely on the global distribution system (GDS) for information regarding baggage rules, but every baggage fee scheme has multiple layers and exceptions and those are not always dynamically available to the agent. Some of these baggage policies are complex, multiple-page documents. It is also hard for travel agents to move the data that they receive from GDS into the itinerary with the appropriate level of personalization for that particular customer. The only practical way for travel agents to fully comply with the disclosure rules and ensure that consumers know exactly what the fee will be is to provide links to the carrier's rules so the consumer can try to figure out for themselves. It is not the best and efficient system for consumers.

Government Perspective

Kimberly Graber, Chief, Consumer Protection and Competition Law Branch, U.S. Department of Transportation, Office of Aviation Enforcement and Proceedings

Consumers should be able to determine the total cost of travel in advance, and should not be surprised mid-travel with differing baggage fees/allowances. There are consumer protection regulations regarding the disclosure of baggage fees and other optional service fees.

The same baggage allowances and fees that apply at the beginning of a passenger's itinerary apply throughout that passenger's entire itinerary. In the case of a code-share itinerary, the marketing carrier of the first flight determines the allowances and fees. For this rule to apply, the flights must be part of a single ticket. The first (marketing) carrier decides the baggage rules that apply, but it can decide to apply the rules and allowances of the downline carrier. "Marketing carrier" refers to the carrier that is actually selling the ticket to the consumer.

There are a few special circumstances for which DOT receives questions. If a multi-leg trip involves foreign carriers, DOT has advised carriers to try to ensure that there are uniform baggage rules and fees throughout the trip and consumers are informed of different policies. DOT cannot force carriers to violate their own baggage rules, so it is permissible for airlines downline to require bags be checked when they were allowed to be carried on during the initial flight. If no fee was initially charged, however, then one cannot be charged by the next carrier. If a passenger decides to add luggage during the trip, a carrier is allowed to charge a baggage fee to check it, even if the initial carrier did not have a baggage fee. The carrier must apply the same rules throughout the journey. Most consumer confusion happens when more complex itineraries with multiple segments are involved. DOT is continuing to monitor complaints it receives and working with industries to implement DOT's rules.

Moira Siân Reid, Acting Manager, Tariffs and Research Division, Canadian Transportation Agency

The air carrier approach to the application of baggage rules is changing due to new industry practices. These practices include à la carte pricing, carrier desire to maximize revenue from baggage and regulatory changes. Both IATA Resolution 302 and US DOT Rule 399.87 apply to Canada and it became clear to the Agency that inconsistent and unclear interline baggage rules impede travel for both airlines and passengers. In order to address this issue, the Agency determined that Canada should try to align either the IATA or DOT rules to harmonize travel in North America.

The Agency's rules are now consistent with DOT's rules. For itineraries involving multiple air carriers that involve travel to, from and within Canada and are purchased on a single ticket, the Agency determined that carriers should apply a single set of baggage rules to the entire itinerary and disclose the rules on the itinerary receipt or e-ticket. Information must be clear and specific

to ensure that consumers who are seeking details about any aspect of a carrier's baggage rules can readily obtain and understand the information provided. Furthermore, carriers must ensure that ticket sellers have sufficient information in order that they may disclose to passengers the baggage rules for their trip.

The Agency has issued guidance on how the industry is to align with the Agency's decision. Air carriers should—for interline transportation on a single ticket where the origin or ultimate ticketed destination is a point in Canada—apply a single set of baggage rules throughout a passenger's itinerary, regardless of stopovers. More specifically, the carrier whose designator code is identified on the first flight segment of the ticket can apply for the entire itinerary their own baggage rules or the rules of the “Most Significant Carrier” (MSC). Canada's regulatory regime requires that carriers have tariffs and that those tariffs reflect the carrier's policies.

The following points were made during a question-and-answer session:

- The wording in DOT Rule 399.87 is not as clear as it should be. It seems to imply that in a codeshare flight, the marketing carrier's rules must apply. DOT is issuing a guidance document to further clarify the rule. DOT advocates for a first carrier rule in which whatever airline's code is on the first flight of the itinerary for a single ticket decides what the baggage rules are for the entire trip. The carrier designates which rules apply in advance and the ticket confirmation should tell consumers what the rules apply.
- Printing the baggage rules on the ticket confirmation is problematic because some consumers may wish to know the baggage rules before purchasing a ticket. Even though its rules should be posted on a carrier's website, consumers may still be unsure of the different baggage rules that would apply to their itinerary.
- It would be beneficial to those in the industry and to consumers for DOT to clarify which carrier has the decision-making authority, when that authority is exercised, and how it must be communicated.

Aviation Industry Perspective

Stephanie Taylor-Klag, Manager, Passenger Services, Airlines for America

Ms. Taylor-Klag noted the following trends in the application and disclosure of baggage fees:

- Until recently, standard industry practice had been for each airline to implement technological changes to their systems to comply with DOT's rule on disclosing baggage fees, including changing their websites and updating their reservation process.
- IATA Resolution 302 recently changed to indicate that marketing carrier baggage rules apply. This helps carriers outside of DOT's jurisdiction to be more closely aligned with the carriers within DOT's jurisdiction. Baggage fees are also now disclosed on tickets.
- U.S. carriers provide direct links to other carriers' baggage data on all e-ticket confirmations. This provides consumers with additional carry-on baggage allowances that may be needed when their itinerary includes codeshare and/or interline operations.

- The industry has also implemented an automated baggage and data filing system to be compliant with DOT's rules and has expanded employee training in using this system so that agents do not have to try and determine which carrier's rules apply. These new changes cost airlines \$1.5 to \$4 million and 20-30,000 programming hours.

Regarding interline baggage policies, Ms. Taylor-Klag shared the following:

- InterAirline Through Check-In (IATCI) Implementation Group is an industry interest group including airlines, system/software providers, and handling agents/operators involved in development, implementation and usage of IATCI functionality. This group standardizes the wording for interline itineraries, based on global messaging industry standards. IATCI's membership covers a multitude of airlines and IATCI facilitates messaging between its members regarding interlining itineraries.
- Through-checked baggage may not be available on an itinerary for a number of reasons including the lack of an interline agreement between carriers, voluntary purchase by a passenger of separate tickets for a multi-leg journey, or local restrictions that require bags to be rechecked. Through-checked baggage systems may fail to work. It does not always make sense to interline transfer bags if they are likely to get delayed by manual correction work at a downline airport causing baggage not to arrive at the final destination. Airlines are currently looking to invest in airport infrastructure to improve this process.

The following points were made during a question-and-answer session:

- Rulemaking on the reporting of ancillary fees has been ongoing at DOT for a number of years and has now been bifurcated so there are now two significant rulemakings. DOT is still planning to make a determination on the reporting of ancillary fees and a separate rule will deal with mishandled baggage and how carriers calculate lost baggage percentages. DOT expects to make a ruling on the lost baggage issue before ancillary fees.
- Airlines have improved how they handle misplaced baggage in recent years.
- It is the airlines understanding that DOT rules stipulate that the marketing carrier's baggage rules apply or that carrier can defer to the Most Significant Carrier's rules if that carrier is crossing over a geographic region—such as between the United States and Europe.
- Consumers learn about which carrier's baggage rules apply early in the booking process when they get the first detailed fare quote and again on the e-ticket confirmation.
- The FAA can impose heavy fines on carriers who allow baggage to be carried on that is beyond what their own programs allow. The FAA does audit carriers and fines can be as high as \$10,000.
- When a passenger has multiple tickets for multi-leg trips, the process to through-check their baggage to other carriers is a manual process. The check-in agent has to manually verify the information and enter that information into their system. This is time consuming for other passengers at the airport, so several airlines including American Airlines are considering only through-checking baggage to carrier in their alliances.
- The first carrier and the marketing carrier are always the same.

Fred Foote, Manager, Industry Solutions, Airline Tariff Publishing Company

Mr. Foote made the following observations about the applicability of baggage rules that apply to codeshare and interline itineraries:

- IATA Resolution 302 is the most current rule regarding baggage rules. It identifies the Most Significant Carrier's rules as those that apply for interline and codeshare itineraries. The resolution was implemented with an operating carrier application meaning that the carrier physically moving the baggage's rules apply. This rule was amended in 2015 to stipulate that the marketing carrier rules apply. It is possible to have multiple marketing carriers on a ticket and the marketing carrier and the operating carrier can be the same.
- IATA has determined geographic areas to help carriers to determine who the Most Significant Carrier is based on area crossed. For travel to/from/within the United States and Canada, the first marketing carrier on the ticket's rules apply. For international itineraries, the first marketing carrier can choose to use the rules of the first Most Significant Carrier on the ticket. For all other travel, the Most Significant Carrier's rules apply for each portion of travel.
- Baggage automation required more than two years of industry coordination and development, affected all airlines, pricing, shopping, and ticketing systems. It involves an on-going effort to maintain the current and changing environment.

The following points were made during a question-and-answer session:

- The airline industry through the Airline Tariff Publishing Company (ATP) implemented a new system that does itinerary analysis to determine whose baggage rules apply. The company has all the data available, though not all carriers have implemented a deep level of personalization for specific passenger baggage fees.
- There is a difference between what DOT allows and how airlines are implementing its rules. Most carriers are using the Most Significant Carriers approach or first marketing carrier. That is not to say that DOT would not allow carriers to use a different approach, however the same baggage fee should be applied through an itinerary.
- All major global distribution systems and online shopping sites use ATP's codes.

Closing Remarks

Chairperson Kathleen Kane thanked all the speakers for their very informative presentations, the Committee members for their questions, and the DOT staff that worked hard to make this meeting possible.

The meeting adjourned at approximately 3:40 PM.

COMMITTEE MEMBER BIOGRAPHIES

The Honorable Kathleen Kane

Ms. Kathleen G. Kane is Attorney General (AG) of Pennsylvania and officially chairs the Advisory Committee on Aviation Consumer Protection. AG Kane serves as a representative of state and local governments with the Committee. She was the first Democrat and first woman elected as Pennsylvania's attorney general in 2012. As Attorney General, her priorities have included protecting consumers from abuse and fraud, as well as protecting senior citizens.

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.

SPEAKER BIOGRAPHIES

Bruce Aguilera

Mr. Aguilera is Vice President and General Counsel for CityCenter and ARIA Resort & Casino. In this role, he is responsible for monitoring gaming regulation compliance, reviewing all contracts and handling all legal matters for those entities. Aguilera also serves as General Counsel for MGM Resorts International Design and MGM Resorts Advertising.

Amna Arshad

Ms. Arshad is a senior trial attorney with the Department of Transportation. Since joining the Department in 2010, she has negotiated consent orders, assessed civil penalties in various advertising cases, participated and led multiple onsite audits of airlines, and provided guidance to airlines and consumers regarding the Department's consumer and disability regulations.

John Breyault

Mr. Breyault joined the National Consumers League—America's oldest consumer organization—in September 2008. His focus at NCL is advocating for stronger consumer and worker protections on a range of issues including telecommunications and technology policy, fraud, and consumer financial protections. Mr. Breyault has served on numerous Boards and advisory committees including the Federal Communications Commission's Consumer Advisory Committee and the Commodity Futures Trading Commission's Technology Advisory Committee.

Thomas Canfield

Mr. Canfield has served as Senior Vice President, General Counsel & Secretary since joining Spirit in October 2007. In this role, he has responsibility for all legal, regulatory and governance matters affecting the Company. Prior to working for Spirit, Mr. Canfield served as CEO and Plan Administrator of AT&T Latin America Corp., a public company formerly known as FirstCom Corporation, which developed high-speed fiber networks in 17 Latin American cities.

Jonathan Dols

Mr. Dols is the Deputy Assistant General Counsel at the Department's Office of Aviation Enforcement and Proceedings. He joined the Department in 2000 as an honors attorney and began work in the Office of Aviation Enforcement and Proceedings in 2002. Prior to assuming the role of deputy, Mr. Dols served as chief of the Consumer Protection and Licensing Branch.

Fred Foote

Mr. Foote has more than 25 years of experience in the airline industry, working at US Airways, Sabre, and Galileo International before coming to ATPCO in 1998. He served as an applications development project manager before joining ATPCO's Product Development team in 2011. Mr. Foote specializes in the Service Fees suite, and he led the company's efforts to develop an automated, standardized baggage solution that met industry and government requirements.

Kimberly Graber

Ms. Grader is currently the chief of the Consumer Protection and Competition Law Branch at the DOT's Office of Aviation Enforcement and Proceedings. She was in private practice from 2005

until 2010 and served as a law clerk for the Federal District Court of the Eastern District of Virginia in 2005.

Paul Hudson

Mr. Hudson has been a public interest lawyer for over 40 years. He presently leads the largest airline passenger organization, Flyersrights.org, which advocates for the rights and interests of airline passengers, publishes a weekly online newsletter, and operates a free telephone hotline for airline passengers.

Mamie Kresses

Ms. Kresses is a senior attorney in the Federal Trade Commission's Division of Advertising Practices. In addition to her recent work on the FTC's Drip Pricing Project, Ms. Kresses has focused on national advertising issues, including deceptive health and safety claims, and on online advertising and consumer privacy, including children's privacy, behavioral advertising, spyware, and adware.

Ed Perkins

Travel columnist Ed Perkins is a nationally recognized reporter and consumer advocate. His weekly columns focus on how travelers can find the best deals and avoid scams and misleading promotions. Mr. Perkins recently retired as founding editor of Consumer Reports Travel Letter, one of the country's most influential travel publications, known for its consumer-oriented research and reporting.

Micah Richins

Mr. Richins is currently the Senior Vice President of Revenue Management and Services for MGM Resorts International. He most recently served as Senior Vice President of Revenue Management and Channel Distribution for MGM Resorts. Prior to that, Mr. Richins served as Senior Vice President of Hotel Operations for Luxor. In this capacity, he was responsible for overseeing the day-to-day operations of the resort, including all Hotel Operations and Entertainment departments and property development.

Paul Ruden

Mr. Ruden is Executive Vice President for Legal & Industry Affairs for the American Society of Travel Agents. His responsibilities include all of ASTA's internal and external legal activities, industry policy issues, state and federal legislation, consumer affairs, and extensive media activity. In June 2001, the Speaker of the House of Representatives appointed him one of the nine commissioners of the National Commission to Ensure Consumer Information and Choice in the Airline Industry.

Moira Siân Reid

Ms. Reid is Acting Manager within the Tariffs and Research Division at the International Agreements and Tariffs Directorate of the Canadian Transportation Agency. She is responsible for the oversight and compliance of air carriers with respect to tariffs and is responsible for projects relating to all aspects of international air pricing and terms and conditions of carriage.

Annette Soberats

Ms. Soberats is an attorney in the Division of Advertising Practices at the Federal Trade Commission's Bureau of Consumer Protection. She is the lead attorney for the FTC's Drip Pricing Project and works on national advertising matters with a focus on health and performance claims.

Stephanie Taylor-Klag

Ms. Taylor-Klag joined Airlines for America (A4A) as Manager of Passenger Services in April 2012. In her current role, she is responsible for facilitating Passenger Services-related councils and working groups, liaising with regulatory agencies such as the Department of Transportation (DOT) and Transportation Security Administration (TSA), and assisting in the development and implementation of airline standards and processes while evaluating the regulatory impact on new or existing standards and processes. Ms. Taylor-Klag came to A4A with an extensive passenger services background, most recently working in the Airport Services Division for American Airlines, where she developed baggage policies, negotiated interline agreements with the industry, and was strategic in the development of implementation plans in relation to regulatory requirements and policy changes such as the DOT Baggage Rules.