



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 22, 2012

The Honorable Ray LaHood
Secretary
United States Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Dear Secretary LaHood:

I am pleased to provide you with the recommendations of the Advisory Committee for Aviation Consumer Protection (the Committee). Over the past four months, the Committee has had the opportunity to meet three times. During these meetings, we heard extensive testimony and reviewed detailed information addressing aviation consumer issues from various perspectives. I have enclosed a summary of the testimony and information presented to us, along with the Committee's recommendations.

The Committee appreciates the opportunity to be of service to the Department in addressing issues facing aviation consumers.

Sincerely,

A handwritten signature in black ink, reading "Lisa Madigan". The signature is fluid and cursive, with the first name "Lisa" and last name "Madigan" clearly distinguishable.

Lisa Madigan
Illinois Attorney General
Chairperson, Advisory Committee on
Aviation Consumer Protection

Report of the Advisory Committee on Aviation Consumer Protection

October 22, 2012

The Advisory Committee on Aviation Consumer Protection (ACACP) met on June 28, 2012, August 7, 2012, and October 2, 2012. All three meetings took place at the U.S. Department of Transportation (DOT) with Chairperson Illinois Attorney General Lisa Madigan and committee members Deborah Ale Flint, director of aviation at Oakland International Airport, David Berg, senior vice president of Airlines for America, and Charles Leocha, director of the Consumer Travel Alliance, in attendance. The following is a brief summary of each meeting followed by the recommendations reached by the Committee in accordance with their Charter (established pursuant to section 411 of the Federal Aviation Administration [FAA] Modernization and Reform Act of 2012, Pub. L. No. 112-95, 126 Stat. 11 [2012]).

First Meeting - June 28, 2012

The first meeting the ACACP conducted on June 28, 2012 began with introductions of the Committee members. The DOT's Office of Aviation Enforcement and Proceedings offered the following presentations during the remainder of the morning:

- Jonathan Dols (DOT) provided an overview of the Office of Aviation Enforcement and Proceedings and a summary of its enforcement procedures and compliance initiatives.
- Barbara Marrin (DOT) presented on air travel consumer protection statutes and regulations.
- Kathleen Blank-Riether (DOT) presented on civil rights statutes and regulations.
- Norman Strickman (DOT) briefed the Committee on the Aviation Consumer Protection Division's functions.

A variety of organizations gave the following presentations during the afternoon session:

- Edmund Mierzwinski (U.S. Public Interest Research Group) presented views on various air traveler consumer protection concerns, including inability to enforce air traveler consumer protection rights due to preemption, airlines' notifications to passengers during flight delays and cancellations, problems with mishandled luggage, consumer education on passenger rights, and accessibility to air traveler consumer rights information on the DOT website.
- Paul Hudson (Aviation Consumer Action Project) also presented views on various air traveler consumer protection issues, including preemption, mishandled luggage, airline insurance policies, and frequent flyer program changes. He cited flight delays as the number one air traveler complaint over the years. He also stated that DOT should pursue airline funding for a consumer complaint hotline.
- Jack Corbett (AirlinePassengers.org) presented views on the importance of the ACACP, problems consumers have with comparison shopping for airline fares, troubles with transparency, and enforcement of provisions contained in airlines' contracts of carriage.
- Sally Greenberg (National Consumers League) presented on setting standards for airline privacy practices, lack of transparency, fee structures, frequent flyer program rules, consumer access to state courts for complaints, and publicizing consumer rights information.
- Erik Hansen (U.S. Travel Association) presented views on problems with fee transparency and the significant increase in carry-on baggage.

- Kevin Mitchell (Business Travel Coalition) presented views on the lack of accurate price information for airline tickets, the problems this causes for large corporate purchasers and travel management companies, and the need for full fee transparency.
- Arthur Sackler (Open Allies) presented a view on the need for full fee disclosure and how this would protect consumers.
- Roger Cohen (Regional Airline Association) presented on regional airlines and the role they play in providing scheduled airline service in the United States.
- Bruce Bishins (Association of Retail Travel Agents) presented views on travel agency issues, including customer service standards, trade practices, commissions, and incentives. He also advocated for DOT to investigate whether GDS errors result in travel agent code-share violations, but argued against regulating negotiations between GDSs and airlines.
- Eben Peck (American Society of Travel Agents) presented a view on the importance of airline ancillary fee disclosure and transactability as a consumer protection issue.
- Terry Dale (U.S. Tour Operators Association) presented on the role tour operators play in arranging consumer air travel, how DOT's authority relates to them, and the importance of achieving balance in future rulemaking activity.
- Deborah McElroy (Airports Council International) presented the perspective of U.S. airports on the consumer travel experience and the desire of airports to cooperate and take part in initiatives and rulings coming from DOT.
- Joseph Rubin (Interactive Travel Services Association [ITSA]) presented on the alignment of consumer traveler interests and ITSA member interests and the need for fee disclosure to, and transactability of, core ancillary services via distribution channels.
- Douglas Lavin (International Air Transport Association) and Sharon Pinkerton (Airlines for America) presented views on the steady improvements taking place in airline customer service and safety and the possible negative impact that further regulation in this area could have. They also reviewed the airline distribution model as it relates to Global Distribution Systems (GDS).

Second Meeting - August 7, 2012

The second meeting of the ACACP held on August 7, 2012 covered the topics of disability rights and issues, the Tarmac Delay Rule, current economics of air carriers, and GDS issues from both the air carrier and vendor perspectives:

- Kathleen Blank-Riether (DOT) continued her presentation from the first meeting on civil rights statutes and regulations and further reported on the disability rights enforcement initiatives undertaken by the Office of Aviation Enforcement and Proceedings.
- Julie Carroll (National Council on Disability) provided testimony on disability-related issues in air travel concerning airport check-in, accessibility of websites, service animal relief areas, captioning, and a number of personnel training issues.
- Kenneth Shiotani (National Disability Rights Network) also provided testimony on disability issues in air travel and the need for individuals with disabilities to receive the same access and opportunities relating to air travel. He stated that he supports ongoing DOT rulemakings related to website and kiosk accessibility for disabled persons. He also stressed the importance of good customer service in solving issues related to this subject.
- Livaughn Chapman (DOT) presented on the Tarmac Delay Rule, its background, and enforcement. He also reviewed DOT's Consumer Rules I and II and the FAA Modernization and Reform Act of 2012.

- John Heimlich (Airlines for America) presented on the current economic and financial conditions facing air carriers. He discussed the industry's current financial challenges, the new and proposed regulations in 2012 that may threaten financial recovery, the positive effect of the airline industry on job growth and service reinvestment, and the relatively low complaint rate of the airline industry compared to other industries.
- Jim Davidson (Farelogix) and Cory Garner (American Airlines) demonstrated online air travel shopping capabilities. Mr. Davidson discussed the consumer-centric shopping model which is available with personalized options for the consumer. He argued that regulation of transparency will eliminate market competition to the detriment of consumers. Mr. Garner demonstrated a shopping experience available through online travel agency Priceline, which shows seating maps with fee information. Mr. Davidson then demonstrated the same shopping experience from the perspective of a travel agent.
- Bruce Bishins (Association of Retail Travel Agents) presented on ancillary fee distribution and the need for airlines and GDSs to negotiate commercial contracts without outside intervention from regulations.
- Sharon Pinkerton (Airlines for America) presented an air carrier perspective on GDS issues. She reasoned that a mandate forcing carriers to provide content to GDSs is unnecessary, and it will raise costs for consumers and stifle innovation.
- Monte Brewer (formerly of Air Canada) also presented an air carrier perspective on GDS issues. He described the fight over distribution costs, innovation, and revenue. He stated that the Internet has steadily made it easier for airlines to create direct sale channels that tailor choices that consumers want, without relying on the traditional GDS model.
- Monty Myers (Eureka Software Solutions, Inc.) presented an air carrier perspective on GDS issues. Mr. Myers contended that the GDS network is dated. He stated that prices currently are transparent and that there are newer and more innovative options for air carriers to consider.
- Al Lenza (Lenza Group) presented an air carrier perspective on GDS issues. Mr. Lenza described the incentives and restrictive contracts that exist between GDSs and travel agencies and airlines.
- Gary Doernhoefer (International Air Transport Association) presented an air carrier perspective on what information they can provide to air travel consumers. Mr. Doernhoefer discussed airlines' alternatives to GDSs for moving data on personalized ancillary products to travel agents. He stated that mandates from DOT would have a negative effect on consumers.
- Chris Kroeger (SABRE Holdings) presented a vendor perspective on GDS issues. Mr. Kroeger described the transparency in pricing information after the DOT rulemaking and the current ability of GDS providers to show fees. He reasoned that the next step is disclosure of ancillary fees and transactability.
- David Schwarte (SABRE Holdings) presented on the amount consumers have paid in ancillary fees in the past year and argued that consumers in this industry do not receive a full disclosure of other fees such as for baggage, reserved seats, and early boarding.
- Shelly Terry (SABRE Holdings) presented a live online demonstration of the SABRE Red workspace—the application agencies use to shop, book, and service travelers.
- Cory Garner (American Airlines) asserted, in response to the SABRE presentation, that American Airlines' website lists fees transparently. He performed a live demonstration of the consumer buying process on Travelocity to compare to the earlier SABRE Red demonstration.
- Peter Kenney (Delta Distribution Systems) asserted that Delta had no interest in hiding fees and that presently the airline is negotiating with GDSs to establish economic and technological conditions for transmitting this information. He also stated that if DOT imposes regulations, it will interrupt the process of negotiating commercial terms that work.

- Curtis Kopf (Alaska Airlines) stated that Alaska Airlines has been able to successfully negotiate with major GDSs to support consumer needs without government interference. He argued that a DOT mandate would give GDSs the advantage, which is not the right outcome for airlines, GDSs, or consumers.
- At the conclusion of all presentations, Chairperson Madigan opened the floor to audience comment. Many attendees offered comments and feedback related to the issues discussed during the day's proceedings.

Third Meeting – October 2, 2012

The third ACACP meeting on October 2, 2012, began with a presentation by Samuel Podberesky (DOT) regarding rulemakings on Enhancing Airline Passenger Protections (Consumer Rules III and IV), currently in the planning and developmental stages. Mr. Podberesky briefly outlined the following topics that are likely to be covered: codeshares, flight-delays, expanded reporting on customer service information, minimum customer service standards for travel agents, disclosure of incentives to ticket agents, disclosure of preferential display of fares or carriers by ticket agents, special disclosure of substantial fees, and display of ancillary fees through all sale channels.

Following this presentation, the Committee began a discussion on initiatives to propose to the U.S. Secretary of Transportation. The Committee discussed traveler complaint resolution processes, complaint statistics for codeshare-service, posting definitions of terms commonly used in contracts of carriage to the DOT website, disability rights issues, airline personnel training, ancillary fee transparency and the related Future of Aviation Advisory Committee Recommendation number 11, ticket agent disclosure, and baggage fees.

Thomas Canfield and Barry Biffle (Spirit Airlines) briefly presented a proposal to accommodate passengers affected by delays or cancellations. Mr. Canfield also explained that Spirit's website uses a shopping cart tool that allows passengers to select only the services they want. Mr. Biffle commented that the possibility of a rulemaking is causing delays in current negotiations between Spirit and third-party seller sites.

In addition to presentations and comments made at the public meetings, the Docket (ID: DOT-OST-2012-0087) at Regulations.gov has received 116 postings as of October 22, 2012. These include the following: 70 comments on fee disclosure and transparency, 5 comments on fees to travel agencies, 1 comment on the spread of sickness on airplanes, 1 comment on GDS systems, 1 comment on recommendations, 33 postings of presentations made at the 3 ACACP meetings, 3 postings of the Meeting Notices (from the Federal Register), 1 Transcript (from the first meeting of the ACACP) and the minutes for the second meeting. Minutes for the third meeting will be placed in the docket when completed.

Committee Recommendations

The Committee has considered the testimony presented at the meetings of the Advisory Committee, the personal air travel experiences of its members, and information generally available about air travel, and makes the following recommendations:

Travelers with Disabilities

Travelers with disabilities testified about difficulties experienced while traveling, including waiting for extended periods of time for transport within the airport. They also testified about encountering airline personnel who were generally unfamiliar with rules concerning travelers with disabilities, such as the location of service animal relief areas, and what a Complaint Resolution Official is or how to contact one.

The Committee recommends that DOT should do the following to address continuing problems for travelers with disabilities:

- 1) Encourage airlines and airports to take any voluntary steps that they believe will result in a better travel experience for travelers with disabilities;
- 2) Encourage airline and airport personnel to work with TSA to develop a plan to assist travelers who are unable to sit during lengthy layovers without their specially made wheelchairs;
- 3) Work with airlines and airports to make their kiosks and websites accessible to travelers with disabilities (The Committee understands that a DOT rule addressing kiosk and website accessibility has been proposed; see Docket DOT-OST-2011-0177, 76 FR 59307.); and
- 4) Require airports and airlines to ensure appropriate access to service animal relief areas where practicable in airports (The Committee understands that service animal relief areas have been further addressed in a proposed regulation; see Docket DOT-OST-2011-0182, 76 FR 60426. The Committee supports making service animal relief areas a priority.)

The Committee recognizes that airlines and airports are subject to federal statutes and regulations governing their accommodation of travelers with disabilities and wishes to study this matter further and discuss whether additional regulation or training is likely to result in a better experience for travelers with disabilities.

Discrimination Based on Race, Religion, National Origin, or Gender

DOT should remind the airlines of their obligation to avoid discrimination on the basis of race, religion, national origin, or gender and should stress this obligation in its initial and recurring personnel training. Recent stories in the news indicate the importance of such a reminder. While it may be necessary for airline personnel to exercise judgment and discretion if they feel a passenger is disrupting travel, airline personnel also should be careful to avoid discriminatory behavior.

Consumer Air Travel Complaints

DOT should improve its informal air travel consumer complaint resolution process by providing more information to consumers about their complaint. Travel consumer advocacy groups testified about the desire for more information about the complaint resolution process.

Addressing consumer air travel complaints is one of the primary responsibilities of DOT's Aviation Consumer Protection Division within the Office of Aviation Enforcement and Proceedings. The unit accepts complaints via letter, through its website complaint form, and by phone, then acknowledges receipt of the complaint, and forwards the complaint to the airline, travel agency, or other business about which the consumer complained. The airlines, by rule, must acknowledge consumer complaints within 30 days and must respond substantively within 60 days. In many instances, the DOT analyst assigned to handle the complaint talks to and/or corresponds with the complainant and the business which is the subject of the complaint in order to facilitate a resolution. Where the DOT analyst concludes that there was a violation of a law or rule, the analyst seeks corrective action, and the complaint is assigned a code that facilitates the identification of patterns of violations and the retrieval of these files for possible future enforcement action.

In order to help complaining consumers better understand the status and resolution of their complaint, the Committee recommends the following specific steps:

In communications with complaining consumers (whether by email, phone, or letter):

- 1) DOT should provide contact information for the analyst handling the complaint and indicate that the analyst is the person the consumer can contact with questions about the status of the complaint;
- 2) DOT should outline the complaint process to consumers and address the following points, if applicable:
 - a. If DOT has determined that a complaint involves a potential law violation, then that fact should be communicated to the consumer (with appropriate disclaimers that a fact investigation must be done, that it may turn out that no law violation occurred, it may be minor and not warrant an enforcement action, etc.);
 - b. The fact that the complaint will be forwarded to the airline for response to the consumer, that the airline is required by rule to acknowledge the consumer's complaint within 30 days and to respond substantively within 60 days, that the airline will respond directly to the consumer, and that the consumer should notify DOT if the consumer has not received responses within those timeframes; and
 - c. In the case of a complaint against a company other than an airline, the fact that the complaint will be forwarded to the company for a response, and that if the consumer does not receive a response from the business, then the consumer can follow up with the DOT analyst assigned to the matter.

Based on DOT testimony at the meetings, it appears DOT is in the process of augmenting its consumer complaint resolution process in these ways to provide more information to consumers.

Enhanced Information about Air Travel Consumer Rights

DOT should place its guidance on consumer rights and related FAQs on its website in a prominent place so that consumers can better understand their rights and responsibilities as air travelers. For example, an FAQ could explain an air traveler’s rights if that person has been denied boarding involuntarily.

Prominently featuring flyer rights and FAQ information will assist consumers with understanding their rights. These changes will make such information easier for passengers to access as they travel.

Understanding Terms Used in Contracts of Carriage and Customer Service Plans

DOT should work with the airlines to survey how the airlines define certain terms frequently used in their contracts of carriage and customer service plans. DOT should place this information on its website to assist consumers with understanding the terms and conditions of their travel. For example, terms such as “lost baggage,” “damaged baggage,” “misplaced baggage,” “direct flight,” and “through flight” may not be well understood by consumers and may or may not be defined in contracts of carriage. Having this information on DOT’s website will assist consumers with understanding their rights and will enable them to access this information while they are traveling.

Transparency

DOT should ensure transparency in air carrier pricing. The Committee adopts Recommendation 11 from the Future of Aviation Advisory Committee Final Report as it pertains to transparency in air carrier pricing¹. The Committee commends DOT for requiring greater transparency of fares and optional services and fees in Consumer Rule II (76 FR 23110), which requires air carrier and ticket agent websites to provide easy access to optional services and fee information (14 CFR §399.85). The Committee encourages all participants in the industry – airlines, distribution systems, and agents – to continue innovating with respect to transparency and distribution of optional products and services. On the one hand, the Committee recognizes that air travel has changed and the days when the only variables were price and schedule are gone. Air travel today provides a wide variety of business models, network choices, and optional services. But with choice comes complexity for consumers. Consequently, innovation that makes comparison shopping easier than it is today would benefit the public.

¹ The full recommendation reads:

The Secretary of Transportation should ensure transparency in—

- Air carrier pricing, including ancillary fees;
- The disclosure of flight operators, such as code share and commuter flights;
- Disclosure of air carrier contracts of carriage, including easy consumer access to those contracts; and
- Departmental reporting of consumer air travel statistics, particularly with respect to code share operations of regional air carriers

All participants in the distribution system should be guided by certain principles that we heard articulated by many witnesses regarding transparency and what consumers should expect: a choice of competitive services related to air travel; to know the choices and services available to them from each airline; to know the cost to them of each choice; to be presented with offers that are designed to meet their stated needs; the ability to choose the services they want and not pay for what they do not want; and to know the cost of the entire trip before purchasing a ticket.

Ticket Agent Disclosures

DOT should require all ticket agents, including online ticket agents, to disclose the fact that they do not offer for sale all airlines' tickets, if that is the case, and that additional airlines may serve the route being searched. All ticket agents, including online ticket agents, should make this disclosure clearly and conspicuously, so that consumers know they may need to search elsewhere if they want to find out all available air travel options. In some instances, it may appear that a route is not served at all because the airline or airlines serving that route have chosen not to participate in a particular distribution system; this can be confusing for consumers. This recommendation applies to third-party ticket agents and not individual airlines. (The Committee is aware that in DOT's planned Consumer Rule III rulemaking DOT plans to seek comment on whether it should require ticket agents to disclose the carriers whose tickets they sell or do not sell.)

On Time Reporting for All Airlines

DOT should mandate that data be reported to the Bureau of Transportation Statistics for all flights and airlines, as opposed to only those that account for 1% of domestic scheduled passenger revenue. This information is important and relevant to consumers when choosing airlines and flights, and in some cases, it already is reported voluntarily pursuant to current regulations. (The Committee understands that Consumer Rule III is expected to seek comment on mandating such expanded reporting, and the Committee supports this change.)