Record of Meeting *October 2014*

Sixth Meeting of the Advisory Committee on Aviation Consumer Protection

Prepared by CENTRA Technology, Inc.
Arlington, Virginia 22203

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

Meeting Date: October 29, 2014

Scheduled Meeting Time: 9:00 a.m. to 3:45 p.m., Eastern Time

Meeting Location: US Department of Transportation, 1200 New Jersey Avenue S.E. 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 October 14, 2014.

Attendees:

Last Name	First Name	Affiliation
Aldeyyeain	Abdulaziz	Kuwait Airways
Ale Flint	Deborah	Oakland International Airport
Atwood	Tristan	Kirstein & Young, PLLC
Baldanza	Ben	Spirit Airlines
Bechdolt	Stacey	Regional Airline Association
Begazo	Fabiola	Virgin America
Berg	David	Airlines for America
Blank Riether	Kathleen	DOT
Bramlett	Alec	American Airlines
Burke	Kevin	Airports Council International – North America
Burke	Kevin	Airports Council International – North America
Carruthers	Ginny	Alaska Airlines/Horizon Air
Chapman, Jr	Livaughn	DOT
Correll	Daniel	Clyde&Co US LLP
Davis	Jerome	Econometrica, Inc.
Dols	Jonathan	DOT
Donahue	James	Executive Deputy Attorney General, PA
Downey	Shane	Global Business Travel Association
Enstice	Tim	Orbitz
FitzPatrick	Beth	Eckert Seamans Cherin & Mellott, LLC
Frederick	Julie	Association of Professional Flight Attendants
Golaszewski	Rich	Economist, GRA, Inc.
Gorman	Robert	DOT
Graber	Kimberly	DOT
Grady	Cynthia J.	Intelsat Corporation
Hammond	Karla	DOT
Harvey	Heather	Spirit

Heimlich	John	Airlines for America
Jansen	Bart	USA Today
Jollie	Susan B.	Law Office of Susan B. Jollie
Kasper	Daniel M.	Kasper Lee Aviation/Compass Lexecon
Kass	Howard	American Airlines
Keithley	Graham	Pillsbury Winthrop Shaw Pittman LLP
Kelly	Tim	DOT
Knapp	Julius	Federal Communications Commission
Kronon-Schertz	Renee	Travelers United
Leocha	Charlie	Consumer Travel Alliance
Lowry	Richard	Spirit Airlines
Maddux	Jason	Garofalo Goerlich Hainbach PC
Markert	Alissa	United Airlines
McElroy	Deborah	Airports Council International – North America
McGee	William	Consumers Union
McGonegal	Steve	Econometrica, Inc
Minardi	Philip	The Travel Technology Association
Mohyuddin	Ghulam	Kuwait Airways
Mtambuzi	Kavaragu	Virgin America
Nguyen	Vinh	DOT
Peck	Eben	American Society of Travel Agents
Przybyla	Amy	CENTRA Technology, Inc.
Rogers	Kevin	AeroMobile Communications, Inc.
Rosa	Louis	Inmarsat
Shaver	Tim	Federal Aviation Administration
Simmons Kendale	Lynora	DOT
Strickman	Norman	DOT
Swafford Brooks	Lisa	DOT
Thumpston	Jim	Zuckert Scoutt Rasenberger
Walko	Chris	Delta
Westfall	Sara	CENTRA Technology, Inc.
Workie	Blane A.	DOT
Young	Joanne	Kirstein & Young, PLLC

TABLE OF CONTENTS

Summary of Meeting Proceedings
Sixth Meeting of the Advisory Committee on Aviation Consumer Protection (ACACP)

Welcome and Housekeeping Matters

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

The ACACP Designated Federal Official (DFO) Ms. Blane A. Workie called the meeting to order at 9:05 a.m. She welcomed the speakers and the attendees and outlined the agenda for the day.

Introductory Remarks of Committee Members

Committee member Charles Leocha, representing consumer protection public interest groups, began by noting the value and importance of having a public forum to discuss the impact on consumers of voice calls on airplanes, government-imposed taxes and fees on air transportation, and industry mergers and consolidations. Mr. Leocha observed that voice calls on aircraft, which are more accepted internationally, are generally opposed by the public in the U.S. He noted that the high roaming costs for mobile phones on planes may inhibit widespread use. He expressed particular concern about the jump in the Transportation Security Administration (TSA) security fee, stating that it has more than doubled since July 2014, and that $40 in fees and taxes are collected from every passenger before the first dollar goes to the airlines. Regarding the impact of taxes and fees on consumers, Mr. Leocha observed that seventy percent of the costs associated with air traffic control, customs and border protection, and airport security comes from fees and taxes collected from passengers. He stated that the fee/tax structure needs to be reexamined so that consumers do not bear such a large portion of the cost burden. Regarding mergers and consolidations, Mr. Leocha reiterated his opposition to the merger of US Airways and American Airlines, which in his view is not in the interest of consumers.

James Donahue (alternate for ACACP Chair Kathleen Kane, who was unable to attend), representing state organizations with consumer protection expertise, stated that the Pennsylvania Attorney General's office receives thousands of consumer complaints each year, many about issues with airlines that his office forwards to the U.S. Department of Transportation (DOT). He noted that Attorney General Kane has worked with the Department of Justice (DOJ) on airline mergers and sided with DOJ to oppose the merger of US Airways and American Airlines.

Committee member David Berg, representing the airline industry, stated his view that voice calls on airplanes is an issue that should be decided by consumer demand. He observed that last year airlines and passengers collectively paid $20 billion in taxes and fees, which constitute more than twenty percent of the total cost of a ticket. Mr. Berg said he looked forward to the meeting presentations on the benefits and concerns of airline consolidation.

Committee member Deborah Ale Flint of Oakland International Airport, representing airport operators, noted that fees provide vital financial support for the modernization of airports. She noted that Oakland anticipates spending $90 million for safety upgrades alone and that she looks forward to the conversation about airport fees.

Update on the Implementation Status of the Committee's Recommendations to the Secretary of Transportation

Tim Kelly, Team Leader, Aviation Consumer Protection Division

Mr. Kelly began his overview by noting that the ACACP has a statutory mandate to make recommendations to the Secretary of Transportation for improving the airline passenger travel experience.

Mr. Kelly then summarized the DOT's actions and responses to the first set of recommendations to the Secretary made on October 22, 2012. The report addressed: protections from prohibited discrimination for travelers with disabilities and for other protected groups, consumer air travel complaints, enhanced information about consumer rights, understanding contract terms, air travel pricing transparency, ticket agent disclosures, and on-time performance reporting for all carriers. He summarized each recommendation and its implementation status as follows:

1. Recommendation: To improve travel experiences for travelers with disabilities, the Committee recommended that DOT encourage airlines and airports to take voluntary steps towards this goal, including encouraging airlines and airport personnel to work with TSA in assisting travelers who are unable to sit during lengthy layovers without their custom-made wheelchairs. Implementation: In June 2013, the Secretary sent a letter to associations for airports and for US and foreign air carriers addressing their obligations to provide nondiscriminatory service and to ensure timely return of customized wheelchairs during lengthy airport connections.
2. Recommendation: The Department should work with airlines and airports to make their kiosks and websites accessible to disabled persons. Implementation: In November 2013, DOT issued final rules establishing kiosk and website accessibility requirements (78 Fed. Reg. 67882). These requirements will go into effect on December 12, 2015 for websites and the period between December 2016 and December 2023 for kiosks.
3. Recommendation: The Department should require airports and airlines to ensure appropriate access to service animal relief areas at airports. Implementation: Under the Notice of Proposed Rulemaking (NPRM) RIN 2105-AD91, a rule has been proposed to require a minimum of one service animal relief area per terminal in a sterile area. The projected final rule date is April 2015.
4. Recommendation: To prevent discrimination based on race, religion, national origin, and gender, the Department should remind airlines of their obligation to avoid such discrimination and encourage them to stress this in initial and recurrent employee training. Implementation: In June 2013, the Secretary sent a letter to carrier associations referring to federal statutes that prohibit such discrimination and stressing the benefits of employee training on prohibited discrimination.
5. Recommendation: To provide better understanding of terms used in contracts of carriage and customer service plans, DOT should survey how the airlines define certain common terms and place this information on DOT's website. Implementation: After receiving the

Secretary's letter in June 2013, Airlines for America (A4A) worked in conjunction with the DOT to develop a glossary of commonly used terms. This information has been posted on the DOT Aviation Consumer office website.

6. Recommendation: To address concerns regarding consumer complaints, DOT should provide complainants with contact information for the analyst handling the complaint and indicate that this person can be contacted concerning the status of the complaint. Implementation: DOT acknowledgment of letters and emails has been revised to include a case number automatically inserted as well as a central email address and phone number and a commitment that an analyst will reply within one business day, in most cases.
7. Recommendation: DOT should outline the complaint handling process to complainants by advising whether a potential violation of rule or statute has occurred; that their complaints will be sent to the carrier, which will have 30 to 60 days to reply to the consumer; and that if a reply is not received in this timeframe, the complainant should contact DOT. Implementation: Acknowledgment letters and emails now state if the subject of the complaint is covered by a DOT rule, the complaint will be sent to a carrier for a response to consumer within the 30 to 60-day legal deadlines.
8. Recommendation: To enhance information about air travel consumer rights, DOT should place its guidance on consumer rights and related frequently asked questions (FAQs) in a prominent location on its website. Implementation: New FAQs have been added on the Aviation Consumer office page and new links to that page are available from the DOT home page and "Aviation" page.
9. Recommendation: DOT should take steps to ensure transparency in air carrier pricing, including ancillary fees. Implementation: Consumer Rule II requires airline websites to disclose fees for optional services and the pending NPRM on Transparency of Airline Ancillary Fees and Other Consumer Issues (Consumer Rule III) contains proposals that address the issue of displaying ancillary fees through all sales channels, including Global Distribution Systems (GDS).
10. Recommendation: To encourage ticket agent disclosures, DOT should require all ticket agents, including Online Travel Agencies (OTAs), to disclose if they do not sell tickets for all airlines and, if so, that additional airlines may serve the route being searched. Implementation: Consumer Rule III addresses whether ticket agents, including OTAs, should be required to disclose if they do not sell tickets for all airlines. DOT released enforcement guidance effective August 19, 2013, addressing how OTAs should disclose in search results if there are carriers the OTA does not market, and thus does not consider in its search process.
11. Recommendation: To promote on-time performance reporting for all airlines, the Committee recommended that DOT require on-time performance data to be reported by all airlines, not simply those that account for one percent of domestic scheduled passenger revenue, as is currently the case. Implementation: Consumer Rule III proposes to reduce the percentage to 0.5, bringing in more carriers that must report and also proposes that reports must include domestic code share partner data.

Mr. Kelly next outlined DOT's actions in response to the Committee's February 22, 2014, recommendations to the Secretary regarding consumer privacy, flyers' rights, and delays in the customs clearance process as follows:

1. Recommendation: DOT should take steps to make consumers aware that they can file privacy complaints with the Department and should revise its website to show consumers how to do this. Implementation: Within 90 days of the report to Congress, DOT will post a link on its Aviation Consumer office webpage with information on DOT's authority and complaint page, specifically inviting privacy complaints.
2. Recommendation: To identify issues of concern to consumers regarding privacy, the Committee itself should facilitate a meeting among privacy groups, consumer groups, airlines, and others in the air travel distribution chain. Implementation: Committee members Mr. Berg and Mr. Leocha agreed to facilitate a meeting regarding privacy practices among these stakeholders to discuss the issues in question. In addition, by February 1, 2015, the Secretary will send a letter to Airlines for America commending their initiative in convening a stakeholder meeting to discuss privacy issues and address consumer groups' concerns regarding airline, travel agent, and GDS privacy practices.
3. Recommendation: DOT should update its *Fly Rights* publication to ensure the content is written in plain language and covers topics such as denied boarding, delayed or canceled flights, and baggage problems. Implementation: By February 1, 2015, DOT will update the publication and prominently post a link to an accessible electronic version on the aviation consumer protection website.
4. Recommendation: The Secretary should encourage airlines and airports to consider methods to enhance consumer access to information about their rights regarding air travel problems. Implementation: By February 1, 2015, the Secretary will write to airline and airport associations asking them to encourage their members to voluntarily adopt methods to enhance such access including online and mobile capabilities.
5. Recommendation: The Secretary should send a letter to the Secretary of Homeland Security and the US Customs and Border Protection (CBP) Commissioner expressing appreciation for their efforts to address long customs processing times at many US airports by improving staffing models and adopting new technologies, and urging the CBP to continue working with stakeholders to improve processing times and enhance transparency of CBP fees. Implementation: By February 1, 2015, the Secretary will send the recommended letter addressing these matters.

Update on Recent Rulemaking and Enforcement Activities of the Office of Aviation Enforcement and Proceedings

Kimberly Graber, Chief, Consumer Protection and Competition Law Branch, Office of Aviation Enforcement and Proceedings

Ms. Graber reported the following updates on the activities of the Enforcement office, which engages in formal and informal enforcement proceedings concerning consumer protection, civil rights, and licensing and fitness matters:

1. Since 2008, the office has conducted about 30 comprehensive inspections of US and foreign air carriers as well as public charters operators, averaging about five inspections per year depending on funding. The office has issued 18 consent orders totaling $3.3 million to date. Ongoing compliance initiatives are Consumer Rules I and II—including posting of customer

service and tarmac delay plans, timely responses to complaints, disclosure of optional service fees, full fare advertising, long on-board tarmac delays, and code-share disclosure.

2. The office has issued 16 orders against US and foreign air carriers – assessing over $3.5 million in fines – for violations of the Tarmac Delay Rule that include:
   - Excessive time on tarmac/failure to deplane (Five orders issued)
   - Excessive time on tarmac/failure to deplane plus failure to provide food and water (Four orders issued)
   - Failure to provide notification of opportunity to deplane (Five orders issued)
   - Failure to provide food (One order issued)
   - Excessive time on tarmac and failure to provide notification of opportunity to deplane (One order issued)

3. The office has issued 10 consent orders over code share disclosure compliance to air carriers and ticket agents—both online and brick and mortar, assessing approximately $750,000 in fines.
4. Three final rules have been issued within the last year:

   - The first rule addresses accessible websites and automated kiosks in US airports. This rule was issued in November 2013 and requires carriers to make their primary websites accessible to people with disabilities. Carriers and U.S. airports must also ensure automated kiosks operated by carriers at U.S. airports are accessible.
   - The second rule addresses seat strapping (placing a wheelchair across a row of seats using a strap kit) in aircraft cabins, which was issued in November 2013. This rule allows carriers to use the seat-strapping method to transport a passenger's wheelchair in the cabin of newer aircraft and came into effect in January 2014.
   - The third final rule, issued July 2014, expanded the requirement to report on loss, death or injury of animals during air transport to a greater number of US carriers. This rule becomes effective in January 2015.

5. Five rulemakings are ongoing:
   - Publication of a final rule enhancing airport accessibility for passengers with disabilities, including service animal relief areas at US airports, high-contrast captioning on certain televisions and audio-visual displays at US airports, and lifts to transfer passengers with mobility impairments where level entry loading bridges are not available.
   - A proposed rulemaking addressing accessible in-flight entertainment to passengers with disabilities.
   - A proposed rulemaking addressing the following accessibility issues:
     - whether carriers should be required to supply in-flight medical oxygen to passengers who require it to access air transportation; whether foreign air carriers should continue being required to only transport service dogs; whether medical documentation and advance notice should continue to be required from users of emotional support and psychiatric service animals; whether there should be a requirement to report the number of requests for wheelchair assistance carriers receive; and whether it is economically feasible to require accessible lavatories on certain single-aisle aircraft.

- A final rule on Transparency of Airline Ancillary Fees and Other Consumer Issues. Public comments are currently under review on a proposed rulemaking to address the following consumer protection areas:
  - Requiring carriers and ticket agents to provide real-time information on fees for optional services to consumers
  - Requiring minimum customer service standards for ticket agents that sell air transportation
  - Expanding the pool of reporting carriers to include smaller carriers
  - Requiring reporting carriers to report on-time statistics for their code-share partners
  - Codifying in regulations the Enforcement Office's interpretation of the statutory term "ticket agent"
  - Disclosing the airlines marketed by a ticket agent and prohibiting display bias
- A final rule on use of electronic cigarettes on commercial aircraft.

During the question and answer session, Mr. Leocha commented that DOT has overhauled its handling of consumer complaints and has done an excellent job of making it easier for consumers to find out what is going on and to access consumer rights information. He provided an example of a consumer who obtained information from the Department's website regarding compensation for a denied boarding. He also expressed concern about the common aviation terms glossary, which allows airlines the latitude to have their own definitions of terms. In his view, the reason for a glossary is to have a standard for all airlines to follow. He also reported that in the near future the Committee will put together a new privacy working group that will include consumer representation and cover international as well as domestic flights.

In response to Mr. Leocha's comment regarding passenger compensation for a denied boarding, Mr. Kelly then provided a brief overview of the ticket oversales rule. He reported that this rule only applies to flights that are oversold, not canceled or delayed. He explained that when a flight is oversold, the airline must seek volunteers to change their flight and it is up to them to determine what compensation they can offer. He further explained that if a passenger is involuntarily denied boarding for an oversold flight, then the passenger is eligible for compensation based on the amount of the original fare and length of the delay up to $1300.

Blane Workie remarked that DOT worked very closely with Airlines for America (A4A) on the terms in the glossary and that the Department cannot impose these definitions on airlines except through a formal rulemaking process. She pointed out that airlines can formulate their own definitions based on best practices and that the DOT's glossary can serve as a baseline. Mr. Leocha reiterated his view that it is unfair for each airline to define these terms differently and his desire to ensure that consumers know what the definitions mean.

Regulating the Use of Mobile Wireless Devices for Voice Calls on Aircraft

Government Perspective

Robert Gorman, Senior Attorney, Office of Aviation Enforcement and Proceedings

Mr. Robert Gorman presented an overview of the overlapping regulatory interests and jurisdictions of multiple federal agencies with respect to voice calls on aircraft. These agencies include the Federal Communications Commission (FCC), the Department's Federal Aviation Administration (FAA) and Office of the Secretary (OST), the Department of Homeland Security (DHS), and various offices within the Department of Justice, including the Federal Bureau of Investigation (FBI).

Mr. Gorman reported the following key developments regarding mobile calls on aircraft:

1. In the years since the FCC adopted its cell phone ban in 1991, Airborne Access System (AAS) technology has been developed. This technology allows for passenger calls on aircraft without interfering with ground networks. In light of this technology, the FAA announced in October 2013 guidance on expanding passenger use of portable electronic devices during all phases of flight. In December 2013, the FCC issued an NPRM proposing a pathway for voice calls to be made through AAS above 10,000 feet.
2. In February 2014, DOT issued an advanced notice of proposed rulemaking (ANPRM) requesting public comment on whether an airline's practice of permitting voice calls is "unfair" (49 U.S.C. 41712) or inconsistent with "safe and adequate" air transportation (49 U.S.C. 41702) and more generally, on whether DOT should prohibit such voice calls, and if so, the parameters of the restriction. About 98 percent of nearly 1700 public comments, including those from pilot, flight attendant, and consumer advocacy organizations, favored a continued ban, citing concerns about passenger annoyance and "air rage," resulting from the intrusion of voice calls, as well as safety concerns related to inattention to inflight announcements.
3. Those against the ban included airline associations, certain foreign carriers, and companies that provide the AAS technology. In addition to challenging DOT's authority over this issue, those opposed cited a lack of evidence of harm to consumers if voice calls are permitted on flights and argued that each airline should be able to make its own decision regarding the service.
4. On September 22, 2014, 77 members of Congress wrote to DOT, DOJ, FCC, and DHS urging the agencies to continue the ban on voice calls on all commercial aircraft and to coordinate efforts.

Julius Knapp, Chief of the Office of Engineering and Technology, Federal Communications Commission

Mr. Knapp's presentation focused on the history of FCC action having an impact on mobile voice calling on aircraft.

1. He explained that the initial ban on voice calls adopted by the FCC in 1991 extended only to the frequencies used by cell phones of the first generation and that while all cell phones include these original frequencies, the additional frequencies currently used by modern cell phones are not covered by FCC rules.
2. The original FCC ban was intended to address the potential for voice call interference with ground communications. The new picocell systems that can be installed on aircraft to transmit voice calls carry a very low risk of interference with ground communications.

3. The FCC issued a notice of proposed rulemaking in December 2013 to consider whether the voice call ban should be maintained on a technical basis. Under the proposed rule, the FCC would no longer retain the ban but airlines would need to take specific steps in order for passengers to be permitted to make voice calls on aircraft. The proposal to lift the ban would not prevent airlines from banning voice calls in flight.
4. The existing FCC rule bars the use of cell phone operating on a particular spectrum. There is no prohibition on data-based mobile phone use to enable connection to websites and check email via Wi-Fi services.
5. On March 24, 2014, Tom Wheeler, Chairman of the FCC, sent a letter to DOT in his capacity as one of the Commissioners, outlining his concerns with lifting the ban. The FCC will continue to collaborate with DOT on this issue to help shape rules that serve the public interest.

During the question and answer session, Mr. Donahue asked if there is still a technical issue with the data-only rule if the plane does not have an onboard wireless access system. Mr. Knapp responded that there are many systems in which you can enable Wi-Fi, and that the technology to transmit either voice or data via Wi-Fi is the same.

Mr. Berg asked how DOT is coordinating with the FCC on inflight cell phone use. Mr. Knapp responded that there is an interdepartmental radio advisory committee (IRAC) and DOT also talks directly with agencies.

Mr. Leocha asked about the status of the FCC and DOT mobile voice call rulemakings. Mr. Knapp responded that DOT has issued an advance notice of proposed rulemaking and has received comments. He added that the FCC's rulemaking posed questions on whether there should be restrictions on the inflight use of voice technology. The agencies are now evaluating the comments and coordinating with the other interested agencies.

Mobile Communications Industry Perspective

Kevin Rogers, CEO AeroMobile Communications, Inc.

Mr. Kevin Rogers began his presentation by stating that he wanted to dispel myths about voice calls on aircraft. His company, AeroMobile, is a UK subsidiary of Panasonic Avionics Corporation that has provided in-flight mobile connectivity (IMC) systems since March 2008. Mr. Rogers made the following observations and assertions:

1. Aeromobile's IMC equipment has been certified airworthy by both the FAA and European Aviation Safety Agency (EASA). Boeing and Airbus offer such systems on a growing number of aircraft types as a catalogue item. Thirteen airlines currently use Aeromobile's IMC equipment—including British Airways, Lufthansa, and Virgin Atlantic—many of which have chosen not to offer the voice call option which is disabled by default in the ground network. There are also 270 roaming partners that have agreements with AeroMobile, including AT&T and T-Mobile.
2. Data and short message service (SMS)—"quiet services"—constitute more than 80 percent of IMC usage when measured across an airline's entire installed fleet. Only 20 percent of IMC usage is "voice" service—calls, call alerts, and access to voicemail—and there is strong

anecdotal evidence that much of the voice service is “listen only”—checking voicemail. The average length of a voice call on the system is two minutes—which may consist of a passenger making a call or just checking their voicemail. When measured across various airlines, including those operating routes to/from the US, “voice” usage is even lower.

3. Aeromobile’s IMC system operates only at cruise altitudes 10,000 feet or above and is automatically disabled below 10,000 feet so as not to interfere with ground networks. For each airline, the system is operated according to the airline’s procedures and the licenses approved in its country of origin. Airlines can choose which IMC applications (e.g., voice, data, text) to enable via a crew-controlled panel that provides an “on-off” override for all services. Many airlines limit the service to text and data applications only.
4. IMC services are offered primarily on long-haul international flights of foreign airlines—there are no standards for US domestic IMC operations. The IMC system uses an international roaming model. The passenger’s mobile subscription must be “roaming enabled” and the wireless provider must have a roaming agreement with AeroMobile. Prices are set and charged by the passenger’s wireless service provider.
5. A recent FAA study on cell phone usage confirmed there have been no adverse impacts of voice service where offered.
6. IMC usage appears to be self-regulating. For example, usage on night flights is much lower than day flights and the cabin crew can disable/enable any text, data and/or voice services at any time. AeroMobile is unaware of any reported incidents of crews disabling the IMC system due to passenger complaints.
7. There is no basis for concluding that voice service, or IMC generally, raises aviation consumer protection concerns. There has been no reported disruption or other concerns regarding IMC availability, particularly in the context of widespread Wi-Fi availability and there have been no alleged unfair or deceptive practices associated with IMC availability.
8. IMC services are often very important to business travelers. US mobile subscribers are frequent users of IMC—including voice— on foreign airlines and outside US airspace. Data and text dominate passenger usage and several US airlines have announced that they would not offer voice if IMC becomes available for domestic flights. Foreign administrations have left the decision of which IMC applications to offer—including voice—to their respective airlines. Mr. Rogers stated US airlines should be given the opportunity to choose a) whether to install IMC systems and b) which IMC services to offer their passengers, at least on long haul international flights.

9. Assuming the FCC lifts the ban, it will take several years for the IMS system to be approved and installed on aircraft. After installation, airlines could still disable voice calls and since many airlines have already announced that they would ban voice calls, it is not necessary to regulate it.

In response to a question about decreasing prices leading to more voice call usage, Mr. Rogers stated that data price is a driver for prices going down. In the European Union, there is huge downward pressure on data roaming prices. He noted that most price reductions are on data usage, but eventually there will also be some reductions on voice and text prices. Over time, data roaming prices in the air will be much closer to prices on the ground.

Though there continues to be very little inflight voice traffic, Mr. Rogers noted that the demand for IMC systems versus Wi-Fi for voice calls is growing due to the technical limitation on the number of passengers who can simultaneously make voice calls via a Wi-Fi system.

Mr. Donahue asked if there might be cultural differences in the EU and US that make using cell phones on aircraft different. It is Mr. Roger's impression that there is no difference.

Flight Attendant Perspective

Julie Frederick, Government Affairs Representative, Association of Professional Flight Attendants

Ms. Frederick stated the Association of Professional Flight Attendants (APFA) is strongly opposed to lifting the ban on voice calls in aircraft. She further noted:

1. Although the FCC has stated that if the ban were lifted, it would be up to the airlines to decide whether or not to offer a voice call option, the FCC commissioners did not unanimously agree on this position.
2. Allowing voice calls on aircraft will make an already challenging cabin environment more challenging for flight attendants. The APFA supports the ban in order to maintain passenger comfort, a good passenger experience, and the security and safety of the airplane. Aircraft cabins are noisy and people speak louder while on phones. She believes there will be issues among passengers if voice calls are permitted and flight attendants do not want to be cell phone police.
3. There were over 1,200 incidents of passenger misconduct in 2013. Already, there have been "air rage" incidents over seat back space and she believes cell phones will increase passenger confrontations.
4. Airline fees add up to $6 billion a year and airlines will use the lifting of the ban as an opportunity to increase fees.
5. The security aspect should also be considered. In 2005, the FCC considered lifting the ban and DOJ, DHS, and the FBI all raised concerns that terrorists and other criminals could use calls to perpetrate an attack. Voice calls may also compromise passenger safety by making it difficult to hear crew member instructions during an emergency.
6. Public comments on the DOT rulemaking show that passengers overwhelming support continuing the ban. The APFA also supports the pending Congressional legislation on the issue.

During the question and answer session, Mr. Donahue asked if the APFA felt there was a safety issue resulting from data usage on flights. Ms. Frederick responded that the APFA feels there is only a safety issue regarding voice calls.

Mr. William McGee from the Consumer Union asked if there was a concern among flight attendants that differing policies among airlines regarding cell phone use would result in confusion among passengers as to whether voice calls are or are not allowed on a given flight. Ms. Frederick stated that she believes this would be an issue, as similar misunderstandings already occur over differing airline baggage policies. A consistent policy across all airlines is the best option in her opinion.

Consumer Perspective

Written Statement from Paul Hudson, President, FlyersRights, read by Charles Leocha, ACACP Committee Member

FlyersRights' position is that DOT and FCC should continue to ban inflight voice calls. According to Mr. Hudson's statement:

1. Passengers and flight crew members overwhelmingly oppose allowing passengers to have cell phone conversations in the passenger cabin due to the likely impact on passenger privacy, quality of the in-cabin experience, security, and safety.
2. The FCC's January 2014 NPRM proposing to allow airlines to decide this issue closed in May 2014 and received over 1,400 public comments, of which 98 percent opposed the proposal. See FCC Docket 13-301.
3. Most of the commenters were long time travelers who have personally experienced the annoyance of cell phone conversations in other confined venues such as in trains, buses or in theatres, which generally ban or severely restrict the use of cell phones.
4. Air rage would be likely to increase, as shown by the assaults and even homicides caused by cell phone use in theatres, even where prohibited (e.g., www.cnn.com/2014/02/07/justice/florida-movie-theatre-shooting/.
5. There is also a possibility that terrorists could use cell phones to coordinate attacks, interfere with pilot and crew communications, or trigger bombs on airliners.
6. Access to internet email using laptops and tablet computers is already permitted and could be extended to text messaging and email on smart phones. There is no reason to also include cell phone voice conversations. Voice calls would inevitably disturb other passengers and may also interfere with flight crew safety instructions and communications. The only possible exception to a general ban should be if an airline provides a privacy booth for cell phone call conversations that prevents any disturbance to other passengers.

Mr. Leocha commented that he could see situations where passengers would want to have voice calling available and situations where they would oppose it. If airlines are permitted to decide whether to offer voice calling service, then perhaps it can be allowed one hour after takeoff and one hour before landing. There may be a middle ground on this issue and that there are other issues to consider. He observed that if DOT were to ban cell phone use on aircraft, it would add one more layer of enforcement responsibilities when the agency already has plenty on its plate. He stated that as the head of a consumer organization, he is still undecided on this issue, although a member survey showed dramatic opposition by the majority with a significant number who would like to have a choice.

Ms. Carolina Mederos from Squire Patton Boggs asked if the DOT rulemaking only involves mobile devices or if it involves other modes of calling. There has not been any testimony yet about the experience with voice calls on aircraft using seat back phones. In response, Ms. Workie stated that the questions in the advance notice of proposed rulemaking (ANPRM) focused on

banning calls on mobile devices, but that DOT did receive comments about other methods of making voice calls. She stated that she was not sure how these issues would be addressed in the notice of proposed rulemaking but that in the ANPRM DOT noted that seat back phones are so rarely used that many airlines no longer make them available.
Ms. Susan Jollie, an attorney and former Civil Aeronautics Board staff member, did not necessarily agree with the speakers on the voice calling issue. She indicated that lessons learned from other deregulation processes could be instructive regarding the proposal to lift the ban and allow airlines to decide whether to offer mobile voice calling service. She pointed out that the vast majority of consumers do not participate in the regulatory comment process, and that while agencies respond to the voices they hear, those voices may not necessarily reflect the best interests of consumers. She observed that one of the lessons learned from past deregulations is that consumers benefit when airlines are allowed to operate in response to consumer perception. She noted that if the majority of passengers do not want to have voice service, then airlines will not offer it. She believes that agencies should not interfere unless there has been a market failure.

Mr. Leocha commented that he did not understand how voice calling on aircraft falls under unfair and deceptive practices. Ms. Workie replied that the question is whether the cumulative impact of allowing in-flight calls on aircraft constitutes an unfair practice. When determining whether or not to regulate, DOT looks at whether an activity that may cause consumer harm can be reasonably avoided by the consumer or not. When considering the voice call issue, the Department is evaluating whether use of voice calls causes harm that a consumer cannot reasonably avoid.

The Impact of Government-Imposed Taxes and Fees on Consumer and Aviation Industry

Airport Perspective

Kevin Burke, President and CEO, Airports Council International – North America (ACI-NA)

Mr. Burke spoke about the following issues and concerns regarding the impact of taxes and fees on airports and passengers:

1. According to a recent ACI-NA economic impact study, approximately 700 million people will travel through U.S. airports this year. Airports provide economic opportunity by generating more than $1.1 trillion annually and providing important jobs in communities.
2. By 2027, that number of people traveling through US airports annually is expected to exceed one billion. With the average airport more than 40 years old, it will be harder and harder to meet the new demand. It is time to rethink how we finance airport modernization, as airports today are financially maxed out, needing more than $71 billion for improvement projects just to keep them afloat. Airports need additional funds to modernize ageing facilities and improve safety infrastructure in order to meet strict federal standards.
3. The Passenger Facility Charge (PFC) gives airports a powerful tool for funding improvement projects. As creative and resourceful as airports have been in utilizing PFC funds, it is time to modernize how airports are financed. Financing modernization projects is a highly complex equation and requires many revenue sources, including the use of tax free municipal bonds, for which airports enjoy a competitive interest rate, and direct investment into local airport infrastructure.

4. The PFC allows airports to make smart decisions about airport improvement projects and take into account the long-term community needs that an airport can help fulfill. The benefit of PFC funds is that they are not part of the federal budget process that can bog down projects. The PFC must stay in the airport system and, more importantly, the PFC provides airports with self-help they need to provide price options to the community.
5. For example, in 1999, the Burlington International Airport began a terminal expansion process funded entirely by PFC funds. The purpose of the expansion was to attract new services and airlines. As the project progressed, JetBlue took advantage of the competitive environment and decided to start providing a new route between Burlington and New York City. Even before the start of Jet Blue's new service, fares started to decrease—the average one way fair dropped nearly 50 percent over the first year. The passengers were not the only winners of the expansion project as all airlines at that airport experienced growth.
6. The ACI-NA applauds the Obama Administration's efforts to modernize the PFC process and believes it is time to increase the charge to adjust it to inflation. The last PFC adjustment to $4.50 is only worth $2.45 in today's dollars. Increasing the PFC will allow airports to make needed improvement and will strengthen the US aviation infrastructure.

During the question and answer session, Mr. Leocha stated that he is unsure about raising the PFC. The current proposal would raise the PFC rate from $4.50 per landing to $8 per landing, noting that a roundtrip ticket with a connection would cost passengers $32 in PFC fees, not including other fees, such as the TSA fee. He questioned why it was necessary to raise the PFC when bond ratings were so high and airports are able to get a good interest rate to fund projects. He explained his understanding that the PFC is a pot of money airports know will be coming in all of the time, but that rather than having a big pot of money that is continuously replenished, funding should be more on a project by project basis. Mr. Burke responded that the PFC is a user fee and you only pay it if you use the airport. This fee goes towards important upgrades to the airport that these passengers are using, noting that Canadians pay a lot more in airport fees than Americans. Mr. Burke asserted that for most airports, the proposed PFC increase will enable them to pay for modernization projects without going into debt. He noted that since January 2014, 32 airports have told ACI-NA that their budgets are maxed out and they need additional PFC funding to pay for needed improvements and upgrades. He reiterated that ACI-NA does not believe that consumers will fly less due to an increase in the PFC.

Mr. Berg asked which airports have not been able to engage in infrastructure projects due to a lack of funding. Mr. Burke responded that there are many airports—both large and small—with funding issues. When airports start modernization projects, they can take more than eight years to complete. A higher PFC could help the airports to finish these projects more quickly and reduce related costs to the local community. More PFC funding would help to pay down existing debt or provide funds for a down payment on new projects. Deborah Ale Flint, a Committee member who is the aviation director for the Oakland International Airport, said her airport will not be able to fund a project to mitigate seismic conditions without an increase in the PFC. Even though Oakland has a high credit rating, she noted that it does not have the bonding capacity to cover the project. Mr. Berg noted that he would like to see a list of airports that are not able to fund projects.

Mr. Leocha noted that he is concerned that passengers bear too much of the financial burden to fund airport development projects, which also benefit the surrounding community economically. He believes that local bonding may be a better solution. Mr. Burke responded that the PFC is a classic example of a user fee, which has helped airports to stimulate local economic activity and competition over time. He explained that the cap on the PFC has not been adjusted for inflation since 2000, and more funds are needed for facilities improvements and modernization as airports continue to age. Mr. Berg noted that airlines view the PFC as a tax that has to be paid regardless of the airport's circumstances. He expressed concern that if the fee is increased, it will continue to increase forever. He indicated that with an increase in the continuous PFC funding stream, airports will have no incentive to observe the fiscal discipline imposed by the bond market to demonstrate that each improvement project will pay off.

Consumer Perspective

Shane Downey, Director, Public Policy, Global Business Travel Association (GBTA)

Mr. Downey spoke about the consumer impacts of taxes and fees on air travel. But first he noted that GBTA member surveys conducted by his organization show that the members do not want the voice call ban lifted —not only because they do not want to hear other people's conversations – but also because they are worried about untenable situations on planes and giving terrorists another tool to use in attacks using aircraft.

Mr. Downey then turned to taxes and fees, stating that:

1. For each dollar spent on business travel, about 30 cents go to taxes. Taxes and fees on business travel keep rising, making business travel more difficult and adding to passenger frustrations. A study found that taxes increased the cost of travel by 58 percent. US business travel is important—it has contributed $491 billion to US GDP, with every dollar of business travel spending generating about $1.28 in GDP. Business travel supports 7.1 million jobs in the United States and has contributed $118 billion to federal, state, and local tax receipts.
2. In 2013, Congress more than doubled the aviation security tax. More costs mean fewer business trips. Not all this new tax goes towards TSA. GBTA supports House efforts to stop this increase and re-impose a cap on this fee. TSA has a difficult job, but continually raising costs is not sustainable. He would like to encourage TSA to expand preflight screening and screening technology that works more efficiently.
3. GBTA members overwhelming oppose the proposed increase to the Passenger Facility Charge and feel they are being taxed excessively. Consumers pay more than $60 or 20 percent in taxes and fees on a typical $300 round-trip ticket. This is more than alcohol and tobacco "sin taxes" intended to discourage use of these products.
4. In 1993, the tax and fee burden on travel was $3.7 billion; today it is $19 billion. Individual fees and taxes are not that big but added together they are a burden and disincentive to travel.
5. The GBTA recognizes the need to address the state of the nation's airport infrastructure and supports increased funding, but would like to see the expansion of public private partnerships and improvement in the procurement processes. There is a mistaken sense that business travelers have deep pockets and that air travel is a luxury.

Ms. Deborah McElroy from Airports Council International – North America asked from where the GBTA supports increased funding for infrastructure. Mr. Downey responded that GBTA does not have a particular proposal, but recognizes the need to increase funding across the board for the transportation system, including metro, highways, train, and air. A real debate on this issue is welcome and the GBTA would welcome leadership from Congress and the Administration to find solutions. Ms. McElroy responded that her organization would welcome the opportunity to talk to GBTA about funding opportunities.

Aviation Industry Perspective

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

Mr. Heimlich's presentation focused on A4A's concerns related to the equity, efficiency, and financial viability of the current aviation tax structure:

1. The current air travel tax structure has its roots in the World War II era, when air travel was considered a luxury item and subjected to high excise tax rates to discourage use and protect capacity for military purposes. Today airlines are the principal commercial intercity carriers, yet the Federal government continues to tax air travel like a luxury item. Airport user fees are structured more like an excise tax and are not justified on true cost grounds.
2. The US federal commercial aviation tax burden reached a record high of $19.3 billion in 2013. The growing taxes leave less revenue for carriers to reinvest. We should think about air travel relative to other modes of transportation and consider general fund contributions.
3. Whether the airline or the passenger ultimately bears the cost of an airport fee depends on the conditions of supply and demand, rather than on who is assessed the charge. It all comes down to price elasticity, which is a measure for capturing consumers' sensitivity to price changes for a particular good or service. Elasticity values of domestic, transatlantic, and transpacific flights from 1994 through 2005 have been negative across the board and demand is lower. The Montreal Economic Institute took a close look at Canadian airport charges and taxes and noted that they are having a profound impact. The institute noted a lot of passenger leakage from Canadian airports with higher taxes to airports with cheaper taxes across the border. Fee and tax increases do matter even in small amount—$1.50 can make a difference in demand.
4. Air travelers are often unfairly bearing more of the cost of travel than other modes of transportation. Air passengers pay much higher fees than passengers of any other mode of transportation, many of which pay no taxes or fees for things like customs and immigration (e.g., immigration costs for commercial aviation are 95 percent fee-funded, whereas these same costs for ferry and cruise ships are only 56 percent. It is important to treat passengers of all modes of transportation equally.
5. Besides the U.S. government, state, local, and foreign governments also impose taxes and fees on airlines and their customers.
6. Taxes levied by federal agencies and some states are often inequitably applied across "users," as confirmed by various federal cost allocation studies and state tax codes. Whether levied on airlines or on passengers/shippers, and whether they are called taxes or user fees, taxes matter—they impact supply and demand, as well as the sustainability of specific routes or frequencies. The impact varies over time and across markets.

7. Ironically, the travelers most sensitive to tax increases or fees for mandatory services are those who are least affluent and are the ones the regulations often purport to protect.

Ben Baldanza, President and CEO, Spirit Airlines

In his remarks, Mr. Baldanza amplified the concerns raised by Mr. Heimlich regarding the high tax burden on consumers of air transportation and the effects of price elasticity on demand. With 30 to 50 percent of the cost of purchasing a ticket going to taxes, Mr. Baldanza felt it is important to recognize the extent to which taxes drive economic activities. He reported that when there was a federal tax holiday a few years ago, most airlines took the tax money and kept fares the same, but Spirit gave the tax amount back to the consumer by lowering fares. He remarked that bookings soared during that time. He noted that even a few dollars' difference in fares can make an enormous difference in consumption.

Mr. Baldanza observed that when airline prices are lower, more people fly, driving economic activities inside the airport and local communities. He stated that taxes and fees for a family going to Orlando are the same as for an affluent person flying first class to Dubai. He believes that taxes should be proportional and that the current tax/fee structure is putting too much burden on those able to least able to afford it.

Mr. Baldanza remarked that Spirit's website shows consumers what they are paying in taxes and fees and asserted that the full fare advertising rule is not transparent, obscures the true price of air travel, and ignores the fact that every airline charges for things other than fare plus tax.

During the question and answer session, Mr. Leocha remarked that the full fare rule came about because it was difficult for consumers to distinguish between mandatory taxes and fees and other fees in order to determine exactly what they were paying.

Ms. Workie stated that regarding the full fare rule, comments received from consumers on the NPRM stated that many felt deceived about the actual price of airfare when the full fare was not displayed. Ms. Workie also added that there is nothing in the rule that prevents airlines from providing information about the amounts of government-imposed taxes and fees. According to Ms. Workie, what the rule requires is that the full price with all mandatory fees be displayed.

Mr. Donahue asked if there is a difference between buying a couch and airline ticket. In the case of airlines, there are half a dozen fees added that are not there when buying a couch. Mr. Baldanza stated that before the rule, taxes were not a big consideration for consumers. Mr. Berg stated that the full fare rule may make it easier to comparison shop, but that the different methods used in the past to disclose taxes on air transportation were not unfair or deceptive practices (e.g., showing taxes as either a flat fee or as a percentage of fare). Mr. Baldanza commented that he thinks there can still be more transparency in pricing.

Mr. Heimlich stated that fees and taxes are a sizable amount and important to a customer's decision making. There is a complicated legacy from the era when there was little cost basis for taxes and fees.

Mr. Baldanza noted that Spirit experienced increased demand with the tax holiday when the excise tax temporarily expired and that data should be analyzed. He offered to show Spirit's numbers from that period to the Committee.

The Impact of Mergers and Consolidations on Air Travel Consumers and the Aviation Industry

Consumer Perspective

Richard Golaszewski, Executive Vice President, GRA Inc.

Mr. Golaszewski provided an overview of the impact on consumers and airlines of the deregulation of the airline industry:

1. The industry structure has evolved since airline deregulation in 1978. There have been new airlines entering, airline bankruptcies, mergers, acquisitions, and liquidations. The events of September 11, 2001, had a profound effect on industry. Several multinational alliance groups have formed in recent years and low fare and even ultra-low cost carriers have entered the market. The airline industry is still recovering from the 2008 financial crisis and has been subjected to fuel price volatility.
2. US carriers need to modernize the backbone of their domestic fleets—the 737's and A320s, which is hard to do in a low margin industry when airlines are not raising enough capital to invest.
3. Due to mergers, airlines are eliminating smaller hubs and strengthening remaining ones. Rising costs are driving a shift to larger regional jets. There is now a lack of highly efficient 50 seat aircraft. Fares are rising and there is more unbundling via ancillary fees. Legacy airlines are focusing on premium traffic—which affects award program credits, among other factors.
4. Since 2006, success at airports is measured in who has lost the least amount of service—some individual airports have had increases. The financial crisis, airline consolidation, fuel costs and reduction in small regional jet flying have all had a major impact on airports. Medium-sized hubs appear to have suffered the largest losses—airlines are closing or scaling back service at secondary hubs. Smaller airport communities have also been hit hard because of mergers.
5. There is less network connectivity throughout the airport system. Many airlines now exclusively have regional jet service, except for low cost carriers (LCC) and ultra-low cost carriers (ULCC). Overall, large hubs have been improving, medium hubs have lost non-stop service which has not picked back up, and traffic at some of the small hubs and non-hubs is starting to pick up a little since the 2008 fiscal crisis.
6. What can improve service to the customer? New start-up carriers, of which most are ULCCs, can provide lower fares to customers. Many airlines need to evolve their business model—similar to, for example, Frontier—to be able to provide network service at lower fares.

7. Barriers to entry into the market also need to be addressed. New airlines need to gain access to key airports. Many airports have excess gates. Further, airports need to figure out how to provide equitable access to the most constrained airports. New technology can increase capacity on flights and reduce fares. While we do not want to sacrifice efficiency, can we increase equity in the system? For instance, if a community is only served by regional jets and it is relatively close to a hub, it almost always has its flights cancelled first when there are traffic issues.
8. The one thing he has heard universally is that small communities feel disadvantaged because of airline mergers.

William McGee, Travel and Aviation Consultant, Consumers Union

Mr. McGee's presentation focused on the negative consumer impact of airline mergers and consolidations, highlighting the following concerns and recommendations of the Consumers Union:

1. The recent mergers will result in an airline industry dominated by only a few airlines that are too big to fail. The largest carriers already hold 87 percent of the market.
2. Mergers have led to service reductions, cut backs, cities and region have lost routes, and millions of passengers' benefits have been eliminated. Without competition, airlines can cut services and raise prices. Domestic fares have increased. Many airport hubs have been eliminated despite promises that it would not happen.
3. In its recent suit against the merger of American Airlines and US Airways, the Department of Justice stated that in recent years the major airlines have in tandem raised fares and imposed newer and higher fees. The DOJ further stated that increasing consolidation has hurt passengers and that major airlines have copied each other, downgrading amenities. It is the Consumer's Union's opinion that mergers have had a bad effect on aviation.
4. The Consumer's Union recommended that the DOT undertake a detailed study on post-merger conditions, including prices and services. Recognizing that running a profitable airline is demanding due to high fixed costs and fuel costs, consumers believe it is in their best interest for a healthy airline industry, but the means to achieving that have repeatedly frustrated and angered consumers.
5. Airline mergers and consolidations are a tale of two different perspectives–often what is good for the airlines is not good for passengers. Ancillary fees are liked by airlines but not by consumers. Outsourcing regional flights to regional airlines is good for airlines, but not welcome by consumers who worry about a large difference in service. Crowded planes are better for airlines, but passengers disagree.
6. Mr. McGee asked the Committee to keep the interest of consumers in the forefront and thanked the Committee for its dedication to consumer protection.

Mr. Donahue commented that every merger has started with a statement about no harm to hubs or service, but then it ends in closure of hubs. Mr. McGee noted that testimony of the heads of companies undergoing mergers always note there are no plans to make major changes. Inevitably it seems that there are cut backs and closures, which are often left up to the best interest of executives. Mr. Golaszewski stated that service reductions have occurred because the economy has been in down cycle and demand for travel is driven by the economy. He commented that airlines cannot guarantee that specific air service to a given city will continue.

Mr. Donahue stated that the large percentage of US air travelers traveled on flights that were 500 miles or less and due to new security rules, it is faster to drive to many of these locations. He asked about the effect on service is if airlines eliminate these shorter flights. Mr. Golaszewski responded that many people stopped flying after September 11th and airlines cut these short flights due to a decrease in demand. Mr. McGee had concerns about underserved markets. He observed that most short flights are serviced by regional airlines and that the larger issue is whether longer, more crowded routes best serve consumers.

Mr. Berg asked if there were other factors that could affect service. Mr. Golaszewski replied that there may be a way to get a better 50 seat aircraft. Right now, airlines cannot make money with them, but there may be other options.

Ms. Jollie commented that the answer to market entry barriers comes from competition as long as there is a vigorous system that encourages actual competition. There is an assumption that regulation has been neutral in the market place. She argued that there are fundamental unintended consequences of well-meaning regulations. For instance, in 1995 the FAA adopted different regulations for small and large aircraft that wiped out the market for 60-90 seats planes, leading to a decline in service. The issue is that airlines might be able to support 60-90 seat plane services, but the FAA regulations support profitability for aircraft manufacturers more than for airlines.

Ms. Jollie observed that another barrier to market entry is the regulation that applies to public charters, which support tour programs and services between small communities. Public charter regulations requiring that consumer funds be held by a depository bank, were written at a time when there were no credit cards to protect consumer funds. Today almost everyone uses credit cards and has credit card protection and few depository banks that will accept public charter accounts. The public charter regulations do not work and do not fit with current commercial practices.

Finally, Ms. Jollie pointed out that DOT's requirement for carriers to demonstrate financial fitness lacks a timely processing procedure and requires high dollar amounts. She believes these are also market entry barriers that DOT needs to address.

Ms. Joanne Young of Kirstein & Young, PLLC asked about opportunities for new carriers who have financing to serve the domestic market and what DOT could do to facilitate the entry of new carriers. Mr. McGee stated that consolidation has become a barrier for new carriers to enter the market. Mr. Golaszewski remarked that carriers are reengineering their networks and that many new carriers are low cost carriers.

Airline Industry Perspective

Daniel M. Kasper, Senior Consultant, Kasper Lee Aviation/Compass Lexecon

Mr. Kasper's presentation focused on the factors driving airline mergers and consolidations. He identified three key factors:

1. **Relentless expansion by low cost carriers** – In 1993, only 27 percent of passengers had access to low cost carrier options, which by 1997 had increased to 47 percent of passengers. From 1998 until the 2008 Delta-Northwest merger, competitive alternatives on domestic routes increased rapidly, resulting in more than three quarters of passengers on such routes having access to low cost carrier options.
2. **Unsustainable financial trends by airlines** – Financial results have had a huge impact on mergers and consolidations. Between 1993 and 2000, legacy carriers generated good profits but between 2001 and 2009, the profit picture has turned around for legacy carriers due to September 11th and the poor economy. If you look at this period, carriers that covered their costs grew and those that did not stagnated. American Airlines, United, US Airways, Southwest, and Delta did not grow because they were not earning sufficient funds to cover their full economic cost and were burning capital.
3. **A network business model requiring greater market ubiquity** – Carriers found that their networks were not comprehensive enough. They could not provide full end to end service on certain routes and their economic models demanded that they do this if they wanted profits. Mergers enabled legacy carriers to create more comprehensive networks that offer consumers more convenient schedules and travel options. More ubiquitous networks have helped carriers to restore load factors above break-even levels.

Mr. Kasper identified other factors having an impact on the trend toward consolidation and made the following observations:

1. There is no evidence that fares have increased much following the mergers. Even controlling for fuel and inflation, base fares have remained basically flat at levels lower than in 2000. Base fares were actually lower in 2013 at around $108 than they were in 2001 at $157, though fuel costs and other fees are higher now. Fuel prices are a big part of the overall cost of air travel.
2. Low cost carriers (LCCs) still enjoy a substantial cost advantage that disciplines legacy carrier fares. Since 1991 the gap between legacy and LCCs on cost per available seat mile has been closing. There is a huge difference in costs to legacy carriers—who operate on a more expensive business model and offer more services—than to low cost carriers. Merged carriers have added capacity but they are still not back to their profit levels prior to 2008. The non-merged carriers, however, have increased capacity by a third and their relatively lower costs have enabled them to rapidly expand during the period of mergers.
3. Who is affected by changes in service patterns? Cincinnati has lost 26 percent of available seat miles in last 5 years and Cleveland lost 16 percent. Both, however, were small hub airports served by 50-seat regional jets. It is important to look at what happened to 50-seat regional jet service. It is widely recognized that this service is marginally viable and only able to operate because labor contracts were so concessionary. The sharp increase in fuel prices pushed airlines to not being able to economically operate this service to smaller cities.

4. Travelers in most large cities have benefitted from increased capacity over the past five years. Post-merger, Delta redeployed its fleet to provide consumers in many of its non-hub cities—including other carriers' hubs—with more flight options. There has also been substantial entry by LCCs at merged carrier hubs. This has allowed LCCs to greatly expand their geographic reach. New aircraft orders suggest LCCs will continue to expand and enter more new markets.
5. Legacy carriers have launched over 140 new international routes since 2010 and after a decade-long hiatus, legacy carriers are finally renewing and upgrading their fleets.
6. With higher costs and fragmented networks, legacy carriers were ultimately unable to compete successfully against LCCs in the domestic US market. Bankruptcies have reduced costs and mergers have strengthened legacy networks. Consumers have benefitted from competitive prices and better network options that have resulted.
7. Recent airline mergers are part of the natural evolution of the post-deregulated industry. Consumers today can chose from the widest array of price and service options in airline history. Legacy carriers provide ubiquitous global networks with the most schedule and product options. Competition from LCCs has broadened to include "higher-end" LCCs such as JetBlue and Virgin America and several "ultra-LCCs" such as Spirit and Allegiant, whose costs are even lower than Southwest's.
8. Improved profitability has enabled legacy carriers to increase investments in aircraft, products, and services that benefit consumers in both domestic and international markets. For the first time in recent memory, legacy carriers are covering their cost of capital, enabling them to invest in new products and services that benefit consumers.

Jay Sorensen, President – Product, Partnership and Marketing Practice, IdeaWorksCompany

Mr. Sorensen offered his perspective on the catalysts for and impacts of the airline merger and consolidation trend, which he believes has served to make the industry more profitable and thus able to better serve everyone:

1. Internet shopping for tickets has changed the airline industry. People now expect a customized travel experience and to know exactly what their travel components will cost. Price transparency is important.
2. The industry has been economically inefficient for so long that it has been necessary to raise prices. Mergers are forcing cost increases but also giving consumers more choices.
3. Airlines make a lot of money from their a la carte products. While carriers have followed each other's product pricing in the past, now they are starting to experiment with different price choices for consumers. Mr. Sorensen views these variations in product pricing as evidence that airlines are not colluding on prices.
4. Fee-based services should lead to service improvements. For example, Alaska Airlines at first did not want to charge bag fees until surveys showed that passengers were confused because most airlines charge fees. Alaska realized that it did not gain anything from not charging baggage fees. When the carrier began charging baggage fees, it included a guarantee that bags would be delivered to the baggage claim area within 25 minutes of landing. This approach was very effective from a marketing standpoint.

5. Airlines have made lots of mistakes implementing changes in their business models. Consumers will continue to have difficulties as airlines work through these changes, but ultimately services will get better.

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

Mr. Heimlich's presentation reported the following positive impacts of airline mergers and consolidations on the industry and consumers:

1. Mergers and consolidations have led airlines to invest in technology, new airplanes, and better customer service. A healthy airline industry means a better flying experience overall. What we are seeing in the airline industry is similar to what happened in the railroad, telecommunications, and trucking industries. Mergers will lead to fewer crises, fewer bankruptcies, more predictability, and more stability in the industry.
2. Considering the break-even load factors for airlines back in the 1970s, the average factor was in the low 50 percent range. In 2011-2013, the average factor was 78 percent. It is much more expensive to run an airline now than it used to be. Airlines that survived the downturn in the industry accumulated lots of debt which had nothing to do with consolidation. Debt crowded out future investment. After years of losses, airlines are finally tackling their debt.
3. Improving finances are helping airlines to hire, train, and retain high quality employees to whom they can offer job growth and security, attractive wages and benefits, tools and training, profit sharing, and accelerated contributions to employee retirement accounts. Earnings momentum and debt reduction are attracting new investors to the airline industry.
4. The increasing ability to hire, train and retain high-quality talent and to lure long-term investors is translating directly to palpable benefits for customers. Improving finances enables significant reinvestment in customer experience. Airline capital spending continues at a robust clip of more than $1 billion per month.
5. Customers are receiving tangible benefits including:
   - New or refurbished aircraft
   - Expanded route networks and schedules
   - Enhanced tools (computers, tablets, software) and training for customer-contact employees
   - Improved airport check-in areas, lounges, and gates
   - Continued development and roll-out of mobile technology and website/kiosk functionality
   - Increasing operational reliability (controlled for weather conditions)
   - Larger overhead bins for luggage
   - Availability of lie-flat seating with AC power and USB
   - Proliferation of domestic and international Wi-Fi and inflight entertainment options

6. Combining fleets can make more destinations available and economically viable. US Airways and American Airlines are expanding to East Asia. Northwest stopped its flight

from Detroit to Korea due to costs, but was able to restart it again after the merger with Delta. There has been lots of strong growth since mergers.

7. Mergers have caused a change in the distribution of capacity. Mr. Heimlich believes that without these mergers, airlines would have had to make deeper cuts. Mergers stopped the hemorrhaging of losses that airlines were experiencing.
8. In terms of service levels, there was not a lot of consolidation prior to 2008. Fuel price spikes and the recession caused airlines to cut back on scheduled seats departing from US airports. Since 2013, there has been 11 consecutive quarters of seat growth. The previous decline in seats was due to outside events and not mergers.
9. Looking at airline employment, there was a 27 percent reduction in work force until 2010 and since then there has been growth.

Mr. Heimlich closed his presentation with a quote from Jamie Baker of JP Morgan emphasizing the significance of the airline industry's economic recovery on quality of service: "With airlines in the US now generating acceptable returns, their ability to reinvest in their products has been greatly enhanced. There is no way any of this would have been possible had the industry not found its way to firmer financial footing."

Airport Perspective

Deborah McElroy, Executive Vice President, Airports Council International – North America (ACI-NA)

Ms. McElroy's presentation addressed the significant impact of reduced service and higher fares on U.S. airports of all sizes resulting from the airline industry consolidation.

1. All airports have seen reductions in flights over the last three years. Airports are focused on adding new service, but are limited in the incentives that can be offered to airlines due to FAA regulations. Over the past four years, the number of flights has continued to decline.
2. In a recent survey, ACI-NA asked US airport directors to identify their most significant challenges. Nearly 45 percent indicated air service development was the single biggest challenge facing their airports right now because of airline consolidation. ACI-NA also asked airport directors to look five years into the future. Nearly 40 percent again identified price and service competition for their communities as the single biggest challenge they expect to face over the next five years.
3. A Passenger Facility Charge adjusted from \$4.50 to \$8.50 and indexed for inflation will assist airports in modernizing their facilities to accommodate increased competition. DOT may also want to consider modernizing the regulations on air service incentives. In response to Mr. Berg's comment earlier about PFCs, there is a place for airlines and passengers to comment on them. Airlines can leave a market whenever they want if it is not economic or they can talk to airport boards.
4. We really do not yet know what the long term impact of mergers on fares will be. This is a huge factor for airports, who are hearing a lot of concerns from passengers about reduced service and higher fares.

5. The consolidated US airline industry is growing its international network. US airports are working with both domestic and foreign airlines for additional international flights. However, there have been a number of instances where staffing issues and CBP funding constraints resulted in the new service being denied by CBP. Additionally inadequate CBP staffing has led to delays in processing arriving international passengers, inconveniencing consumers. Airports and airlines are installing Automated Passport Control (APC) to more efficiently process arriving international passengers. Additionally, ACI-NA and Airside Mobile developed the Mobile Passport Control (MPC) which is now being piloted in Atlanta. Some airports have also signed agreements with CBP to pay for overtime expenses. However, given increasing international travel, increasing CBP staffing is an important consumer issue that should be addressed.
6. If we are to have a healthy airline industry and happy consumers, we need to make sure that the fees we have consumers pay are being used properly.

William Swelbar, Research Engineer, International Center for Air Transportation, Massachusetts Institute of Technology

Mr. Swelbar's presentation focused on factors other than airline industry consolidation that are having an impact on the route service map, including:

1. Rationalization: During the pre-recession period, LCCs were growing and taking business from legacy carriers. During the recession, LCCs started acting like legacy carriers and airlines went through a period of rationalization, in which available seating capacity was actively reduced as a result of macroeconomic shocks to the airline industry and the "new normal" of higher fuel prices.
2. Capacity discipline: Since 2010, airlines have instituted capacity discipline, defined as a restriction of seat capacity growth by network carriers (and Southwest) even as passenger enplanements have continued to increase. In the past year, capacity discipline has remained the status quo.
3. Reduction in departures: Capacity discipline has resulted in a decrease in the overall number of departures with airlines cutting domestic flights by 2.4 percent from 2013-2014. It is unclear if this will remain the status quo.
4. Challenges: Economic challenges, for instance, have included the rise in oil prices. It also includes a decision by airlines that the 50 seat aircraft was uneconomic: , resulting in a reduction in the overall number of planes available. Under operational challenges, there is not a 50 seat aircraft replacement in the manufacturing pipeline. The smallest new plane in production will be 100 seats. Government-induced challenges include flight time/duty time regulations that have caused staffing challenges. There will probably not be enough pilots to fly regional routes in the future due to retirements.
5. Small airports: Airline capacity rationalization and capacity discipline disproportionately impact smaller airports. Customers are now being served at one hub rather than two. There is a need to talk more about connectivity at smaller airports.

6. Despite service cuts, US airports remain well-connected to the globe. Domestic seat capacity has finally begun to grow along with the US economy. Mr. Swelbar is optimistic that these changes will be good for the airport community.
7. In today's consolidated industry, there are more questions than answers, including:
   - What will cause the legacy carriers to grow frequencies?
   - Where will that growth be?
   - What will be the future of Southwest and Jet Blue? Can hybrid carriers find a sweet spot in the system?
   - What is the future of Ultra Low Cost Carriers?
   - Will there be a regional industry? There are 269 airports that are reliant on regional aircraft so this is not a small issue.
8. With regards to labor in the context of consolidation, labor has fared very nicely. For the first time in history, average airline salary and benefits per full time employee is greater the $100,000. A more stable industry provides employees with a sense of security. There has been modest growth in employment after years of deep job cuts. A more profitable industry makes it more of an employee market than an employer market as it was the prior decade.

During the question and answer session, Mr. Berg asked if there is a reduction in flights, but growth of seats, is there an opportunity for new entrants. Mr. Swelbar responded that there has been entry but not new entrants. Mr. Swelbar also noted that it is still early in the American Airlines merger process, so it is unclear how the hub architecture will work out. He observed that there have been promises made about hubs staying, but until airlines rationalize their network, it is unclear if they will stay.

Mr. Leocha asked that if fuel prices are plummeting, but fuel surcharges are not, will fares go up despite fuel prices going down. He commented that airlines could do a better public relations job of letting consumers know what the reality is. In terms of the effects of consolidation on consumers, he hoped the Committee will have this discussion again a year from now to evaluate the real effects of consolidation of US Airways and American as well as Southwest and AirTran.

Mr. Swelbar responded that Mr. McGee correctly stated in his presentation that there have been 5 price increases; however, that was out of 21 recent attempts to raise prices. He would have expected the ratio to be higher. Mr. Berg stated that there have been more failures than successes in raising prices and fuel prices remain structurally high. Mr. Berg pointed out that in the past airline business models had assumed fuel costs at $50 per barrel. Ms. McElroy stated that these price increases are system-wide, and Mr. Berg responded that they are not always system-wide.

Ms. Workie asked Mr. Kasper's opinion about whether DOT should conduct an analysis of the actual impact of mergers and consolidation as suggested by Consumer Union earlier and if so, what methodology he would envision. Mr. Kasper responded that if such a study was conducting he would recommend commissioning research by outside academics to do it. When someone tries to look at fares over time, there is a wide array of factors that go into that analysis. It is important to make sure researchers are comparing apples to apples and fares are looked at on an inflation-adjusted basis. It would be a burden on the Department to do this and therefore it would be better to go to academic institutions that do this kind of analysis regularly.

Ms. McElroy remarked that there are many factors driving changes in the airline industry and having an impact on fares. She cautioned against undertaking a study prematurely or failing to adequately take into consideration that the impacts of mergers are still playing out as pricing discipline is imposed and service changes continue to be made.

Mr. Heimlich commented that there is a lot of data yet to be disclosed on mergers. If he were doing a study, he would want more data. There are a few more years left in the national economic cycle and when doing an analysis, it is important to look at the full business cycle. Any analysis would also need to factor in foreign carriers and aviation shipping.

Mr. Berg stated that DOT does not have relevant authority since Congress deregulated the industry and it is not DOT's role to undertake such a study.

Mr. Sorensen stated that if FAA rules pose impediments to entry new entrants, a much more worthwhile effort would be to study how competition can be enhanced in the future.

Ms. Young asked the presenters if there have been any studies showing increase in services happening in the international market versus the domestic. This might explain why entry opportunities are happening for the low cost carriers.

Mr. Kasper responded that yes, for several mergers he has looked at international markets. The short answer is there has been an increased presence of LCCs in the international market, predominately in shorter flights such as to the Caribbean or Canada. The expectation is that as LCCs get more familiar with international operations, they will be more likely to engage in international competition. The biggest operational difference is that LCCs have smaller aircraft in their fleets and they will need bigger aircraft to travel internationally. Purchasing new aircraft is a significant cost and takes a while. Some carriers will do it, but it will be a slow process.

Closing remarks

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

The Committee's DFO Blane A. Workie asked the Committee members to give closing statements. Committee member Deborah Ale Flint stated that it had been a productive day and there were issues that the Committee needs to follow up on. Committee members David Berg, James Donahue, and Charles Leocha thanked all the speakers for their very informative presentations.

Committee member Blane Workie thanked everyone for attending and stated that the minutes from the meeting will be posted on the Department's website. Under Chairperson Kane's guidance, the Committee will put forth recommendations.

The meeting adjourned at approximately 4:30 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.