

UNITED STATES OF AMERICA

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ADVISORY COMMITTEE ON AVIATION
CONSUMER PROTECTION

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FIRST MEETING

+ + + + +

THURSDAY
JUNE 28, 2012

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The Advisory Committee on Aviation Consumer Protection met in the Oklahoma City Room, Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Washington, D.C., at 9:00 a.m., Lisa Madigan, Chairperson, presiding.

MEMBERS PRESENT

LISA MADIGAN, Chairperson
DEBORAH ALE-FLINT, Member
DAVID BERG, Member
CHARLES LEOCHA, Member

ALSO PRESENT

ROBERT RIVKIN, General Counsel, DOT
SAMUEL PODBERESKY, Assistant General Counsel,
DOT, Designated Federal Officer
BLANE WORKIE, Principal Deputy Assistant
General Counsel, Office of Aviation
Enforcement and Proceedings

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P-R-O-C-E-E-D-I-N-G-S

8:59 a.m.

MR. PODBERESKY: It is nine o'clock. I am pretty sure we are going to have people floating in as we move along, but I think we are going to get started on time. We have people who have to leave early, and let's try to keep on schedule.

It is my pleasure to welcome you to the first meeting of the Advisory Committee on Aviation Consumer Protection. I lose track of the terminology this early in the morning.

For those of you who are not here for that, if that isn't your destination, you can leave by the back door instead of the front door.

(Laughter.)

If it is healthcare you are interested in, just go out New Jersey Avenue about a mile and a half to the Supreme Court. And if it is highway funding, you could either go up a mile and a half to Congress or up to the 10th floor, and you can deal with those kinds of

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1 things in this building. But, in any event, we
2 are going to be dealing with aviation consumer
3 protection here.

4 My name is Sam Podberesky. I am the
5 required Designated Federal Officer for this
6 Advisory Committee. And the Office of the
7 General Counsel, and, in particular, my office,
8 the Office of the Assistant General Counsel for
9 Aviation Enforcement and Proceedings, is
10 responsible for staffing this Committee and
11 helping this Committee carry out the functions
12 which are required under Section 411 of the FAA
13 Modernization and Reform Act of 2012.

14 And those duties are very simple,
15 straightforward. They are supposed to review
16 existing aviation consumer protection
17 provisions and the state of our efforts in that
18 regard, and then to make recommendations to the
19 Secretary with regard to any improvements they
20 see fit to recommend.

21 The Secretary, in turn, will have to
22 respond in a report to Congress with regard to

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1 his views on the recommendations, either
2 indicating that he agrees with them and will move
3 forward. Or if he doesn't, to give reasons why
4 he won't be moving forward.

5 I am just going to very quickly
6 introduce the members of the Committee. They
7 were appointed by the Secretary of
8 Transportation. The statute provides for four
9 members, including a Chairperson. They are
10 required to be from certain areas or
11 organizations or representations, and the
12 people that are on this Committee fall within the
13 categories required by statute. The statute
14 called for four members, and that is why we have
15 four.

16 Lisa Madigan, sitting at your far
17 left as you look at the dais, is the Attorney
18 General of Illinois. Next to her is Dave Berg,
19 who is the General Counsel and a bunch of other
20 positions at A4A, Airlines for America. Next to
21 him is Deborah Ale-Flint, who is the Director of
22 Aviation at Oakland International Airport. And

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1 next to her is Charlie Leocha -- did I get that
2 right this time, Charlie?

3 MEMBER LEOCHA: You did it
4 perfectly. Thanks.

5 MR. PODBERESKY: Excellent.

6 He is the Director of the Consumer
7 Travel Alliance.

8 I have a bunch of housekeeping
9 matters that I need to give you, but I am not
10 going to bore Bob Rivkin with that. The
11 attendees and I have to be bored with it, but I
12 am not going to keep him here for that because
13 he has got an important meeting that he has got
14 to attend.

15 Let me just say a few remarks about
16 Bob. I am not going to embarrass him, but I
17 guess I will anyway. I work for him; I have got
18 to say nice things.

19 (Laughter.)

20 But I am going to say nice things,
21 notwithstanding that I work for him.

22 I have been in this job for 26 years,

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1 in the job I am in now. I can honestly say that
2 I have never had a General Counsel who has been
3 as totally committed to aviation consumer
4 protection, and making sure that we have the
5 resources to carry out our responsibilities, as
6 Bob Rivkin.

7 Together with that, and as part of
8 this introduction, I have to also say that he has
9 been a driving force in all the rulemaking
10 efforts and enforcement and compliance
11 initiatives that the Office has been involved
12 in.

13 And at the same time, he is a person
14 who has the intelligence and desire to learn from
15 all the people involved in this industry, all the
16 parties, all the players. So, he doesn't make
17 rash decisions. He thinks things through. He
18 makes decisions that are fully justified legally
19 and are fully justified from a cost/benefit
20 perspective.

21 I can only say there is only one
22 other person in the Department who is more

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1 devoted to consumer protection, and that is the
2 Secretary. And he is sorry he can't be here, but
3 he has got a bunch of other initiatives that he
4 is dealing with right now.

5 So, with that said, I am going to
6 introduce Bob for opening remarks.

7 MR. RIVKIN: Thank you, Sam.

8 MR. PODBERESKY: Thanks, Bob.

9 MR. RIVKIN: Sam is very kind, as
10 always.

11 Those of you in the industry who are
12 here understand that Sam and his
13 recently-departed Principal Deputy Dayton
14 Lehman, his Deputy Blane Workie, and Jonathan
15 Dols, now his Deputy, and the whole team of folks
16 from the Aviation Enforcement Office have been
17 doing a great job for years on this and have
18 really been open to your suggestions, your
19 concerns, your criticisms. And they continue
20 to be the really excellent civil servants that
21 they are.

22 Welcome. Again, we do our work in

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1 public here. So, our newly-designated Advisory
2 Committee, we are really excited to have you
3 here. We know it is an imposition. Two of you
4 have to come in from out of town, and that can
5 be difficult.

6 We don't have all that much time,
7 given the timing of things, for you to come to
8 some recommendations for this year. And so, we
9 really do appreciate the imposition that this is
10 and the public service that you already do and
11 that you are continuing to do by agreeing to
12 serve on the Secretary's Advisory Committee.

13 We can always do better. I think
14 that is a driving notion that we have within the
15 Department. We are very proud of what we have
16 done, but we think that there are a lot of
17 interesting and complex issues here that we
18 really do need a broad perspective of views on
19 to sort of figure out what we can do and, more
20 important, what we should do.

21 With respect to what we can do, I
22 just want to point out something that I said to

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1 members of the House T&I [Transportation and
2 Infrastructure] Committee yesterday, which is a
3 lot of folks, including occasionally the
4 Secretary, say, "That's terrible. Can we stop
5 that?"

6 And sometimes the answer is "No,"
7 because we are not the regulator of the airline
8 industry. The industry has been deregulated
9 since the 1970s, and rates, routes, and services
10 are not something within the purview of DOT to
11 regulate.

12 However, something that is just as
13 important to those who cry loudly about
14 deregulation, the Congress specifically did not
15 deregulate our ability to supervise, oversee,
16 and enforce on fairness and transparency in the
17 way the airlines and travel agents do business.

18 So, we have specifically the power
19 to oversee and take action when we determine that
20 there has been unfair or deceptive practices in
21 the industry. We have, I think in this
22 Administration, been very, very aggressive

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1 about figuring out ways to do that that really
2 haven't been done before.

3 So, you are basically familiar with
4 the two consumer rules we have put out, the
5 three-hour tarmac delay rule, and the rule that
6 followed that expanded upon that rule and
7 required disclosure of fees and full-fare
8 advertising.

9 I just want to mention full-fare
10 advertising right now because there has been a
11 lot of dispute about things related to that.
12 After many years of not insisting upon the
13 enforcement of the full-fare advertising rule,
14 we decided that it was appropriate, in light of
15 some activities within the industry, to very
16 specifically enforce that provision, so that
17 consumers can see the cost of travel.

18 It gets muddled in the public
19 debate, but when you have to pay something to
20 travel, that is part of the cost of travel. When
21 there is other stuff that is nice to have, you
22 know, if you want to get a special seat, if you

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1 want to have a great meal on the plane, if that
2 is possible, those things are beyond the basic
3 costs of travel, and we are not concerned. You
4 know, airlines can offer as many different
5 options as they want to consumers who want to pay
6 for them.

7 But when something is part of the
8 cost of travel, it needs to be disclosed and it
9 needs to be easily understood by consumers. And
10 so, one thing that I personally have bristled at
11 is when airlines try to deceive, in my view, the
12 public by putting forth what they call a base
13 fare and, then, having a whole bunch of other
14 stuff that is essentially part of the base fare
15 because it is required to travel.

16 So, my pet peeves include things
17 like fuel surcharges and convenience fees and
18 other nondescript and, frankly,
19 potentially-inherently-misleading statements
20 or fees that, really, consumers have no choice
21 but to pay.

22 We are not trying to hide government

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1 taxes and fees. You know, airlines and travel
2 agents can, and in some cases maybe should, make
3 very clear what portion of the total fare is
4 comprised of those sorts of fees. But the key
5 and most prominent number needs to be the total
6 cost of travel, of non-optional travel cost,
7 because that is what consumers need to know.

8 So, baggage fee disclosure has been
9 another issue. I think when we get down beyond
10 these kind of sound bites we have to face some
11 realities. I know Charlie has strong feelings
12 about this.

13 There are 100-and-something
14 categories of ancillary fees currently out there
15 in the industry. You can't easily disclose in
16 a quick and easily-understood way all of those
17 fees immediately, unless there is some system
18 where consumers have complete functionality;
19 where they can enter exactly what they want to
20 do and get the cost of that. And I know that is
21 something that Charlie and others have
22 advocated.

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1 But that is something that would
2 require departmental intervention into the
3 marketplace, and that is something that we are
4 looking at very carefully, as you know, but we
5 have to make sure we understand all the
6 unintended and intended consequences of that.

7 I don't want to go on too long,
8 except to describe a couple other things for sort
9 of setting the stage of where we are. We know
10 there is more to be done. We put out the fact
11 that we are doing a notice of proposed rulemaking
12 (NPRM) that we expect to issue in December that,
13 among other things, will examine whether we need
14 to ensure that airlines provide these sorts of
15 ancillary-fee data electronically to GDSs
16 [Global Distribution Systems] and travel
17 agents. That is an issue that we are looking at
18 and that we have said that we will address in the
19 NPRM.

20 There are a number of other issues
21 that we will address as well. We are doing a
22 rulemaking pursuant to a GAO [Government

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1 Accounting Office] report that will require more
2 information about the amount and types of
3 airline fees. That will be useful information
4 for the Department to get. We have had a public
5 meeting about that.

6 We are doing rulemakings in several
7 other areas, like the use of electronic
8 cigarettes and the accessibility of automated
9 airport kiosks, which is an issue of great
10 importance to the blind community.

11 And we are putting in The Federal
12 Register tomorrow a proposal to amend our rule
13 on the loss, injury, or death of animals during
14 air transport, which is an important issue to
15 many who travel.

16 I want to touch briefly on our
17 enforcement work. We have been very aggressive
18 in enforcement. Sam and his team have done
19 onsite investigations this year, over the past
20 four years, at more than 25 different sites.
21 They go to airline offices, inspect the books,
22 and look at their numbers. And many of those

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1 inspections have resulted in cease and desist
2 orders.

3 We have also been very aggressive in
4 assessing fines for violations for our rules,
5 including a fine that was assessed against
6 American Eagle last year, \$900,000 for violating
7 the tarmac-delay rule for a number of flights
8 that were on the tarmac at O'Hare on May 29th,
9 2011.

10 So, I like to point out that in the
11 three years prior to this Administration taking
12 office, comparing the three years prior to our
13 taking office and the first three years of this
14 Administration, the assessed penalties for
15 enforcement of these rules basically tripled.
16 We think that is a reflection of how seriously
17 we take these matters and the lengths to which
18 we will go to ensure that the industry takes it
19 seriously.

20 So, I will just close because the
21 real meat of this is going to come from Sam and
22 his staff, by summarizing that we take this very

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1 seriously. We think we have been very
2 aggressive on behalf of consumers. We want to
3 be fair and judicious about the use of the
4 limited powers that the Secretary has in this
5 area.

6 But there may be other creative ways
7 of looking at these powers. It is particularly
8 interesting to me that we have Attorney General
9 Madigan chairing the panel because the statute
10 that we operate under essentially mimics state
11 consumer protection standards. We at DOT in
12 this area, essentially, preempt state ability to
13 act. So, we have to act as the State Attorney
14 General for the aviation industry across the
15 country. And so, we look to the states sort of
16 as a model of what is fair, where do you cross
17 the line into unfair and deceptive? And what
18 are the ways that are both just and reasonable,
19 but also strong on behalf of consumers to
20 exercise that authority?

21 So, I hope this meeting is
22 productive. Thank you again for coming. And I

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1 will see the panel again later today. Thanks.

2 MR. PODBERESKY: Thank you, Bob.

3 I promised some housekeeping
4 matters. So, I am going to go through them, and,
5 Bob, you can leave whenever you want, whenever
6 you get bored.

7 The first has to do with security.
8 This building, as you are already aware, has
9 strict security requirements. DOT personnel
10 are supposed to be with you at all times when you
11 are wandering in the building, particularly
12 outside this conference area.

13 We have, more or less, my entire
14 staff floating around here at different times of
15 the day to get you around the building and in and
16 out of the building as your needs require. If
17 you need to leave early or if you need to go
18 someplace in the building, just ask one of the
19 staff members around, and they will escort you.

20 Next, in an effort to try to minimize
21 the number of trees we cut down, we are trying
22 to save paper. So, we don't have a whole lot of

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1 handouts outside. If you haven't gotten them,
2 you should have gotten an agenda, a one-page
3 agenda, two-sided. You should have gotten a
4 copy of the latest Air Travel Consumer Report,
5 which is available out there.

6 You should have a map which shows
7 eating areas, eating locations around the
8 building, restaurants and other establishments
9 where you can buy food.

10 Just outside this door is a small
11 snack bar. So, for people who want coffee or a
12 banana or apple, or something along those lines,
13 you can obtain that right outside this door to
14 my left.

15 If you will look at your agenda,
16 which I will do, just to give you an overview of
17 how the day is going to work. The morning is
18 going to be devoted to presentations by members
19 of my staff about what my office does, the laws
20 that we enforce, the regulations, the statutes,
21 as well as the procedures we use, an overview of
22 our aviation consumer protection

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1 responsibilities. That will take up the whole
2 morning, and it will close with a
3 question-and-answer period.

4 The main purpose of this first
5 meeting is to educate our Committee members.
6 So, the question-and-answer periods, unless the
7 Chairperson decides otherwise, should be
8 devoted to questions and answers to questions
9 from the Committee.

10 Two of the members have a
11 significant background in aviation consumer
12 protection work. Two of the members, while
13 familiar with consumer protection, while
14 familiar with the aviation industry, may not
15 have the same background. So, we are going to
16 try to devote as much time as possible on
17 questions from Committee members. Now, to the
18 extent that the Chairperson wants to entertain
19 a question from the floor, that is obviously her
20 right.

21 One small change. In the afternoon
22 we are going to have organization presenters.

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1 That is on the back of the agenda. One
2 change -- is Joe Rubin in the room? Not yet? We
3 have Roger Cohen scheduled for a 4:15
4 presentation, and he just notified us late
5 yesterday after this was printed that he has to
6 leave by three o'clock. So, somebody in the
7 first group of presenters is going to trade
8 places with him. It may be Joe Rubin, but it may
9 be somebody else, depending on who is available.

10 So, with that said, we move on to
11 some other items. The restrooms are out the
12 back door, and as you are walking to your left,
13 you will find restrooms. There are also signs
14 in the corridor that will point you to rest
15 rooms.

16 Lunch options, again, we gave you the
17 map which shows the establishments in the area,
18 which there are not very many. There's Five
19 Guys and Subway across the street. There is a
20 Potbelly's in the back of this place. Those are
21 probably your best bets for getting a quick
22 lunch. And there are also food trucks that you

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1 will find outside the door you came in, again,
2 on M Street. Some people swear by them, and
3 others don't.

4 (Laughter.)

5 Just in case of an emergency, if you
6 have a medical emergency, inform my staff, and
7 we will make sure that we will call the right
8 people and get you to the right place.

9 If there happens to be a fire
10 alarm -- and we do get fire alarms -- we have to
11 leave. So, we go out the same door you came in
12 on New Jersey Avenue and then just head left
13 towards the water. We are supposed to get
14 together in a place and make sure everybody is
15 still alive. So, the best bet is to head toward
16 the water in the back of the building. Let's
17 hope we don't have a fire alarm.

18 With respect to microphones, we are
19 going to ask everyone to use microphones, so that
20 everybody can hear you. And we do have a loop
21 system in our microphone system, so that persons
22 with hearing disabilities will be able to hear.

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1 It also helps our court reporter.
2 You know, this presentation, this day's meeting
3 is going to be transcribed. That transcription
4 will be placed in the docket after it is checked
5 by the Chairperson and by us, just to make sure
6 it is accurate. That will probably be in two or
7 three weeks from now, is our expectation.

8 Again, for people who are presenting
9 with PowerPoint presentations or have written
10 remarks that they are going to be reading, if you
11 want to give them to us, we will put them in the
12 docket. We have a docket devoted for this
13 proceeding.

14 The morning session and the
15 PowerPoint presentation from my office, which is
16 about 100 slides, we didn't print that out, but
17 if it isn't already available, it will be
18 available in the docket for this Advisory
19 Committee as well.

20 And the docket for the Advisory
21 Committee will remain open. Anyone wishing to
22 submit comments or critiques or suggestions or

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1 anything along those lines, please feel free to
2 submit the material to the docket.

3 I think that is about all I have.
4 Any questions from the Committee members?

5 (No response.)

6 Okay. With that, I am going to turn
7 it over to our first presenter, Jonathan Dols,
8 who is the Deputy Assistant General Counsel. He
9 is going to start with an overview of the
10 Office --

11 CHAIRPERSON MADIGAN: [presiding]
12 We would like to at least say hello to everybody.

13 MR. PODBERESKY: Oh, I'm sorry.
14 Yes, I am supposed to follow the agenda, and I
15 skipped over opening remarks by the Committee
16 members.

17 CHAIRPERSON MADIGAN: Ladies and
18 gentlemen, I am Lisa Madigan. I am normally the
19 Attorney General of the State of Illinois, but
20 for today, and a number of other days in the
21 coming years, I will serve as the Chairperson of
22 this Committee.

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1 I want to say thank you for the
2 opportunity to do so. In particular, thank you
3 to Secretary LaHood for appointing me to this.

4 And I would like to give credit to
5 Sam and to everybody who works with Sam. They
6 have all done a terrific job in getting us
7 materials, getting us organized, and getting us
8 here today in a very timely manner.

9 I would like to also acknowledge
10 some of what Bob Rivkin said. Really, when you
11 look at the work that has been done under this
12 Administration, it is clear that consumer
13 protection has become a priority, and certainly
14 a desperately-needed priority.

15 And I also appreciate the fact that
16 you have acknowledged that there is certainly
17 more that can be done. Because from the
18 perspective that I come from as an Attorney
19 General, really, one of the foremost things that
20 I do on a day-to-day basis is handle consumer
21 complaints and work on consumer protection.
22 And so, I think in the past year, in Illinois we

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1 received well over 200,000 -- and don't get
2 scared, airlines; it is not about you -- 200,000
3 consumer inquiries, resulting in about 25,000
4 consumer fraud complaints being filed.

5 Because of deregulation, we
6 obviously don't have any control over the
7 consumer issues regarding airlines and air
8 travel, but we do still receive
9 approximately -- I looked back over the numbers
10 over the past five-six years -- it is about 85
11 a year that we get. And then, we try to work on
12 this, not always successfully, but maybe this
13 position will change that. And there is
14 certainly, as I said, a lot to be done.

15 So, I am the person on the Committee
16 who is not connected to the industry, with the
17 exception of being an air traveler. So, I have
18 a lot to learn, but I am very excited about being
19 able to bring the expertise that I have from the
20 perspective of somebody in law enforcement who
21 has to deal with consumer protection and really
22 takes pride, I think, in the good work that we

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1 do. And certainly, we can use those skills to
2 improve the situation for air travelers as well.

3 So, thank you very much.

4 Let me just go down the line here and
5 hand this off to one of my Committee members,
6 David Berg.

7 MEMBER BERG: Thank you, Lisa.

8 So, I am David Berg. I am General
9 Counsel of Airlines for America, which is the
10 airline industry trade association,
11 representing the passenger and cargo airlines.

12 Let me first, like Lisa, thank the
13 Secretary and DOT for this opportunity. I think
14 this is going to be a very interesting exercise.
15 I can confirm what Bob Rivkin has said, in that
16 consumer protection has been a priority of this
17 Secretary and Bob's office and his staff and Sam.
18 And we have seen an uptick in enforcement
19 actions. That is a very real part of our world.

20 And also, as Bob said, there has been
21 a lot of debate about the issues. There has been
22 a lot of rhetoric about the issues.

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1 And I was thinking about how this
2 Committee might function and provide added value
3 to the debate. What I am hopeful is that in the
4 course of educating my colleagues and myself as
5 well about the issues, which is the focus, I
6 think, of this Committee, at least this meeting,
7 it would be useful not to simply make this
8 another forum for the same debate and
9 discussion. As presenters come today and talk
10 about the issues that they are concerned about,
11 be sure to talk about the data, the information,
12 the studies that support the statements that you
13 are making, because that will be helpful for us,
14 I think, more than simply broad-based statements
15 that all of us make from time to time.

16 So, with that, I will pass it on.
17 Thank you.

18 MEMBER ALE-FLINT: Good morning.

19 I am Deborah Ale-Flint, and I
20 represent the airport industry. As I sit on the
21 Board of Directors for Airports Council
22 International - North America, which represents

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1 over 300 commercial service airports in the
2 United States, I am very proud to be here as the
3 voice of airports in this panel.

4 As Tony Tyler of IATA said, aviation
5 is really a force for good across the world. I
6 certainly view that airports are a very
7 important part of that equation and a partner in
8 that. Airports directly employ 1.3 million
9 people across the country and indirectly over 10
10 million jobs. So, we are very important to be
11 part of this discussion.

12 And certainly for airports like
13 mine, Oakland International -- which is, if you
14 don't know, your favorite airport in the San
15 Francisco Bay Area and the best way to the
16 Bay -- we take issues of choice, fairness, and
17 value very much to heart. We know that this is
18 a very important industry to the economy, to
19 local economies, as well as to the global
20 economy.

21 So, again, as the airport
22 representative on this panel, I am very proud and

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1 look forward to representing the voice of
2 airports, as we seek collaboration and
3 cooperation on these issues.

4 MEMBER LEOCHA: Hello, I am Charlie
5 Leocha, and I am the Director of the Consumer
6 Travel Alliance.

7 A little background: I am a
8 long-term journalist. Years ago, I worked with
9 DOT writing a book called Travel Rights. I kind
10 of am a talking head that talked about consumer
11 issues on TV a lot, ended up moving to D.C. about
12 three years ago, and decided that maybe I should
13 do something on the inside to try to change
14 issues rather than throw rocks from the outside.

15 So, here I am. We have been working
16 for three years in pulling things together.

17 I have sort of a statement that I
18 would like to read and a broad overview of areas
19 that I would like to see this Committee move in,
20 beyond some of the minutia that we find ourselves
21 dragged into every day as we work on consumer
22 issues.

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1 So, aviation consumers are families
2 struggling with getting their luggage into their
3 overhead, struggling with getting their luggage
4 crammed under their front seat. They are
5 seniors going out to meet their grandchildren.
6 They are leisure travelers on their way to Disney
7 World, to play the slots in Vegas, to ski in New
8 Hampshire, or go to the wilds of New Mexico.
9 They also head over to explore history in Europe
10 and art in the Orient.

11 But those aren't the only people
12 that we are going to be talking about. They are
13 also everyday warriors who really make the
14 economic engine of America run. They are
15 salesmen who present their benefits day after
16 day. They are politicians connecting with the
17 public. They are journalists looking for the
18 next big scoop, musicians on the way to their
19 next gig. All of these passengers have to deal
20 with a unique part of the American economy, a
21 part of the economy where consumer issues are
22 handled very differently than they are in any

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1 other country.

2 Bob Rivkin quickly outlined where we
3 are. In this meeting, I would like to, and right
4 now I would like to, paint as broad a mandate as
5 possible for our Committee. Let's spread our
6 wings, like the airlines would say, and take a
7 look from a 10,000-foot level at consumers in the
8 aviation world.

9 We have a historical opportunity for
10 the first time to exam the aviation world after
11 30-plus years of airline deregulation from the
12 viewpoint of consumers. We find ourselves
13 moving into a different world, a world where
14 passengers are looking for more, for less, and
15 where airlines are finding themselves in the
16 economic position of having to provide less for
17 more money or having to differentiate between
18 passengers' desires.

19 The Consumer Travel Alliance and
20 this Committee's job is to focus on airline
21 passengers and ensure that in this aviation
22 world of shrinking mainline carriers,

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1 mushrooming low-cost carriers, code-sharing,
2 antitrust immunities, consumer protections and
3 market transparency, they don't get forgotten
4 for all consumers.

5 Today we are going to hear from the
6 government about consumer protections all
7 morning long which are already enshrined in
8 federal regulations. We will hear from
9 consumer and industry groups in the afternoon
10 about airline price transparency, baggage fees,
11 seat reservation fees -- fees, fees,
12 fees -- compensation for flight delays, lost
13 luggage, family prerogatives, purchase
14 protections, PNRs [Passenger Name Records],
15 GDSs, MCOs [miscellaneous charge orders], PFCs
16 [Passenger Facility Charges], and a lot more.

17 This is an industry where the
18 rulemakers at the Department of Transportation
19 not only write the rules, but their small staff
20 enforces the rules nationally and
21 internationally. And they serve as the sole
22 judge and jury for most violations.

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1 This is a part of our economy that
2 faces unique jurisdictional issues such as who
3 is responsible for privacy of
4 personally-identified information held by the
5 airlines in globe-spanning central computer
6 reservation systems. The FTC [Federal Trade
7 Commission] doesn't have jurisdiction. DOT has
8 nothing to do with privacy. Who has
9 jurisdiction if something goes wrong?

10 This is a portion of our economy
11 where state and local rule of law has been
12 superseded by federal preemption. Aggrieved
13 airline passengers have access to small claims
14 courts for paltry damages, but then are faced
15 with the challenges of federal courts for any
16 legal claims resulting in significant damages.

17 The State Attorneys General, the
18 bastion of consumer protections across the
19 country, are disenfranchised. This legal
20 conundrum should be addressed. We need to take
21 a look at enforcement of uniform federal law
22 through state courts. This Committee cannot

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1 solve this problem, but, hopefully, we can raise
2 the issue.

3 Even the IRS treats travelers
4 differently. Many taxes, government charges,
5 and fees paid for tickets that we don't use and
6 we cancel cannot be reimbursed. This is
7 something else we need to look at.

8 Besides writing the rules of legal
9 protections, DOT holds the keys to airline
10 safety. That is through the FAA [Federal
11 Aviation Administration]. The FAA, all part of
12 the DOT, makes rules that affect every single
13 flight from pilot certification to aircraft
14 maintenance and from specifications for child
15 seats and details of onboard effects of Kindles,
16 iPads, iPhones, and other electronics. And
17 plus, they manage the massive air traffic
18 overhaul that is underway. This is another area
19 we need to keep somewhere on our radar screen.

20 And finally, I would like to take a
21 look at how consumers can learn details of
22 contracts of carriage and the arcane federal

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1 rules. We are going to hear a lot of this today.

2 Should DOT take a more proactive
3 approach to educating consumers about their
4 passenger rights? Should they look for a way to
5 do some sort of a public/private partnership,
6 together with airlines, airports, and travel
7 service companies, to keep consumers informed
8 about what their rights are and where to find the
9 rights?

10 And so, before we start with the
11 presentations, I want to emphasize our aviation
12 system is an absolute marvel. It connects the
13 world. It makes our modern lives possible by
14 joining people, moving cargo, and facilitating
15 our international and domestic economies.

16 The FAA operates the safest aviation
17 transportation system in the world. The
18 airlines were created by visionaries who love to
19 travel and for whom underregulation/excellence
20 in consumer service was the prime
21 differentiator.

22 The fact that the airline has had

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1 virtually no enumerated consumer protections
2 for decades, other than lost baggage and
3 overbooking rules, speaks volumes about the
4 primary focus that airlines once placed on
5 treating their passengers well.

6 Today we are faced with a growing
7 litany of DOT rules and regulations, together
8 with emerging consumer issues. It is time to
9 take a fresh look at passenger protections that
10 have evolved over the past few years and take a
11 good look into the future. I hope that the
12 Committee will get to move in those directions.

13 MR. PODBERESKY: Thank you, Lisa
14 and Committee members.

15 And now, we will start our
16 presentations regarding the Office of Aviation
17 Enforcement and Proceedings with Jonathan Dols.

18 Charlie, are you able to see?

19 MEMBER LEOCHA: Yes.

20 MR. DOLS: Good morning, Committee
21 members. Good morning, everyone.

22 I am Jonathan Dols. I am a Deputy

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1 Assistant General Counsel.

2 Over the next two hours or so, you
3 will receive a comprehensive briefing on the
4 Office of Aviation Enforcement and Proceedings
5 or, as we call it for short, the Enforcement
6 Office.

7 A note on the slides that are an
8 essential component to our presentation today.
9 Sam mentioned that we have over 100 of them, and
10 I can sort of see gasps of horror back there in
11 the crowd. Many of the slides are very
12 detailed. So, I promise you that, at least
13 during my portion of the presentation, I won't
14 belabor you by hitting every single point and
15 every single sub point. In fact, there will be
16 times when I talk about something that is not on
17 a slide.

18 So, what I would ask you to do, and
19 to facilitate your understanding, is to follow
20 me first, and then, when I point to something
21 that is particularly important, I will refer you
22 to the slides.

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1 So, then, please, next slide.

2 Let's start by talking about who we
3 are, who the Enforcement Office is.
4 Paradoxically, we are going to begin by telling
5 you who we are not. We are not these other
6 agencies. We are not the FAA. We are not the
7 TSA [Transportation Security Administration].
8 The FAA and TSA regulate the safety and security
9 aspects of the airline industry.

10 We at DOT are the economic
11 regulators of the airline industry, and
12 specifically in the Enforcement Office we are
13 the consumer protectors. We do, however, work
14 very closely with our sister government
15 agencies.

16 Next slide.

17 Now this is who we are. We are a
18 component of the DOT General Counsel's Office.
19 We are 45 people strong. We are organized into
20 two divisions, a legal division on one hand and
21 a non-legal division on the other. The
22 non-legal division is called the Aviation

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1 Consumer Protection Division, or ACPD for short.
2 And we go into that office's functions in detail
3 later on in the presentation this morning.

4 Now something that is not on the
5 slide. I want to tell you a little bit about
6 where we have come from, where the Enforcement
7 Office has come from, our history. We are a
8 vestige of an entity called the Civil
9 Aeronautics Board, or the CAB, that regulated
10 the airline industry between 1938 and its sunset
11 in 1984, at the end of 1984.

12 During that time, the CAB told
13 airlines where it could fly and what they could
14 charge. It also had a consumer protection set
15 of responsibilities as well.

16 Well, starting in 1978 with the
17 passage of the Airline Deregulation Act, slowly,
18 most of those functions went away, opening up a
19 free market. But the consumer protection
20 functions or responsibilities, in large
21 measure, did not. They reside with us here
22 today in the Enforcement Office.

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1 Next slide.

2 A moment to describe -- you know who
3 we are and you know where we come from -- but what
4 is it exactly that we do? What do we regulate?
5 What is our jurisdiction?

6 Our jurisdiction starts with a
7 statutorily-defined term called "air
8 transportation," which I will attempt to
9 paraphrase for you here today. Air
10 transportation is the transportation by air of
11 persons or property for compensation or hire as
12 a common carrier between -- and this is the
13 critical part -- between a point in a state and
14 a point in another state or between a point in
15 a state and a point outside of our country.

16 Of course, when you look at the
17 statute, you will notice it is a little more
18 detailed than that and nuanced, but you get the
19 gist of it for now. That is what we regulate.

20 But who do we regulate? We regulate
21 three things: direct air carriers, indirect
22 air carriers, and ticket agents.

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1 Let's start with direct air
2 carriers. That is an easy concept to grasp. In
3 fact, that is how many of you came here today,
4 came to Washington, to be with us. You were
5 flown on American Airlines or United or U.S.
6 Airways, or what have you. They are direct air
7 carriers. They are what the FAA considers to be
8 in operational control of your flight. The FAA
9 regulates them, as do we.

10 What about indirect air carriers?
11 That is a slightly more amorphous concept. It
12 is not defined in statute. You can find
13 versions of definitions in various places in the
14 Department's regulations, but, in essence, an
15 indirect air carrier is an entity that purchases
16 air transportation from a direct air carrier
17 and, then -- and this is critical -- in its own
18 right as a principal, resells that air
19 transportation to consumers.

20 Perhaps the best example I can think
21 of, of a legal indirect air carrier, are Part 380
22 public charter operators. Now what are they?

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1 So, what I want you to do here is think back to
2 your college days and those cold
3 January/February days when you walked into the
4 student union and you saw something posted on the
5 bulletin board that said, "Hey, spend spring
6 break in Cancun. Sign up here."

7 Chances are, if you took the offer,
8 you were flown on a public charter flight to
9 Cancun. Your contract of carriage -- that is
10 not the term we use -- but your contract was with
11 the indirect air carrier that, in turn, placed
12 you on a direct air carrier to take you down for
13 your holiday.

14 And what about ticket agents?
15 Ticket agents, as with the term "air
16 transportation," is defined in our statutes.
17 And I will attempt again to paraphrase what they
18 are.

19 A ticket agent is an entity other
20 than an air carrier or an air carrier's employee
21 that, as a principal in its own right or as an
22 agent of the air carrier, holds out, sells, or

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1 arranges -- that is a keyword -- arranges air
2 transportation.

3 Examples of ticket agents are your
4 travel agents, your online travel agents, the
5 Expedias of the world, Travelocity, Orbitz, et
6 cetera. But they are also your
7 brick-and-mortar, mom-and-pop, corner travel
8 agents as well. Significantly, GDSs, Global
9 Distribution Systems -- Amadeus, Sabre, et
10 cetera -- are also ticket agents and fall under
11 our purview, our regulatory purview.

12 Next slide, please.

13 This is a busy slide, just three
14 things I want you to note here. Firstly, the
15 consumer protection jurisdiction at the federal
16 level in the airline vis-a-vis air
17 transportation lies solely with the Enforcement
18 Office. The FTC, by contrast, has jurisdiction
19 over a much wider range of industries.

20 The second point here: the Airline
21 Deregulation Act, which I mentioned earlier.
22 When Congress deregulated, it took out the

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1 ability to regulate rates and routes and
2 services, et cetera, it prevented states from
3 filling that void via a preemption provision
4 which exists today in our statute.

5 Thirdly, there is no private right
6 of action under our aviation statutes for
7 individuals to vindicate their rights.
8 However, there are methods via contractual
9 claims in which they can do so.

10 Next slide, please.

11 A note on economic licensing. In
12 order to be an airline in the United States, a
13 direct air carrier, one has to have two forms of
14 licenses from the federal government, one of
15 which is a safety license from the FAA. So, you
16 will often hear people say, "Hey, we have a 121
17 certificate" or a 135 certificate. That is what
18 they are talking about, their FAA authority.
19 Just incidentally, they are technically not
20 using the terminology right, but they are
21 referring to their FAA authority.

22 Over on the economic side of the

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1 house, the DOT side of the house, we give
2 economic authority in the form of a Certificate
3 of Public Convenience and Necessity or an
4 exemption from the certificate requirement. A
5 good example of an exemption is the regulatory
6 exemption that exists under Part 380.

7 Now how does one get one of these
8 certificates? One applies to our Fitness
9 Office here within DOT. It is separate from the
10 Enforcement Office and the DOT General Counsel's
11 Office. And the Fitness Office looks at several
12 criteria, four basic criteria.

13 Firstly, it looks to see whether an
14 applicant has sufficient financial resources in
15 place to fund its operations for an initial
16 startup period without during that period
17 putting passenger funds at risk. The idea there
18 is so that an airline starts business. It goes
19 two weeks and then it goes out of business. At
20 that point, it should still have the passenger
21 funds in place to make refunds. And so, those
22 passenger funds weren't used to fund the two

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1 weeks of operations that already occurred.

2 Secondly, the Fitness Office will
3 evaluate the managerial competence of the
4 applicants to make sure that they have
5 sufficient experience running airlines in the
6 airline industry, et cetera.

7 Thirdly, they will look to see
8 whether the owners, the officers and directors,
9 and the key managers have demonstrated a
10 willingness/ability to comply with the aviation
11 regulations. We call that having a positive
12 compliance disposition.

13 And lastly, and a criteria that I
14 believe is unique to the airline industry, we
15 require, in order to get a certificate, one to
16 be a citizen of the United States. And that is
17 a statutorily-defined term. Again, I am
18 unaware that that exists anywhere else but here
19 in the airline industry.

20 A final note on economic licensing
21 and fitness. It is a continuing requirement.
22 So, you don't just get a certificate and then go

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1 on your merry way and never come back to DOT.
2 You always have to be fit.

3 So, let's just suppose that within
4 a year of receiving a certificate an applicant
5 decides, for some reason, to replace its
6 president and CEO with a second grader.
7 Clearly, that will affect the managerial
8 competence of the airline, and it would no longer
9 be fit.

10 Next slide, please.

11 At this point, I want to transition
12 to the second part of my presentation. Here I
13 want to talk about the two types of
14 investigations that the Enforcement Office
15 engages in. I want to tell you a little bit
16 about how we get our cases, the various avenues
17 that they come to us. I want to tell you about
18 what we do when we have a case, and then, lastly,
19 I want to tell you about how we resolve those
20 cases.

21 This slide, it describes our formal
22 and informal investigations. Essentially,

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1 there is very little difference between the two.
2 We have two regulations, Part 300 and Part 302,
3 that govern our procedures during
4 investigations, and they govern our conduct.

5 Next slide, please.

6 How do we get our cases? Let's
7 start by how we reach out. We exercise our own
8 initiative to get those cases. Bob has already
9 mentioned our onsite compliance inspections, a
10 great example of, when we send a team into the
11 field -- we have had sufficient resources since
12 2008 to do this -- send teams into the field, they
13 subject an airline to a comprehensive evaluation
14 of its records in areas such as advertising,
15 refunds, oversales, code-share disclosure, et
16 cetera, to make sure that the carrier has
17 sufficient mechanisms in place to ensure
18 compliance. It has been an excellent tool for
19 us.

20 But there are other ways in which we
21 reach out ourselves. We use our meager staff of
22 45 to monitor websites on a daily basis, to

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1 monitor newspapers on a daily basis, other
2 advertising.

3 I see Howard smiling at my use of the
4 term "meager".

5 We are out there. We are also, not
6 surprisingly, a group of people that likes to
7 travel by air. So, when we see violations,
8 things that we think are wrong, we will bring
9 those back to the office and perhaps institute
10 an investigation.

11 So, those are the ways that we reach
12 out. But what about things that come to us?
13 Firstly, we rely on our sister agency,
14 principally the FAA. As I have said, 45 people,
15 that is not enough to cover the whole country,
16 but the FAA has significantly more. More
17 importantly, they have inspectors in the field
18 that serve as our eyes and as our ears.

19 So, the FAA are the ones who tell us
20 when they see a Canadian Air Taxi that doesn't
21 have an economic license and it just happens to
22 have landed at an airport in upstate New York.

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1 They are also the ones, critically, who are down
2 in south Florida and are able to identify the
3 charter operator that is, in fact, engaging in
4 scheduled service between Florida and the
5 Bahamas.

6 Passengers and consumers bring us a
7 lot of complaints, as you can imagine, as well;
8 in fact, thousands of them. Norman, when he
9 discusses the ACPD [Aviation Consumer
10 Protection Division] later today, Norman
11 Strickman will mention that as well.

12 When our non-legal division, ACPD,
13 receives these complaints, they look at them.
14 If they are particularly egregious ones, or if
15 there is a pattern in practice that they are able
16 to discern, they will refer the matter over to
17 the Legal Division for institution of an
18 investigation.

19 Also, from time to time, carriers do
20 self-report. That is a mitigating factor that
21 we will take into account in how we handle the
22 investigation beyond that.

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1 And lastly, but not least,
2 competitor complaints. We have Airline A, and
3 it is down there in the field and it has a pretty
4 good idea of what Airline B is doing wrong. And
5 they don't hesitate to come to us to let us know
6 what is going on. They have an economic
7 incentive for doing it. Our incentive for
8 encouraging it is to protect consumers. To the
9 extent that we can under law, we keep the
10 identity of complainants anonymous -- to the
11 extent that we can.

12 Now those are the ways that we get
13 our cases, most of the ways. What do we do when
14 we get them? We typically issue a letter of
15 investigation, an investigation letter. It
16 sounds pretty much what you would think. It
17 outlines the facts as we know them. It, then,
18 will solicit from the respondent additional
19 information. It is an informal method, but it
20 works very, very well almost all the time. We
21 get complete, timely, forthright responses upon
22 which we are able to base fairly-sound judgment.

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1 However, if there are situations,
2 when there are situations in which a respondent
3 drags its feet, we do have the ability to compel
4 production of the information that we need. We
5 have the ability to have subpoenas issued and
6 information directives in certain conditions.

7 When we have the information before
8 us, we look to see whether a violation has
9 occurred. And if one has occurred, then we have
10 to consider penalties.

11 We have a range of penalties from
12 which to choose, probably the lightest of which
13 is the warning letter. It is a private letter
14 between our office and a respondent, and it
15 essentially says, "Listen, we believe you have
16 violated a regulation or statute." For now, we
17 recognize that there are certain mitigating
18 circumstances here, and we presuppose before we
19 send this letter that the carrier or entity is
20 already in compliance, but, for now, we are going
21 to close our file on the matter. However, we
22 reserve the right to resurrect the situation if

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1 we see a similar violation in the future.

2 On the next step up in terms of our
3 penalties, our consent, cease and desist orders,
4 which usually levy civil penalties, I will talk
5 about those more in a moment. Except, right
6 now, I do want to mention the fact that, with fair
7 regularity, at least 10 or 15 times in the last
8 two decades by my unscientific count, we have
9 included as part of our consent orders bans on
10 individuals from various aspects of the airline
11 industry, in one case a total ban.

12 Further up on the level of penalties
13 and remedies are suspensions or revocations of
14 economic authority. If we see a recidivist, for
15 example, or we see a situation where a carrier
16 has done something particularly beyond the pale,
17 it may be appropriate at that point for our
18 office, the Enforcement Office, to refer the
19 matter to the Fitness Office to ask them to
20 institute a proceeding to modify, suspend, or
21 revoke the carrier's economic authority.

22 And lastly, we do have the ability

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1 to ask for criminal penalties for violations of
2 the aviation statutes and regulations. In that
3 situation, we would refer the matter generally
4 to our Inspector General's shop for further
5 follow-up.

6 Next slide, please.

7 On to our settlement practices and
8 more on consent orders, because consent orders
9 really are the way by which we settle our cases.
10 A few things here.

11 Firstly, they are a private
12 agreement to start between the Enforcement
13 Office and the respondent. They do become
14 public. We publish them in our docket, make
15 them available. Our Public Affairs Office
16 often issues press releases that accompany them.
17 We believe consent orders are an efficient tool
18 for conserving our resources and those of the
19 respondent, but, more importantly, for ensuring
20 future compliance.

21 Now I mentioned at first that they
22 start out as a private agreement. But, under

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1 Department regulations, after a certain period
2 of time, a consent order becomes under certain
3 situations an order of the Department, in which
4 case we believe that it has a broader
5 applicability.

6 Some of the factors that we consider
7 when we propose a civil penalty as part of a
8 consent order, we are required to consider
9 these: the size, the sophistication of a
10 carrier, the economic condition of an entity.
11 So, if an entity is in financial extremis, that
12 would certainly be a mitigating circumstance.

13 The idea here is not to put entities
14 out of business and reduce competition. We want
15 to see free, fair, and open competition that
16 benefits consumers.

17 We also look at the length of time
18 that a violation has occurred, and we look at,
19 to the extent that we can, quantifiable consumer
20 harm.

21 And lastly, but not least, we look
22 at whether the respondent has cooperated with us

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1 throughout the investigation. All of those
2 factors come into play.

3 Next slide, please.

4 Two more points about our consent
5 orders and our settlement practices - both of
6 which have been misunderstood for years. And
7 so, I want to take the opportunity now to clear
8 it up a little bit.

9 First are our doubling provisions.
10 The way a doubling provision works is this: a
11 consent order will have an assessed penalty
12 amount, let's say \$100,000. But it will also
13 usually have a paid penalty amount, \$50,000
14 we'll say. The \$50,000 is the amount that our
15 office feels is appropriate to be paid under the
16 circumstances of the case.

17 Now, to ensure future compliance, we
18 build in a provision into the consent order that
19 says, listen, if you violate the order within a
20 given period of time, that \$50,000 paid amount
21 doubles to \$100,000.

22 Now, offset provisions, what are

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1 those? You will typically find offset
2 provisions in our civil rights order. But the
3 key concept, the concept that is most often
4 misunderstood, is that an offset provision is an
5 expenditure that a respondent makes above and
6 beyond complying with our regulations.

7 So, for example, if a carrier
8 expends a certain amount on wheelchairs above
9 and beyond what is necessary to comply, under
10 certain circumstances it could take that
11 expenditure and offset it against the paid
12 amount of the penalty in our consent order.

13 In essence, it is our way of
14 benefitting consumers more directly. That way,
15 the funds go directly to their benefits rather
16 than to the U.S. Treasury and the General Fund.

17 Next slide, please.

18 We settle 99 percent of our cases.
19 But what happens when we don't? We start a
20 formal enforcement action at that point. It
21 begins with filing of a complaint with an
22 administrative law judge here at DOT, an ALJ.

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1 And essentially, what transpires
2 there is your basic lawsuit. We have an answer
3 period. There is a discovery period. It all
4 culminates in a hearing before the ALJ.

5 Then, we will issue a decision.
6 That decision is then appealable to the
7 Secretary of Transportation or his or her
8 designate.

9 We also have the ability to seek
10 injunctions, although that is a rare instance.

11 Next slide, please.

12 Now this is a busy slide, a lot of
13 numbers here. And I know, especially those of
14 you in the back have no way that you are going
15 to be able to see it. That's okay because you
16 are going to get a copy of these. It is
17 available to all of you publicly.

18 But I am going to tell you the two
19 important things I want you to take from it.
20 Okay? The first of which, the numbers show that
21 we are active now like we have never been active
22 before. In 2010 and 2011, we set records for

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1 total numbers of consent orders issued. Last
2 year, we had the second-highest amount of
3 assessed civil penalties ever. That is point
4 one.

5 But what about point two? That is
6 what you don't see in these numbers. What you
7 do not see are the many, many, many hours and many
8 things that we do that are aside from enforcement
9 that benefit consumers; that bring entities into
10 compliance.

11 Specifically, we have a wide range
12 of outreach activities. In the past several
13 years, we have organized disability forums. We
14 have organized consumer rights forums. We are
15 here today participating, organizing this
16 Advisory Committee. It has a public education
17 function, an important public interest
18 function.

19 But it is more than that. We speak.
20 We speak at conventions. We speak to consumer
21 groups. We speak to airline groups. We speak
22 to anyone who wants us to come and speak to them.

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1 We are always out there wanting to spread the
2 word about our regulations and what we do and how
3 things can be done right.

4 We are also on the phone on a daily
5 basis with private attorneys, with consumers who
6 call, explaining the way we believe they can
7 comply.

8 And lastly, what you don't see here
9 is the effort, the massive effort, that we put
10 into rulemaking. And I think at some point I
11 might ask Sam if he can have our office renamed
12 to include "rulemaking" in our official title
13 because we seem to be doing so much of it. More
14 on that in a moment.

15 Next slide, please.

16 Again, it is a busy slide, a lot of
17 numbers here. But when you look at your slide
18 packet, you will be able to see several things.
19 This just basically breaks down our consent
20 orders by category and by amount.

21 And what you can see here are
22 enforcement trends and areas where we have had

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1 a particular focus at a given period of time.
2 For example, you will see that recently, in the
3 last couple of years, we have had a high number
4 of advertising-related consent orders and a high
5 number of what we call other consent orders.
6 Those are consent orders involving violations of
7 our oversales regulations, our baggage
8 liability regulations, our refund regulations,
9 et cetera.

10 Next slide, please.

11 Compliance tools. I have mentioned
12 the ways, several of the ways, in which we
13 monitor compliance. We have people looking at
14 websites every day. We send teams into the
15 field for onsite compliance inspections. I
16 have also talked about several of our outreach
17 initiatives.

18 But rulemaking, that is the big one
19 of late. In the past five or six years, we have
20 been responding to consumer demand and to
21 changes in the airline industry, to really bring
22 our regulations up-to-date, to respond to the

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1 way that things are now.

2 Next slide, please.

3 We have engaged in several rounds of
4 rulemaking, two rounds thus far, and we are well
5 along in a third. I am calling each of those
6 Consumer I, Consumer II, and Consumer III, and
7 the other presenters will refer to them as well
8 that way.

9 Here are the major provisions that
10 came out in Consumer I. Significantly, that was
11 the rulemaking that imposed the tarmac-delay
12 ban, the prohibition on keeping people out on
13 tarmacs for an extended period of time.

14 Next slide, please.

15 Consumer II, which was promulgated
16 last year, and it has gone into effect in phases,
17 last August and, then, January. I will let you
18 read at your leisure the many things that it
19 included, but I will say this is where we
20 responded to the unbundling of services and the
21 innovative ways in which airlines were
22 advertising their fares.

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1 We had a full-fare rule in place for
2 many years, and there had been an exception that
3 we had allowed in which certain government taxes
4 and fees could be broken out from the advertised
5 fare and put in the fine print. That isn't the
6 case anymore under Consumer II.

7 Furthermore, Consumer II has
8 several vital provisions regarding disclosure
9 of baggage fees and optional fees.
10 Particularly, there are several points in a
11 consumer's purchase process where he or she is
12 made aware of the amount of baggage fees that may
13 be applicable. The next presenter will detail
14 that, go into more detail there.

15 Next slide, please.

16 Consumer Rule III, this is what is
17 coming soon to you. We expect an NPRM to be out
18 sometime in the fall. I will just read the top
19 two things here for you, and I will let you look
20 at your slides later on to get the rest.

21 One of the considerations is a
22 requirement for an enhanced reporting by

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1 mainline carrier of code-share operations. A
2 second consideration is codifying a statutory
3 requirement regarding code-share disclosure.
4 And the third, of course, is expanding the flight
5 delay and mishandled baggage reporting to
6 smaller carriers. Currently, I believe there
7 are 18 reporting carriers? Fifteen. And we
8 are considering expanding the threshold
9 reporting level to include more.

10 Next slide.

11 Now this is why we are here today.
12 Okay? The FAA Reauthorization Act, at long
13 last, after many, many extensions, it has
14 imposed a half-dozen requirements on the
15 Enforcement Office, the most significant of
16 which right now is the establishment of an
17 Aviation Advisory Committee for Consumer
18 Protection. But there are other pieces of it as
19 well that we believe may at some point become
20 part of a Consumer IV rulemaking.

21 Next slide, please.

22 Now at this point I believe our

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1 agenda calls for a 15-minute break. So, I will
2 leave the stage now, and I will be succeeded by
3 Barbara Marrin, who will discuss in detail the
4 regulations and statutes that the Enforcement
5 Office enforces.

6 Thank you.

7 MEMBER LEOCHA: May I ask you a
8 question?

9 MR. DOLS: Yes.

10 MEMBER LEOCHA: On your last slide,
11 you said that the FAA Reauthorization Act came
12 up with these things. Do each of those have to
13 be handled by rulemakings?

14 MR. DOLS: No. I mean, the
15 establishment of an Advisory Committee,
16 correct, Sam?

17 MR. PODBERESKY: Let me give you an
18 example. Most of them do require rulemaking at
19 some point. For example, the tarmac-delay
20 contingency plan requirement requires airports
21 and airlines to submit tarmac-delay contingency
22 plans to the Department for approval.

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1 We are in the process right now
2 of -- I am happy to report, I think at the current
3 time every airport that is required to comply and
4 every airline except one has filed tarmac-delay
5 contingency plans with us, and we are well along
6 in the approval process.

7 However, all we can really require
8 of those plans before we approve them is what is
9 already in existence in the regulation or what
10 is in existence in the statute. We can't go
11 beyond that unless we issue rules saying what has
12 to be in those plans beyond what is stated in the
13 regulation or the statute.

14 With respect to, for example, the
15 toll-free hotline, if we ever have the money to
16 really have a toll-free hotline office within
17 our office, which will cost millions of dollars
18 for us to have people and staff to answer
19 consumer calls, if we have the money to fund that
20 office, what would be required would be some kind
21 of a rule requiring airlines to provide that
22 information, post signage in airports, as to who

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1 and where to call.

2 So, the answer is some of the things
3 can be accomplished just because they are in the
4 statute and by us giving guidance about how to
5 go about doing it, like filing tarmac-delay
6 contingency plans with us, and letting carriers
7 know where there are requirements regarding this
8 dis-insectification or the insecticide use
9 onboard airlines, where that exists on our
10 website, so that they can comply with the statute
11 which requires airlines and agents to provide
12 that information to consumers. Other things,
13 more detailed implementation of the statutory
14 provisions are going to require rulemaking.

15 MEMBER LEOCHA: Okay. So, I guess
16 my question is, just because a law is passed,
17 like the 800-number hotline, it doesn't really
18 come into effect until someone says, "Okay.
19 Here's the money to pay for it." And I think it
20 had some relatively-specific requirements to
21 put the number on all of the airline counters,
22 and so on, so people knew what was going on. And

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1 all that has to wait, that part has to wait for
2 a rulemaking or for money, is that it?

3 MR. PODBERESKY: Yes, we would have
4 to issue a rule telling carriers that, "Here's
5 our 800-number for consumer complaints. Here,
6 you have got to post it on signage, and the
7 signage has got to be this size and it has got
8 to be in these locations," et cetera, et cetera.

9 While it sounds easy to issue a rule
10 saying that, but once somebody puts an
11 800-number up, there has got to be somebody to
12 answer the phone. There isn't going to be
13 anybody answering the phone unless we get
14 millions of dollars. Our estimates are that it
15 probably is going to take 100 people to man that
16 kind of a system, just based on our talking to
17 airlines and the FTC about similar kinds of
18 hotline complaint systems.

19 MEMBER LEOCHA: Is it within our
20 purview, I guess as a Committee, to make
21 recommendations on that? Because one of my
22 problems with the 800-number is that it is so

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1 20th century. I mean, with all of us with cell
2 phones today, nobody has to run over to an
3 800-number. We are not limited to punching into
4 the pay phone.

5 But if you move forward on a
6 rulemaking for that, to bring it out, instead of
7 making it only DOT, to encourage 800-numbers for
8 airlines who can actually respond in real-time
9 to passenger problems, perhaps set up of
10 electronic communications between like Facebook
11 or Twitter or Tumblr, emails, and so on? Is that
12 something which we could suggest go into a
13 rulemaking as a Committee?

14 MR. PODBERESKY: I think it is
15 within the purview of the Committee to make those
16 kinds of recommendations --

17 MEMBER LEOCHA: Okay. Thank you.

18 MR. PODBERESKY: -- if they think it
19 is in the best interest of the public.

20 MS. WORKIE: Charlie, if I could
21 just add, the FAA modernization already requires
22 the airlines to respond to complaints by

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1 telephone.

2 And with respect to the toll-free
3 hotline, as Sam said, the specifics on the
4 signage, and so forth, would need to be addressed
5 with rulemaking. But if Congress were to fund
6 a hotline, then we could provide guidance to the
7 airlines to simply comply with the general
8 standards that already exist in the statute.
9 The rulemaking is only for more detailed
10 requirements on how to comply.

11 MEMBER LEOCHA: I understand, and
12 that will be good. It is just that I don't know
13 if anybody has tried to get the customer service
14 number from an airline. It is like pulling
15 teeth. They want to know, "Why do you want it?
16 Who do you want to...?" You know, you go through
17 three or four levels, and then, finally, they
18 will come up with it.

19 So, I am just looking at this as
20 something which we can, under that aegis,
21 because we have the opening now from Congress to
22 allow us to give consumers better access to their

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1 airlines. That is what I am looking for.

2 MR. PODBERESKY: For those who
3 didn't recognize the voice of the person, this
4 is Blane Workie. She is the Principal Deputy in
5 my office. She will be chirping in to correct
6 me and to add information that is necessary.

7 Again, Charlie, there are various
8 issues. I think the Committee should think
9 about, you know, we have had issues with things;
10 for example, with things like Twitter and
11 Facebook. Some carriers accept complaints on
12 those, through those entities; some carriers
13 don't.

14 There are privacy issues associated
15 with filing complaints that way that may or may
16 not be in the interest of the public to do.
17 There are also, using systems like that where you
18 are limited to 140 characters or telephone
19 systems to file complaints, there are always
20 questions about what really was the complaint;
21 what really was the response; what really was the
22 resolution.

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1 If it is in writing, you have a
2 record and you know what has been done. And that
3 is why, as Blane said, our rule requires written
4 responses to written complaints, and it does
5 require airlines to respond in that way. But
6 those are all things the Committee should
7 consider in deciding upon recommendations.

8 CHAIRPERSON MADIGAN: All right.
9 Let's adjourn until 10:30.

10 (Whereupon, the foregoing matter
11 went off the record at 10:13 a.m. and went back
12 on the record at 10:28 a.m.)

13 MR. PODBERESKY: If everybody can
14 take their seats, we are going to move on.

15 We were advised that there was one
16 presenter who didn't get signed up, probably
17 because of some miscommunications. So, we are
18 going to try to squeeze him in after we finish
19 my office's presentations this morning.
20 Hopefully, we will be able to get that done
21 before noon. I think we will.

22 He is not on the agenda. His name

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1 is Paul Hudson with the Aviation Consumer Action
2 Project. I will let him say who he is
3 representing here. I don't see him in the room
4 now, but it won't be until later when he has his
5 opportunity to speak.

6 With that, I am going to turn it over
7 to Barbara Marrin, Senior Attorney on my staff,
8 who will continue with our presentation.

9 MS. MARRIN: Good morning.

10 As Sam said, I am Barbara Marrin. I
11 am a Senior Attorney in the Office of Aviation
12 Enforcement and Proceedings.

13 Before we begin, I am going to
14 apologize. I have a little bit of a throat thing
15 going on. So, I may lose my voice and have to
16 pause for some water.

17 But I am in charge of presenting our
18 current regulations substantively to you in the
19 area of consumer protection. I am going to sort
20 of build off of what Jonathan started at the end
21 of his presentation when he briefly introduced
22 Consumer I and Consumer II to you.

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1 So, my presentation is going to
2 focus on our existing regulations with a
3 particular focus on the new rules and new changes
4 that went into effect as part of Consumer I and
5 Consumer II.

6 However, we are going to begin with
7 what we call the keystone provision. It is the
8 statute that pretty much all of our rules come
9 from, and it is the authority that we have to make
10 rules. That is 49 USC Section 41712.

11 This broadly prohibits unfair and
12 deceptive practices and unfair methods of
13 competition. This statute is broadly written.
14 It does mirror similar consumer protection
15 statutes with the FTC in its language, but it
16 does pretty much give the authority to the
17 Secretary to investigate and decide unfair
18 methods of competition and unfair and deceptive
19 practices. As you can see by this list, it is
20 the basis for pretty much all the consumer rules
21 that I am going to be discussing.

22 So, I am going to begin with

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1 advertising. There are many components to our
2 advertising rules. I am going to start with
3 probably the biggest component to our
4 advertising rules, which is our full-fare rule.
5 Bob touched on it earlier, and I am going to sort
6 of elaborate on it now.

7 As a part of Consumer II that went
8 into effect January 26th, 2012, the new 14 CFR
9 399.84(a) changed the Enforcement Office's
10 enforcement policy regarding full-fare
11 disclosure. So, now when a seller of air
12 transportation -- this rule covers travel agents
13 as well as air carriers -- presents a price for
14 air transportation, the price must include all
15 mandatory fees and taxes. So that, basically,
16 everything a consumer has to pay to get on that
17 plane has to be included in that advertised
18 price.

19 And as you can see, there are some
20 other components of full fare, such as if there
21 are restrictions to a fare and a banner
22 advertisement or a newspaper ad, those

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1 restrictions must be disclosed, such as a
2 blackout period or a limited availability of
3 seats.

4 So, my next slide is just sort of an
5 illustrative slide of what the full-fare change
6 meant for consumers. The first example on the
7 left is what it used to be, which is the base
8 fare. The 829 is the base fare. And then, that
9 plus sign typically was a hyperlink that would
10 take the consumer to a pop-up or another web page
11 which would detail that government taxes and
12 fees apply and it would detail the amount of
13 those taxes and fees. That is no longer
14 allowed.

15 On the left is a better example of
16 what is allowed now under our full-fare
17 advertising policy. The most prominent price
18 is the full fare, which in this example is \$958.
19 And then, the components of that full fare, the
20 government taxes and the base fare, are below it.

21 As Bob mentioned in his
22 presentation, carriers, even though they have to

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1 have the full fare be the most prominent, they
2 still can disclose to consumers government taxes
3 and fees, charges, and things of that nature, in
4 a descriptive way, an accurate and descriptive
5 way. But our goal is that consumers know what
6 they are paying for air transportation, and that
7 is why we have the new full-fare rule.

8 Another new part of full fare, which
9 is 14 CFR 399.84(b), went into effect January
10 26th as part of Consumer II. It codified
11 longstanding Enforcement Office policy
12 regarding the advertisement of air
13 transportation that had a roundtrip purchase
14 requirement.

15 So now, if an airfare advertisement
16 is advertised and there is a roundtrip purchase
17 requirement, that price to be paid must be
18 labeled as each way, and the roundtrip purchase
19 requirement must be clear and conspicuous.

20 And then, the third component that
21 Consumer II added was a prohibition against
22 opt-out provisions. This is 14 CFR 399.84(c).

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1 This came about because often times
2 carriers and other sellers of air
3 transportation, such as tour operators, were
4 preselecting and adding on certain ancillary
5 services to the price of someone's air
6 transportation. These ancillary services
7 ranged from travel insurance to car rentals, to
8 extra leg room, to seat assignments.

9 And oftentimes, travelers were
10 unaware that this was being automatically added
11 into their cost of air transportation. 399.84(c)
12 prohibits it being added in, but it still allows
13 carriers to offer these services on an opt-in
14 basis, so that consumers must actually
15 affirmatively say that they want these ancillary
16 services.

17 Another aspect of advertising is
18 pre-licensing sales. This goes into what
19 Jonathan was talking about in relation to
20 economic authority and safety authority. An
21 applicant for an authority cannot advertise the
22 schedules or accept reservations before their

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1 authority has been actually approved.

2 MEMBER LEOCHA: Can we have
3 questions afterwards?

4 MS. MARRIN: Yes, after all three of
5 our presentations, we are going to have a
6 question-and-answer session.

7 MEMBER LEOCHA: Okay.

8 MS. MARRIN: Another element of
9 advertising is our unrealistic scheduling
10 rules. Basically, this touches on Consumer I,
11 which basically prohibited chronically-delayed
12 flights, and we have advertising regulations
13 related to chronically-delayed flights.

14 One thing I do want to touch on that
15 Consumer Rule I did was regarding on-time
16 performance disclosure in internet advertising.
17 The new section 234.11, which went into effect
18 under Consumer Rule I, April 29th, 2010,
19 requires carriers now, reporting carriers,
20 which is important -- Norm is going to talk more
21 about what reporting carriers are, but there are
22 15 reporting carriers now. They now on their

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1 website flight displays must disclose on-time
2 performance, and they have to do this in three
3 ways.

4 First, they have to disclose the
5 percentage of flights that are on time. That is
6 defined as the percentage of flights that arrive
7 within 15 minutes of the scheduled arrival time.
8 They have to disclose percentage of flights that
9 are more than 30 minutes late. And then, they
10 have to disclose the percentage of flights that
11 are cancelled if that number is more than 5
12 percent of the flights.

13 Now this has to be disclosed on
14 website displays. And the method that carriers
15 do disclose this is they will, in response to a
16 search initiated by a consumer, they will have
17 the list of flight options. And those flights
18 will either be a hyperlink or underneath the
19 flight listing they will say something like
20 "flight information" or "on-time information".
21 And the consumer will click on it, and a pop-up
22 will come up that has that on-time performance

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1 disclosure.

2 And we do, as an Enforcement Office,
3 have a team that checks every month to make sure
4 that the on-time performance disclosures are
5 updated appropriately with the appropriate
6 month's information.

7 And then, another aspect of our
8 advertising, which also goes into disclosure to
9 consumers, is code-share disclosure.
10 Code-share operations are those operations
11 where a marketing carrier will sell a flight that
12 is actually operated by a different carrier.

13 Congress passed 49 USC 41712(c),
14 which basically says that, on a website,
15 following a search initiated by a consumer, in
16 a format that is easily visible to the viewer,
17 this code-share operation must be disclosed.
18 Something that is important to note is that it
19 has to be disclosed, not just the name of the
20 operating carrier, but also if that operating
21 carrier is acting under a business name, such as
22 an Express or Connection Partner, that name

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1 needs to be disclosed to consumers as well.

2 So, moving away from advertising and
3 disclosure, I am going to briefly talk about our
4 refund rules and regulations. It is important
5 to note that the DOT does have the responsibility
6 to enforce U.S. and foreign air carrier
7 compliance with all the credit protections as
8 passed by Congress. And there are two methods
9 we do this.

10 The first is that a credit to a
11 credit card charge, the airline or seller of air
12 transportation must submit within seven
13 business days after receiving a complete ticket
14 refund application to the credit card company.
15 Refunds for cash and check sales must be made
16 within 20 days. That 20 days is something new
17 that we put in Consumer Rule II, 14 CFR 259.5.

18 I am going to move on to another
19 large area of regulation for us and an area that
20 the office views as very important to consumer
21 protection, and that is our oversales
22 regulation, which is 14 CFR Part 250, commonly

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1 referred to as bumping or involuntarily-denied
2 boarding.

3 And this regulation governs the
4 practice of air carriers to sell tickets on a
5 flight to offset no-shows, and then sometimes
6 they will have to bump passengers because the
7 flight is oversold.

8 Just a few important things I would
9 like to point out about this. The first is
10 Consumer II amended this section pretty heavily.
11 The main amendment I am going to talk about on
12 the next slide, which is it increased
13 compensation amounts. But I do want to point
14 out some things on this slide.

15 First, airlines must seek
16 volunteers willing to give up their reservation
17 in exchange. In your Air Travel Consumer
18 Reports, oversales is something that carriers
19 have to report. You will see the statistics on
20 involuntarily-denied/bumping and volunteers.

21 Additionally, something new that
22 Consumer II instituted was that, to the extent

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1 that someone is involuntarily denied boarding,
2 and on their subsequent flight they are unable
3 to use ancillary services that they purchased,
4 such as early boarding or a premium seat or an
5 extra leg-room seat, a carrier must refund those
6 fees for all unused ancillary services.

7 So, on the next slide, I just have
8 a quick chart of the compensation levels.
9 Consumer II provided that the DBCs [Denied
10 Boarding Compensations] be adjusted
11 biennially based on the CPI [Consumer Price
12 Index]. And the first chart here is a
13 compensation chart for domestic flights.

14 So, there are two components
15 carriers look at when compensating consumers for
16 being involuntarily denied boarding. The first
17 thing they look at is how long the delay will be
18 for that bumped passenger. And then, if it is
19 zero to one hour, no compensation under our rule.
20 One to two hours, 200 percent of one-way fare,
21 but no more than \$650. And if it is over two
22 hours, 400 percent of the one-way fare, but no

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1 more than \$1,300.

2 The next slide shows the
3 compensation for international flights. As you
4 can see, the compensation levels are the same,
5 but what has changed is the arrival delay.
6 Instead of one to two hours, it is one to four
7 hours and over four hours.

8 I am going to move on to another
9 important piece which Jonathan did mention, and
10 that is baggage liability limits. In addition
11 in 2011 code-share disclosure and baggage
12 liability limits, and other consent order
13 category, baggage liability violations and
14 code-share disclosure violations made up a large
15 part of that 24 number for consent orders issued
16 last year.

17 There are two regimes for baggage
18 liability reimbursement for passengers whose
19 baggage is damaged, lost, or delayed. The first
20 is for domestic transportation. And that limit
21 may not be less than \$3,300 per passenger.

22 Just to point out something, the

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1 limit for assistive devices is the original
2 purchase price with no \$3,300 limit. And my
3 colleague, Kathleen Riether, will be talking
4 more about our disability regulation after me.

5 And then, the international
6 transportation has a different regime. And
7 that is under the Montreal Convention. The
8 liability and limit is 1,131 special drawing
9 rights. Special drawing rights is a currency
10 basket that the IMF [International Monetary
11 Fund] has. Currently, as of two days ago, it
12 equaled \$1.51 in U.S. dollars. And so, that is
13 usually about \$1,600 to \$1,700 U.S. dollars.

14 A big difference between these two
15 is that, for international transportation under
16 the Montreal Convention, a carrier cannot
17 exclude from liability any special class of
18 checked items, such as a valuable electronic
19 item or jewelry; whereas, under domestic
20 transportation, they could.

21 And still talking about baggage and
22 baggage fees, under Consumer II, we instituted

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1 a regime of baggage fee disclosure. As Jonathan
2 said, Consumer II is really our answer to the
3 unbundling of fees and how consumers can readily
4 access this information, so they can understand
5 the total price to be paid for air travel before
6 they even purchase their air travel.

7 So, it has five sections. The first
8 bullet is 399.85(a), which basically means, when
9 a carrier changes their bag fees, they have to
10 have notice of that change on their home page and
11 it needs to be a descriptive link such as
12 "changed bag fees," and that link must take the
13 consumer to a page that details the change.

14 399.85(b) deals with baggage fee
15 disclosure in response to a consumer search
16 itinerary. So, say you want to fly from D.C. to
17 Tampa and you enter in that search itinerary.
18 When the seller of air transportation comes back
19 with a fare matrix, at the top it needs to say
20 "Baggage fees may apply," and it needs to be a
21 link to take the consumer to tell them their
22 baggage fees. It is important to note that

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1 399.85(b) does apply to travel agents as well as
2 air carriers.

3 399.85(c), which is the third bullet
4 on the right side of the screen, is on e-ticket
5 confirmations. Sellers of air transportation
6 must include information about applicable
7 baggage fees. So, this is a summary page that
8 gets emailed to you at the end of an online
9 purchase. It needs to have enough information
10 so that the consumer can understand what they are
11 going to be paying for their baggage fees, and
12 it should be taking into account special
13 circumstances such as frequent flyers or the
14 type of itinerary the person is flying on.

15 399.85(d), which is the second
16 bullet that is on the right side of the screen,
17 deals with all other fees from unaccompanied
18 minors to seat selections. And carriers must
19 have a page that just lists all these fees, easy
20 for the consumer to find with a link from the home
21 page that has a descriptive link such as
22 "optional fees" or "fees for our services," or

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1 something like that.

2 So, a consumer can just say, you
3 know, "I want to take my pet in cabin." Click,
4 there's the fee. So, they can find it fairly
5 easily.

6 And then, the final section of
7 399.85 is 399.85(e), which requires carriers to
8 disclose on its websites differences between its
9 optional services and fees and that of its
10 code-share partners.

11 399.87 is a new section under
12 Consumer II. The goal of this section is that
13 consumers are not surprised by changed or
14 different baggage fees or allowances
15 mid-itinerary, especially in code-share and
16 interline itineraries.

17 I think it is important to note, sort
18 of taking a break, this is not about a particular
19 rule, but all the rules I am talking about
20 oftentimes have a component of notice for
21 consumers. So, in one way or another, sometimes
22 on e-ticket confirmations, sometimes at the

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1 airport, these notices have to be given to
2 passengers.

3 One of the most important is the
4 oversales notice. Under Part 250, we actually
5 have the language of the oversales notice that
6 carriers have to give passengers who are
7 involuntarily denied boarding, so that they
8 understand their rights in a denied-boarding
9 situation.

10 Part 253 governs the U.S. domestic
11 contracts of carriage and what disclosures must
12 be in those and on tickets and e-tickets. As you
13 can see, a lot of the disclosure is in general
14 terms in terms of contract terms incorporated by
15 reference and the liability limits and claim
16 restrictions.

17 And this slide also deals more with
18 the notices, but there is one thing I wanted to
19 point out that Consumer Rule II did, and that is
20 it has a form restriction that now U.S. carriers
21 for U.S. domestic transportation cannot limit a
22 passenger from bringing a claim against a

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1 carrier in any court of competent jurisdiction,
2 including a court within the jurisdiction that
3 is the passenger's residence in the United
4 States.

5 Another element of consumer
6 protection that this office is in charge of
7 enforcing and implementing is the family
8 assistance after aviation disasters. These are
9 two statutes that Congress passed in the 1990s,
10 in response to a series of high-profile airline
11 accidents where Congress and the public felt
12 that the families of the victims were not treated
13 properly. So now, carriers have to have these
14 plans which you see include establishing a
15 toll-free number and assisting family members in
16 traveling to the accident location. And they
17 have to file these plans with the DOT and the
18 National Transportation Safety Board [NTSB].

19 So, now I am going to move on to
20 probably one of the biggest changes that we have
21 had recently. That is our new so-called
22 tarmac-delay rule.

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1 Part 259 is a bigger section than
2 just tarmac delays. It is enhancing airline
3 passenger protections. And I am going to be
4 talking about other sections. But it is
5 commonly referred to as the tarmac-delay rule.
6 But the tarmac-delay section is actually 259.4.

7 Consumer Rule I applied a three-hour
8 time limit for the deplanement of passengers on
9 a domestic flight at a large or medium hub
10 airport. And this went into effect April 29th,
11 2010. In addition to providing assurances that
12 carriers will deplane passengers, carriers also
13 provide assurances that they will serve adequate
14 food and potable water after two hours after the
15 aircraft door is closed. Additionally, the
16 carrier has to provide assurances that they will
17 provide operable laboratories and adequate
18 medical assistance.

19 As Bob said in his presentation,
20 since the rule has gone into effect, we have had
21 one carrier fined. That was the American Eagle
22 case. And the Aviation Enforcement Office has

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1 investigated nearly 300 separate alleged
2 tarmac-delay incidents.

3 Now I just wanted to do a quick note
4 of where we get information about these alleged
5 tarmac-delay incidents. Probably the No. 1
6 source we get is from the carriers themselves and
7 the reporting that they are required to do.
8 Every month it is published in the Air Travel
9 Consumer Report [ATCR]. And those ATCR delays
10 do get a lot of attention in our investigation.

11 However, we also get consumer
12 complaints about when they are stuck on the
13 tarmac. To the extent that they allege a delay
14 that would fall under the tarmac-delay rule, we
15 investigate those complaints. We request the
16 information from the carriers.

17 And then, a third way is we also hear
18 about it through media incidents. You go to bed
19 one night, and then you wake up and there was a
20 Twitter explosion of some diverted flight that
21 happened overnight. And we will take a look and
22 see if there are any merits to those types of

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1 incidents as well.

2 Continuing on with tarmac delays,
3 Consumer II extended the applicability of the
4 tarmac-delay rule in a few areas. The first
5 thing it did is it extended the provisions to
6 non-U.S. carriers. It also established a time
7 limit for international flights.

8 Under Consumer Rule I, the rule
9 allowed domestic carriers to set their own time
10 limit for international flights. After a
11 series of some high-profile events, and also
12 taking a look at the U.S. carriers' plans, the
13 office determined that a four-hour time limit
14 for international flights was appropriate.

15 Additionally, Consumer II extended
16 the plan beyond large and medium hub airports to
17 small and non-hub airports. So, basically, all
18 U.S. airports are now covered by this rule.

19 Additionally, Consumer II has
20 notification triggers, so that passengers
21 understand what is going on the plane when they
22 are in the middle of one of these delays. This

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1 came from many passenger complaints we received
2 where they would be on a large plane , say a 747
3 with over 350 passengers, and they didn't know
4 the door was open and they had the opportunity
5 to get off the plane. So now, if the opportunity
6 to deplane actually exists, an announcement has
7 to be made to the passengers.

8 In addition to the extensions that
9 Consumer Rule II made, the FAA Reauthorization
10 Act signed by President Obama on February 14th
11 extended the tarmac-delay rule even a little
12 further. So now, an air carrier's plans must
13 also cover assurances that they will ensure a
14 comfortable cabin temperature during these
15 flights, and, also, that they will make a
16 commitment to share gates and facilities in the
17 event of an emergency.

18 And something new for our office was
19 that the FAA reauthorization bill also requires
20 large, medium, small, and non-hub airports to
21 develop contingency plans and to submit those
22 plans with the DOT. The airport contingency

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1 plans must have three parts.

2 The first is assist in the deplaning
3 of passengers. The second, similar to air
4 carriers, is sharing facilities and gates in the
5 event of an emergency. And the third is, to the
6 extent practicable, providing sterile areas for
7 Customs for international flight deplanement.

8 So, as I said, there are many parts
9 of 259, which is our main passenger protection
10 regulation. One of those parts is the
11 establishment of customer service plans.

12 Consumer Rule I required U.S.
13 carriers to establish customer service plans.
14 Consumer Rule II extended that requirement to
15 non-U.S. carriers and also established minimum
16 standards in the 12 areas of the customer service
17 plans. So, I am going to talk about each area.

18 The first is carriers must disclose
19 that a lower fare may be available elsewhere.
20 It is pretty self-explanatory.

21 The second thing is that carriers
22 now must notify consumers of known delays, in

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1 accordance with 14 CFR 259.8. 259.8 is our
2 flight-status change rule, and it is intended to
3 help consumers plan their travel closer to the
4 date of their travel, so within seven days of
5 their travel.

6 And if there is a delay or
7 cancellation that is known to the air carrier,
8 consumers must be notified in a variety of ways
9 within 30 minutes of the carrier becoming aware
10 of the delay. The ways that they must be
11 notified are airport signage and gate boards
12 that they control. Their websites must be
13 updated. And to the extent that they offer a
14 service of telephone, text, or email
15 notification, and the consumer subscribes to
16 that service, they must adhere to that.

17 I have to say I was a beneficiary of
18 this rule. I was flying out of LaGuardia last
19 Friday. There were a lot of storms rolling
20 through. I got text messages when my flight was
21 changed, and it was very helpful to me as a
22 consumer last Friday.

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1 No. 3 is to make reasonable efforts
2 to return mishandled baggage within 24 hours.
3 This includes an assurance to adhere to the
4 baggage liability rules, but it also requires
5 carriers to reimburse passengers for any fee
6 charged to transport a bag if that bag is lost.

7 No. 4 is a new section that actually
8 went into effect a little bit later than the rest
9 of these. No. 4 went into effect in January.
10 And that is, carriers must allow reservations to
11 be held at the quoted fare without payment or
12 cancelled without penalty for at least 24 hours
13 after the reservation is made. This provision
14 allows the carriers to choose, how they want to
15 comply. They can allow the reservations to be
16 held or cancelled, but they don't have to do
17 both.

18 No. 5 is refunds, which I covered,
19 just following the rules relating to refunds for
20 credit, and then, within 20 days, for cash or
21 check purchases.

22 No. 6 is properly accommodate

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1 passengers with disabilities. My colleague
2 will talk more about that very comprehensive
3 regulation next.

4 No. 7 is meet customers' essential
5 needs in the event of a lengthy tarmac delay. I
6 already covered the requirements of that.

7 No. 8 is handling bumped passengers
8 with fairness and consistency in accordance with
9 14 CFR Part 250.

10 No. 9 is a disclosure requirement
11 for several things, cancellation policies,
12 frequency flyer rules, seating configuration,
13 and lavatory availability.

14 No. 10 is to notify consumers in a
15 timely manner of travel itinerary changes.
16 This is intended for itinerary changes that
17 occur prior to flight, more than seven days.
18 Oftentimes, you will buy a few months in advance,
19 and sometimes the carriers will change the
20 schedule. The carriers should notify.

21 I was the beneficiary of this when
22 I was on my honeymoon last year. My flights were

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1 changed. It shorted a connection. So, I was
2 able to change my flight to make sure I had enough
3 connection time when I was coming back from my
4 honeymoon.

5 So, No. 11 is to ensure
6 responsiveness to consumer problems, as
7 required by 259.7, which I will talk about on the
8 next slide.

9 And then, No. 12 is to identify
10 services it provides to mitigate passenger
11 inconveniences resulting from flight
12 cancellations and missed connections.

13 Now 14 CFR 259.6 is a disclosure
14 requirement. Carriers must post these customer
15 service plans, their contracts of carriage, and
16 their tarmac-delay contingency plans on their
17 websites.

18 259.7 is our rule governing response
19 to consumer problems. As you can see from the
20 slide, it has three main components.

21 The first is the carrier must
22 designate an employee to monitor the effects of

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1 irregular flights on consumers.

2 The second is that the carrier must
3 inform consumers how to complain. And in
4 Consumer II, we detailed what that means. It
5 means having a place on your web page that has
6 a website address and mailing address for
7 consumers to file complaints. To the extent
8 that a carrier maintains a Twitter or Facebook
9 page, and they don't accept complaints through
10 those pages, those pages must have information
11 on how a consumer can file a written complaint.

12 And it requires carriers to respond
13 to written complaints by acknowledging their
14 receipt of the complaint within 30 days and
15 substantively responding within 60.

16 And so, then, finally, I am going to
17 talk about our prohibition against
18 post-purchase price increases. 14 CFR 399.88,
19 which is the text that is on the left side of this
20 slide, deals with when a consumer has paid the
21 full amount for air transportation, a carrier
22 and/or a seller of air transportation cannot

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1 increase the price of that ticket except in the
2 limited circumstance of an increase in
3 government taxes or fees.

4 In Consumer II, the proposed rule
5 actually prohibited all types of increases.
6 But, in response to comments received, we
7 realized that there is a very limited case when
8 government-imposed taxes and fees can increase.
9 And so, in response to those consumers, we
10 modified our proposed text to include that
11 limited exception.

12 399.89, which is on the right side
13 of the screen, deals with mainly consumers who
14 purchase air transportation as part of a tour
15 package or a component of an air tour. In that
16 case, a lot of consumers will pay a deposit for
17 this package, and the tour operator will accept
18 the deposit. This prohibits a seller from
19 raising the price unless it receives written
20 consent from the passenger acknowledging the
21 potential for an increase and accepting that
22 increase before the seller of air transportation

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1 accepts the deposit.

2 So, that is just our brief overview
3 of the consumer protections we have and some of
4 the substance behind them. I will turn it over
5 to my colleague Kathleen now.

6 CHAIRPERSON MADIGAN: Why don't we
7 let Charlie ask some questions at this point, or
8 anybody else?

9 MEMBER LEOCHA: We just heard an
10 awful lot, and I have got a 6-inch binder filled
11 with what we just went over in a few minutes.

12 I think that part of our charter as
13 a Committee is to look at the current enforcement
14 actions and the current rules and regulations
15 and comment on whether we think that they are
16 being enforced, you know, well enforced or not.
17 Is this something we are going to sort of look
18 at and question today as we move through this?
19 Or is this something that you want to move and
20 deal with in another meeting? Because I have
21 just got a whole series of questions which we
22 glossed over everything, and with every one of

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1 these points there are consumer issues involved
2 which either are being handled or not handled.

3 CHAIRPERSON MADIGAN: So, I think
4 all of this is obviously open to us to decide --

5 MEMBER LEOCHA: Right.

6 CHAIRPERSON MADIGAN: -- how we
7 want to respond. If you have substantive
8 questions that aren't going to completely throw
9 us off our schedule, I think this is a good time
10 to start asking some of those.

11 MEMBER LEOCHA: Okay. I will just
12 put these out in terms of general thoughts. We
13 don't have to answer them right now.

14 But in terms of enforcement of your
15 full-fare advertising rule, I don't think that
16 DOT has put in any kind of an IT system to scour
17 the internet to see who is breaking the law and
18 who is not breaking the law. As I understand it,
19 DOT is looking at the major airlines and what
20 they have on their websites, and then reacting
21 to that and working their way through the system.
22 I just didn't know if you were exploring using

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1 some sort of a system to scour web advertising
2 to find out who might be following the rules and
3 where the scofflaws are.

4 MR. PODBERESKY: We clearly monitor
5 all the larger carriers. You will find consent
6 orders against carriers that go to maybe the
7 20th, 25th largest carriers. And as far as
8 online travel agents are concerned, we monitor
9 all the big online travel agents regularly. And
10 again, if you go look at the enforcement orders
11 we issue, we go after a lot of small online travel
12 agencies as well.

13 As far as getting some kind of a
14 computerized monitoring system, that would
15 involve a lot of money to develop that kind of
16 a system. Right now, we don't have the kind of
17 resources to do something like that.

18 But our general view is that, based
19 on our monitoring, the larger carriers and the
20 online travel agencies that we are looking at are
21 in compliance with our full-fare advertising
22 rules now in general. I mean, we still have

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1 enforcement cases, obviously.

2 MEMBER LEOCHA: Right. Okay. I
3 just bring it up because that will be a question
4 of maybe we need financing, something to help out
5 to do that kind of thing and to develop those
6 kinds of systems.

7 In terms of code-share, in general,
8 we just glossed over it. I would just like to
9 say that I think that code-sharing is prima facie
10 absolutely deceptive. They paint the airplanes
11 to look the same. In the back pocket, you have
12 got the major airlines magazine. When you get
13 your boarding pass, it has the airline's code
14 number. Like it will say "United" even though
15 you are flying on Republic or you are flying on
16 Chattaqua or you are flying on a different
17 airline.

18 Just as a general statement, I just
19 think that there is nothing that the airlines can
20 do with code-sharing that they can't do with
21 interlining -- it is basically the same
22 thing -- and letting us know what airline we are

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1 actually flying on. The only time that we, as
2 consumers, learn about the problems is if there
3 is a big problem, such as the Colgan Air crash.
4 Then, there was a big problem, and, all of a
5 sudden, it wasn't a Continental flight anymore;
6 it was a Colgan Air flight. And I just think
7 this should be made upfront to consumers, and
8 that is something we need to look at.

9 In terms of oversales, the airlines
10 are already beginning to set up bidding
11 processes. So, when you sign in for your
12 flight, they will say, "Your flight may be
13 oversold. Would you be willing to take \$300 to
14 be moved onto another flight?"

15 All of this is done without
16 notifying you that you could get \$1300,
17 according to the rules and regulations, if you
18 are involuntarily bumped. And so, I just think
19 that if you are into an oversold situation at an
20 airport, I know that the airlines are required
21 to give you this in writing, what your rights
22 are.

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1 But, before that, it is a game that
2 is played with consumers. I just think that
3 somewhere we should have something written in
4 that lets consumers know.

5 CHAIRPERSON MADIGAN: If you have
6 specific questions for the people, for the
7 staff, can we focus on the questions and we can
8 get comments at the end?

9 MEMBER LEOCHA: Okay.

10 CHAIRPERSON MADIGAN: Thanks.

11 MEMBER LEOCHA: In terms of baggage
12 fees, in terms of your new regulations that on
13 the flight itineraries the baggage fees need to
14 be passenger-specific, flight-specific, how are
15 you enforcing that? I am flying to Spain on
16 Delta, and I have got my itinerary and receipt
17 with the Delta thing, and nowhere on here is
18 there anything flight-specific. I come back
19 and I get on U.S. Airways, and I fly up to Boston,
20 and nowhere is there something specific for me.

21 I can figure it out if I go all the
22 way down and they give me all the exceptions.

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1 But I thought that the idea of DOT's rule was
2 that, when you got your flight itinerary, it
3 would say, "This is your baggage fee." Even
4 though we are learning it after the fact, at
5 least it was a step ahead, but the airlines
6 aren't even doing that.

7 So, have you looked at that or had
8 any enforcement actions on these things?

9 MS. WORKIE: The first thing I will
10 say is that there may be a little bit of a
11 misunderstanding in terms of what is required
12 with respect to baggage disclosure. Under
13 Consumer Rule II, what the Department requires
14 is that, both for the e-ticket confirmation as
15 well as when a passenger is doing a search for
16 a particular itinerary online, that there be
17 specific baggage fee information, so that the
18 consumer can figure out what baggage fee applies
19 to them.

20 So, there is no requirement, for
21 example, for any airline on the e-ticket
22 confirmation to say that, "Charlie, your

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1 specific baggage fee with the credit card you are
2 using with the kind of frequent flyer level you
3 are, and the advanced purchase," all that stuff,
4 "that your specific fee would be \$25."

5 However, they are required to
6 provide sufficient information so that you,
7 knowing what frequent flyer level you are,
8 whether you are going to buy the bag in advance,
9 and so forth, can figure that out.

10 I know, Charlie, you are aware of
11 what the Department is considering doing in
12 Consumer Rule III. It is partly to address that
13 gap, which is the gap that exists right now ---
14 that is although there is enough information for
15 consumers to figure out what baggage fee may
16 apply in their particular itinerary, there is
17 some work the consumer has to do. It is not that
18 there is a number that is displayed upfront.
19 So, it is not that easy, although some carriers,
20 I understand, may choose to go that route.

21 MEMBER LEOCHA: Okay. My
22 understanding was that, under Consumer Rule II,

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1 DOT allowed the carriers to have one page with
2 general baggage fees, such as you link from their
3 home page --

4 MS. WORKIE: Right.

5 MEMBER LEOCHA: -- to a page that
6 has all of the ancillary fees. In that
7 ancillary fee page, it would say, "baggage".
8 And it will say zero to \$250. They are allowed
9 to put it into ranges.

10 MS. WORKIE: Actually, they are
11 not. With respect to non-baggage-related
12 ancillary services, you are correct, they are
13 allowed to put it in a range. With respect to
14 baggage fees, whether it is a baggage fee that
15 is listed from a home page, the list of ancillary
16 services, or whether it is the baggage fee that
17 you link into when you are doing a search for an
18 online itinerary, or on the e-ticket, they have
19 to provide specific baggage information.

20 So, for example, they wouldn't be
21 able to say the baggage fee for a first bag is
22 from zero to \$50. They would have to specify

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1 when it is zero, when it is \$25, when it is \$50,
2 as opposed to food, they are allowed under the
3 existing rule to say food may cost from zero to
4 \$20. So, they are allowed to provide a range for
5 ancillary services that are not baggage. For
6 baggage, it needs to be specific. They have to
7 actually provide you specific information, so
8 you can figure out, in my particular situation,
9 it is going to be \$25 or it is going to be \$20.

10 MEMBER LEOCHA: Okay. My
11 understanding was that, on the ticket itinerary
12 when we got it, it would be passenger-specific
13 based upon level of frequent flyers, based upon
14 what credit card you used to buy the ticket.

15 So, as of right now, consumers are
16 still left -- when we get our itinerary, and then
17 the airlines just give us the blurb, you get
18 "It's first bag," this; "That bag," there, and
19 then you link to something else and it tells you,
20 "By the way, if you are a frequent flyer
21 member...", and then, you go somewhere else and
22 it says, if you use a certain credit card --

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1 MS. WORKIE: Okay. And I am sorry
2 to go --

3 MEMBER LEOCHA: That is --

4 MS. WORKIE: Almost. I am sorry to go
5 into all the different details of this. But,
6 for example, for email, the carriers are not
7 allowed to provide a link. So, for email
8 confirmations, the carrier has to provide that
9 specific information on the confirmation
10 itself.

11 On the other hand, if you buy your
12 ticket from Orbitz, Expedia, and so forth, they
13 are allowed to provide that information through
14 a link.

15 So, for your e-ticket confirmation,
16 if you are getting it from Delta or United, or
17 so forth, under Consumer Rule II, the specific
18 information so that you can determine what fee
19 applies to you needs to be included on the
20 e-ticket confirmation. It would be a violation
21 of our rules if they provided a hyperlink for you
22 in order to get that information.

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1 A hyperlink is allowed for airlines
2 with respect to searches you do for a specific
3 itinerary online. They can simply say, "Click
4 here for the baggage." And then, you would have
5 to click and then figure it out.

6 But I think you are making a good
7 point, and the Department recognizes that we are
8 not completely there, which is why we are looking
9 into whether a Consumer Rule III is needed and
10 exactly what the Department should be requiring
11 in the third consumer rule.

12 MEMBER LEOCHA: Okay. I will
13 discuss this with you later.

14 MS. WORKIE: Okay.

15 MEMBER LEOCHA: This is just to show
16 you these examples to look at.

17 MS. WORKIE: Okay.

18 MEMBER LEOCHA: On customer service
19 plans, are those enforceable under law or are
20 they just enforceable under DOT? Customer
21 service plans as opposed to contract of
22 carriage?

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1 MR. PODBERESKY: Customer service
2 plans are enforceable by us.

3 MEMBER LEOCHA: Okay.

4 MR. PODBERESKY: Consumers
5 wouldn't have the opportunity to enforce them.
6 The contract of carriage is something that a
7 consumer could enforce in the courts, if they
8 wanted, and we can enforce them as well under our
9 authority under 41712.

10 MEMBER LEOCHA: Okay. And I guess
11 the one recent example that we ran into was the
12 example of Delta Air Lines, in their customer
13 commitment through their customer service plan,
14 saying that the price you see on the website is
15 the lowest-possible price. But if two
16 different people look at the same time, I guess,
17 I mean, they get two different prices. Yes, for
18 that guy, it is the lowest-possible price and for
19 this guy it is the lowest-possible price, but in
20 the universe of prices I guess -- I am just
21 trying to figure out how that happens.

22 MS. WORKIE: Similar to baggage, in

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1 terms of the lowest fare available, I can
2 understand why there is a misunderstanding
3 because of the language that is used in the rule
4 text. For instance, for baggage, we use the
5 word "specific," and people have in their minds
6 what they view to be specific. And even in terms
7 of lowest fares, on the customer service
8 commitment, we say they have to provide you the
9 lowest fare. We don't mean Delta has to tell you
10 that you can get a cheaper fare by American or
11 that you can get it through Expedia. We just
12 mean that that particular carrier has to tell you
13 the lowest fare that they have available.

14 So, for example, if the lowest fares
15 available on the internet versus at the airports
16 versus calling on the telephone, if you are
17 calling on the telephone, they will need to let
18 you know that there could be a lower price
19 available on the internet.

20 MEMBER LEOCHA: However, a consumer
21 reading Delta Air Lines' customer commitment
22 that says, "The prices you see on this website

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1 are the lowest fares" has a reasonable
2 expectation that they are looking at the lowest
3 fare. And the problem we run into is there has
4 been a case where the guy right next door to you
5 has got a different fare when you look it up at
6 the same time.

7 MS. WORKIE: Yes, and we can talk
8 about it in terms of the appropriate language
9 that should be used. But, generally, when you
10 look on a carrier's website and they talk about
11 this as the lowest fare, they are talking about,
12 for that particular carrier, that is where you
13 get the lowest fare, not that that is the lowest
14 fare available anywhere.

15 MEMBER LEOCHA: Okay. And then, I
16 have got some questions on baggage setup. When
17 you talk about making sure everybody in the
18 code-shares and airline alliances have the same
19 baggage fees as we move across, I think this is
20 a little bit arcane, but this is what we deal
21 with.

22 We get on a plane. I buy my ticket

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1 from Delta. It has a Delta flight number on it.
2 And I never step in Delta metal. I fly on Air
3 France to Paris. I fly on Alitalia to Rome. I
4 fly on KLM to Amsterdam.

5 And maybe when I am getting on the
6 plane in New York, they are pretty good about it.
7 They say, "Oh, yeah, you get the Delta baggage
8 rules and Delta charges." But when I continue
9 the trip with a Delta flight number in Paris,
10 they say, "Sorry, we've got different rules" and
11 "You can't bring this big a bag onboard. You
12 have to pay extra," and so on.

13 MS. WORKIE: Is this after January
14 24th? Or is this in the past?

15 MEMBER LEOCHA: This has been in the
16 past that I have experienced it, yes.

17 MS. WORKIE: Okay. One of the
18 things that Barbara was talking about is Section
19 399.87, which basically has a requirement that
20 the same baggage fee and allowances need to apply
21 throughout a passenger's itinerary. This did not
22 become effective until January 24th.

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1 There was also an extension request
2 that, while we denied it, we said as an
3 enforcement policy for a six-month period we
4 were going to provide some grace period for
5 interline and certain code shares, not in terms
6 of complying with the same baggage fee
7 provision, but in terms of -- it is all
8 related -- but e-ticket confirmation
9 information, the information that is provided on
10 e-ticket confirmations.

11 And let me actually just backtrack.
12 The main thing that I want to point out is that,
13 after January 24th of 2011, a consumer should not
14 be charged different fees for their itinerary.
15 They should have the same fee so long as it is
16 the same baggage. If they add a bag mid-trip,
17 they could be charged additional, but they
18 should be charged the same fee for the same bag.
19 And if they are not, then please let us know so
20 that we can look into it, because that is one of
21 the new requirements in terms of Consumer Rule
22 II.

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1 MEMBER LEOCHA: The last thing, and
2 then I will let them go on, is you talked about
3 the most significant carrier and marketing
4 carrier. DOT is accepting in some conditions
5 that the most significant carrier's rules will
6 apply and in other conditions that the marketing
7 carrier's rules -- I am trying to figure out
8 whose rules apply in terms of baggage.

9 MS. WORKIE: Okay. So, in terms of
10 baggage, the marketing carrier will get to set
11 the rules. But the marketing carrier can select
12 what is termed the most significant carrier's
13 rules to apply.

14 So, if you are a consumer, I mean,
15 from a consumer standpoint, what I think
16 consumers would care about is that, one, they
17 know beforehand what the baggage fee is. And
18 secondly, the baggage fee that they are assessed
19 and charged is the same baggage fee throughout
20 the itinerary. And that is certainly required
21 by our rules.

22 There should never be a case after

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1 January 24th that a carrier is providing wrong
2 baggage information though this is a little more
3 complicated for certain code-share and
4 interline arrangements until July 24th as we
5 provide a little bit of a grace period. And
6 again, we can talk about the specifics but
7 passengers certainly should not be getting
8 charged different fees throughout their
9 journey. And if they are, again, let us know.

10 But the most significant carrier is
11 just a mechanism that the airlines have figured
12 out as the manner/method to comply with the rule,
13 and still respect one another's baggage rules.

14 And for those of you that are not
15 aware of the most significant carrier concept,
16 it really came out of IATA [International Air
17 Transport Association] Resolution 302, where
18 the airlines worked together and they tried
19 figuring out whose baggage fee should apply,
20 particularly for interline and code-share
21 situations.

22 MEMBER LEOCHA: Okay. So, someone

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1 who buys a ticket on Delta, and at that point you
2 are looking at a Delta contract of carriage.
3 That contract of carriage doesn't necessarily
4 apply, then, to international flights until they
5 make their decision whether you are going to be
6 on the --

7
8 MS. WORKIE: The contract of
9 carriage would still apply. The contract of
10 carriage needs to be consistent with how they are
11 applying the MSC. So, a contract of carriage
12 should be consistent with how they are applying
13 it.

14 MR. PODBERESKY: If you are buying
15 a ticket on Delta Air Lines from Delta Air Lines
16 for a flight that is going to be operated out of
17 Dulles Airport to Paris on Air France, when you
18 get your e-ticket confirmation, you should have
19 Air France baggage information on your e-ticket
20 because that is what is going to apply to you.

21 And in addition, if you have a
22 connecting flight in Paris on the same itinerary

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1 taking you to Marseille, you should be getting
2 the same baggage rules that apply on your first
3 flight applying on your second flight and on your
4 return as well --

5 MS. WORKIE: Right.

6 MR. PODBERESKY: -- all the way
7 through.

8 MEMBER LEOCHA: Okay.

9 MR. PODBERESKY: That's the rule.

10 MEMBER LEOCHA: Okay. I mean, we
11 can continue --

12 MS. WORKIE: But this is a
13 complicated area. And I should just mention
14 there is an extension request for this
15 enforcement grace period that we received from
16 the carrier associations that the Department is
17 currently considering. So, this is a very
18 complicated area.

19 We have been to a number of meetings
20 of the airlines as well as ATPCO [Airline Tariff
21 Publishing Company] to try to explain exactly
22 what is required under our rules. But, again,

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1 the most important concept here is that the
2 passengers should be charged the same bag fee
3 throughout.

4 MEMBER LEOCHA: Thank you.

5 CHAIRPERSON MADIGAN: Thank you,
6 Charlie.

7 Let's continue with the
8 presentations.

9 MS. BLANK-RIETHER: Good morning,
10 members of the Committee, members of the public.

11 My name is Kathleen Blank-Riether.
12 I am a Senior Attorney in the Aviation
13 Enforcement Office.

14 This morning I will be speaking to
15 you about the statutes and regulations that we
16 enforce that prohibit discrimination on the
17 basis of disability and, also, prohibit
18 discrimination against individuals who are
19 members of other protected classes.

20 Like the consumer rules, our
21 disability rules are very complicated and
22 detailed. So, I will be giving you a

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1 fairly-high-level overview to give you an idea
2 of the breadth and depth of coverage of this
3 regulation, of the disability regulations. And
4 then, I will touch on our enforcement work
5 regarding the other protected classes.

6 I want to start off by giving you
7 some historic background on the ACAA [Air
8 Carrier Access Act] and Part 382. I believe
9 Dave will be familiar with some of this historic
10 background, having been a participant.

11 Actually, although Part 382 is the
12 implementing regulation for the ACAA, it
13 actually preceded the ACAA in time. 14 CFR Part
14 382, which was at the time "Non-discrimination
15 on the Basis of Handicap -- and from now on, I
16 am going to be using the word "disability" in air
17 travel -- was promulgated by the Civil
18 Aeronautics Board [CAB], which Jonathan
19 mentioned earlier, in 1982. And as the legal
20 authority for the regulation, the CAB used the
21 provisions of Section 504 of the Rehabilitation
22 Act of 1973, which prohibits discrimination on

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1 the basis of disability in federally-assisted
2 programs and the provisions of the Federal
3 Aviation Act of 1958, which require safe and
4 adequate service and that prohibit unjust
5 discrimination in air transportation. So,
6 there was no ACAA when Part 382 was originally
7 promulgated.

8 The regulation was intended to
9 prohibit discrimination on the basis of
10 disability by certificated air carriers -- that
11 is the larger airlines -- and commuters air
12 carriers. There were three subparts to the
13 regulation at that time. There are ten today.

14 But the first Subpart A was a general
15 prohibition against discrimination, very
16 general. Subpart B had all the specific
17 requirements for service that the carriers were
18 supposed to provide. And Subpart C had the
19 recordkeeping and complaint and reporting
20 provisions.

21 Only Subpart A applied to all
22 certificated and commuter carriers. All the

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1 detailed provisions of service were only applied
2 to carriers that received a direct federal
3 subsidy under the Essential Air Service Program.

4 So, with so many carriers not
5 obligated under the regulation to provide
6 accommodation services, the regulation didn't
7 really remedy the situation faced by people with
8 disabilities in air travel generally, which was
9 a complete lack of predictability and
10 consistency regarding accommodation and
11 assistance they could expect to receive from
12 carrier to carrier and from airport to airport.
13 They simply could not rely on whether a
14 wheelchair would be available at an airport,
15 whether the carrier would accept a wheelchair
16 for transport, or whether there would be
17 assistance in the baggage claim area, if they
18 needed it.

19 So, as a result of this situation,
20 the Paralyzed Veterans Association -- I'm
21 sorry -- the Paralyzed Veterans of America sued
22 the CAB. And their argument was that the

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1 carriers that did not receive subsidies under
2 the Essential Air Services Program actually were
3 receiving significant federal assistance in the
4 form of air traffic control services and airport
5 and airway improvement grants from the FAA.

6 Well, this case made its way to the
7 Supreme Court, and the Supreme Court decided
8 that the Subparts B and C, which contained all
9 the detailed regulations about the services that
10 needed to be provided, only applied to carriers
11 that were receiving a direct subsidy, direct
12 federal assistance, under Section 504.

13 Well, that was not the outcome that
14 the disability community was looking for.
15 Frankly, I am not even sure that that is what the
16 carrier community was looking for.

17 But what happened was, shortly
18 thereafter, Congress enacted -- and this is
19 where the Air Carrier Access Act was born -- they
20 enacted the Air Carrier Access Act of 1986 which
21 amended the Federal Aviation Act and added a new
22 subsection that read, "No air carrier may

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1 discriminate against any otherwise qualified
2 handicapped individual by reason of such
3 handicap in the provision of air
4 transportation." It also defined disability
5 for purposes of protection under the regulation,
6 and it gave the Department 120 days to draft a
7 regulation.

8 Well, the Department was going to
9 publish the existing Part 382 as an Interim Final
10 Rule, and then they would do another NPRM to
11 figure out any other provisions that the
12 stakeholders felt needed to be part of the
13 regulation. But, instead of actually doing an
14 Interim Final Rule, they were persuaded by the
15 members of the disability community to embark
16 upon a reg-neg to develop proposed and final
17 regulations.

18 So, the Department convened an
19 Advisory Committee like you under the Federal
20 Aviation Advisory Committee Act -- I'm
21 sorry -- the Federal Advisory Committee Act,
22 which was chaired by a neutral mediator, to

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1 conduct the reg-neg. And this group, this
2 Advisory Committee, met from June through
3 November of 1987. And they made substantial
4 progress on a lot of issues, but they never
5 actually came to full consensus.

6 The deal-breaker was a provision
7 about seating in emergency exit rows for people
8 with disabilities. It was very unfortunate
9 that that had to be the deal-breaker.

10 But what ended up happening was that
11 the Committee then came to an end and never
12 submitted a full package of recommendations to
13 the Department. But the Department did use what
14 had been done to date cumulatively through the
15 process of their meeting to develop its own
16 regulation that it submitted for public comment.
17 It was quite a lengthy public comment period,
18 seven months. And finally, in March 1990, Part
19 382 was revised, taking into account all the
20 public comments, and all the new provisions that
21 the public felt were needed were incorporated.

22 So, I just wanted to mention that

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1 when the Air Carrier Access Act was enacted in
2 1986, it only applied to U.S. carriers. But on
3 April 5th, 2000, the Congress enacted the
4 Wendell H. Ford Aviation Investment and Reform
5 Act for the 21st Century, which is otherwise
6 known as AIR-21. They amended the ACAA to
7 specifically include foreign carriers.

8 Just a few months after that
9 legislation was enacted, we, the Department,
10 issued a notice of our intent to investigate
11 complaints against foreign carriers according
12 to the amended provisions of the ACAA and using
13 Part 382 as a guide in our enforcement of the ACAA
14 against foreign carriers.

15 We also announced our intention to
16 initiate a final rulemaking to include foreign
17 air carriers in Part 382, because that
18 legislation only incorporated them into the
19 statute. So, we did that in November of 2004.
20 We put out a rulemaking to include foreign air
21 carriers, and then, on May 13th, 2008, we amended
22 the final rule to apply Part 382 to foreign

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1 carriers, and we also substantially rewrote the
2 rule and we added many substantial new revisions
3 regarding oxygen service on aircraft, which
4 actually was not oxygen service, but actually to
5 permit the use of portable oxygen concentrators
6 on aircraft; and to provide additional
7 accommodations for people who are deaf and hard
8 of hearing.

9 Okay. The Part 382 definition of
10 disability is based on the definition of
11 disability in the Rehabilitation Act, which, as
12 you may know, was amended to conform to the
13 [Americans with Disabilities Act] (ADA's)
14 definition that includes individuals who have a
15 record of an impairment or who are regarded as
16 having an impairment.

17 So, for example, if an individual
18 who has a facial disfigurement was to board an
19 aircraft and would be asked to move to sit in the
20 back of the aircraft, presumably, because their
21 appearance was disturbing to other passengers,
22 that person would be protected under Part 382.

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1 Something noteworthy about Part
2 382's definition, though, in terms of how it
3 differs from ADA and the Rehabilitation Act
4 definition is that, whereas those two statutes
5 generally exclude those having short-term,
6 temporary impairments with no long-lasting or
7 permanent effects on a major life activity -- for
8 example, people who would have a broken leg or
9 somebody who was prohibited from lifting more
10 than 10 pounds because of recent surgery, those
11 people wouldn't necessarily be protected under
12 the ADA or Rehabilitation Act, but they are under
13 Part 382.

14 So, we will be discussing carrier
15 responsibilities in four broad headings:
16 accessibility, physical accessibility
17 generally; the assistance that they must
18 provide; the training to their personnel, as
19 well as contractors who are performing any
20 responsibilities that are required for them to
21 perform under Part 382, and no complaint
22 resolution and reporting provisions.

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1 Under the airline accessibility
2 provisions, the carriers are responsible for
3 ensuring accessibility of their aircraft, for
4 airport facilities that are under their control,
5 and for communication and access to information,
6 particularly for people who are deaf and hard of
7 hearing.

8 In terms of providing assistance,
9 the types of assistance and service
10 accommodations the carriers must provide to
11 assist individuals with enplaning, deplaning,
12 and connecting include wheelchair assistance
13 for those with mobility impairments or escort
14 assistance for those with visual or cognitive
15 impairments.

16 Services within the terminal that
17 carriers are required to provide include
18 assistance with carry-on and checked baggage for
19 individuals with physical limitations,
20 providing assistance in check-in areas where
21 check-in kiosks are inaccessible to people who
22 are blind or visually-impaired, providing

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1 escort assistance to a service-animal relief
2 area, providing individuals with visual and
3 hearing impairments with access to the same
4 information provided to other passengers, at
5 designated areas in the terminal.

6 Services on aircraft that carriers
7 are required to provide -- and I am just giving
8 a very high-level overview now -- include such
9 things as assistance with stowing, carry-on bags
10 and assistive devices in the cabin.

11 And other assistive services that
12 are required are, for example, we don't have any
13 provisions in our rule presently that say that
14 a carrier's website has to be accessible. What
15 we do say is, if an individual is not able to
16 access your website because it is inaccessible
17 and they have a visual impairment, and they let
18 you know that, then you must let them know, you
19 must disclose to them any web-based fare
20 discounts that they could obtain if they were
21 able to get onto that website. And if they have
22 to call you to make a reservation and you charge

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1 a reservation fee, you have to waive that
2 reservation fee because they couldn't use the
3 website.

4 I also talk about our training
5 requirements and spell out what carriers must do
6 to ensure not only that their own staff are able
7 to meet the requirements of Part 382, but also
8 ensure that their contracts -- I think I
9 mentioned that before.

10 And finally, we will discuss the
11 requirements to make Complaint Resolution
12 Officers available and to respond to disability
13 complaints and to submit an annual report that
14 summarizes all the disability-related
15 complaints that they have received from the
16 public from the previous year.

17 Okay. Aircraft accessibility.
18 This first bullet, I want to point out, is not
19 correct. What it should say is that new
20 aircraft that U.S. carriers ordered after April
21 5th, 1990, or had delivered after April 5th,
22 1992, have to provide these physical

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1 accommodations, these physical accessibility
2 features.

3 For foreign carriers, these
4 aircraft accessibility requirements did not
5 kick in until the most recent amended version
6 that incorporated the foreign air carriers.
7 So, any aircraft that they ordered after May
8 13th, 2009, not 2008, or any that were delivered
9 after May 13th, 2010, have to incorporate these
10 features.

11 So, if you have an aircraft with 30
12 or more seats, half of the aisle armrests in each
13 class of service have to be accessible, or have
14 to be moveable, I should say. If the aircraft
15 has 100 seats or more, you have to have priority
16 stowage space in the cabin for one folding
17 wheelchair. Only on twin-aisle aircraft must
18 one of the lavatories onboard be accessible.
19 And by that, I mean the person in an onboard chair
20 has to be able to get in, close the door, maneuver
21 and use all the facilities, and get out again,
22 with the same privacy that anyone else would

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1 have.

2 And with aircraft that have more
3 than 60 seats, the onboard wheelchair has to be
4 stowed if there is an accessible lavatory.
5 And if there is not, then if any individual
6 requests it, it has to be kept onboard for their
7 use.

8 Regarding access onto the aircraft,
9 airlines have to ensure that lifts and ramps are
10 provided at U.S. airports if boarding by jet-
11 bridge is not available, and they must also enter
12 into contracts, written contracts, with the
13 airports concerning their responsibilities,
14 especially regarding lifts to make sure that
15 those lifts are available and present when the
16 individual needs them.

17 At foreign airports, I want to add,
18 the requirements to provide a lift, there aren't
19 any requirements to provide a lift at foreign
20 airports. But carriers would be required to use
21 any available means to which the passenger
22 consents to get them on that aircraft at a

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1 foreign airport.

2 Regarding information, I want to
3 just stop here and ask, "Where are we in terms
4 of time? How far are we?" Okay.

5 Let's see, both U.S. and foreign
6 carriers must ensure that passengers with a
7 disability who identify themselves as
8 individuals needing visual or hearing
9 assistance have prompt access to the same
10 information provided to other passengers at each
11 gate, ticketing area, and customer service desk
12 that a carrier owns, leases, or controls at a
13 U.S. airport.

14 Now U.S. carriers have the same
15 obligation at foreign airports, and foreign
16 carriers at foreign airports have more limited
17 obligations. And that is that they would have
18 to provide this information at only those places
19 used with respect to flights to and from the
20 United States.

21 Examples of information that they
22 must provide promptly, upon request, would

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1 include, but be not limited to schedule changes,
2 ticketing, flight check-in, flight delays or
3 cancellations, volunteer solicitations on
4 oversold flights, boarding information, et
5 cetera.

6 So, one issue that I want to just
7 raise quickly here not regarding accessibility
8 of information *per se*, but, rather, regarding
9 accessibility information that must be
10 communicated to passengers, , if a passenger is
11 booking a flight and they ask to know with
12 respect to a specific flight, what are the
13 accommodations that you can provide, the carrier
14 must be able to disclose it to them, except in
15 certain limited circumstances where it may not
16 be possible for them to know. For example,
17 there is a last-minute equipment change. But
18 they have to be able to tell them if there is
19 going to be a lift needed to get on and off the
20 aircraft, and this must be disclosed to a
21 passenger who uses a wheelchair to board,
22 whether or not he or she asks for the information

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1 explicitly.

2 But other types of assistance, for
3 example, whether they can use portable oxygen,
4 can use an assistive device, a respiratory
5 assistive device, they would have to be able to
6 let them know whether they can do that or not.

7 Airlines must also ensure that
8 certain information, for example, safety and
9 informational videos on the aircraft, and any
10 kind of audio-visual displays that they have
11 control and in the airport terminal must be
12 captioned.

13 I do want to mention
14 that there are certain accessibility
15 requirements regarding the airport terminal
16 before I go into the discussion about
17 assistance. Carriers do have to be sure at the
18 U.S. airports that systems of intra- and
19 inter-terminal transportation, such as moving
20 sidewalks, shuttle vehicles, and people movers,
21 are accessible. They have to ensure that any
22 equipment that they have, the audio-visual

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1 displays in the terminal have the captions
2 enabled on them at all times.

3 And they must also ensure that the
4 pathway through the airport is accessible to an
5 individual to get them to the gate, and if they
6 have to board from the tarmac, from the gate area
7 onto the tarmac, where they will be boarding.

8 I just wanted to mention at foreign
9 airports none of those apply that I mentioned
10 except for the fact that they must provide an
11 accessible means through the airport to get to
12 the gate area and onto the aircraft if boarding
13 is from the tarmac.

14 I think that we are going to be
15 keeping on schedule. Okay. Let's skip ahead
16 to the very end, to discrimination.

17 Our office enforces 49 USC 40127
18 that prohibits carriers, both U.S. and foreign,
19 from subjecting a person to discrimination on
20 the basis of any of those protected classes:
21 race, color, national origin, religion, sex, or
22 ancestry.

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1 We had a number of cases shortly
2 after 9/11, probably five or six enforcement
3 cases, against major air carriers in which
4 significant civil penalties were imposed for
5 violations. And there were, as part of those
6 settlement agreements, significant offsets
7 granted in order to expend funds for civil rights
8 training for public-facing employees.

9 So, since that time, we have not had
10 the volume of discrimination complaints. But
11 this year, within the last year, we have had two
12 enforcement cases against carriers for
13 discrimination in which the individuals were
14 removed from an aircraft. They were screened by
15 TSA or they were questioned by TSA and by the
16 corporate security. They were found by both to
17 be no threat. But the airlines, then, did not
18 promptly reboard them onto the aircraft that
19 they had been removed from, which had not
20 departed. And so, they placed them on other
21 aircraft later in the day.

22 So, it is our office's view that,

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1 when there has been a determination that there
2 is no threat, and that determination has been
3 made officially, that carrier is obligated to
4 reboard the passengers onto the flight that they
5 were originally on that had not departed, unless
6 there is a valid safety or security threat that
7 has not been resolved.

8 So, I basically did not give about
9 half of my presentation, but I will just turn it
10 over now to Norman Strickman, who will be talking
11 to you about the Aviation Consumer Protection
12 Division.

13 MR. STRICKMAN: My name is Norman
14 Strickman. I am the Director of the Aviation
15 Consumer Protection Division.

16 I am going to make this very, very
17 quick. I am going to accelerate my presentation
18 to try to get us back a little bit on schedule.

19 I can make it very quick by letting
20 you know that tomorrow marks my 39th anniversary
21 of federal service.

22 (Applause.)

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1 Thank you.

2 I am using this opportunity to give
3 notice of my retirement from the federal
4 government. I am only kidding.

5 (Laughter.)

6 Okay. A little levity. Sorry.

7 I am going to accelerate my
8 presentation. I will be available for
9 questions during the course of the day, and you
10 will have the benefit of my slides. But I am
11 going to be working through this very, very
12 quickly.

13 As Jonathan Dols mentioned early on,
14 we have 20 people on my staff, a variety of
15 backgrounds, bringing over a century of
16 experience and expertise to handling aviation
17 consumer protection issues.

18 I started, initially, my career was
19 with the Drug Enforcement Administration [DEA],
20 but early on in my federal aviation consumer
21 protection work, I was with the Civil
22 Aeronautics Board. I don't know if Tim Kelly is

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1 in the room -- Tim Kelly, in the back, as well.
2 We have been working together; we started
3 working together at the Civil Aeronautics Board
4 at the mid-1970s.

5 I know there are some other people
6 in this room who also worked for the Civil
7 Aeronautics Board as attorneys. There are
8 people in our office, attorneys, that worked for
9 the CAB, as well as there are airline attorneys
10 and private aviation attorneys that are in the
11 room as well who worked back together at the
12 Civil Aeronautics Board.

13 We are going to kind of move through
14 this slide because it is just going to summarize
15 what I am going to be talking about.

16 What do we really do? We are the
17 complaint office. We are kind of the official
18 repository for the federal government for people
19 who want to express an opinion, a complaint, some
20 issue regarding airline service.

21 It was mentioned earlier by Jonathan
22 that we do not handle safety or security issues.

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1 Those are the responsibilities of the FAA and the
2 TSA.

3 What we do, we receive complaints.
4 We receive cases from consumers who generally
5 are upset with aviation service issues. If you
6 have flown, which I imagine everybody in this
7 room has, and you have either experienced
8 personally an airline service issue or you know
9 somebody who has, or if you can even imagine what
10 an airline service problem would be, chances are
11 that we have received a case, a complaint, about
12 it. We receive complaints about U.S. and
13 foreign airlines, about both domestic and
14 international itineraries and scheduled and
15 charter service.

16 Our handling of airline service
17 issues comes through us by phone call, by letter,
18 and by an online electronic complaint form that
19 we make available on our website. The majority
20 of our cases come to us by our online submission
21 form.

22 Carriers who write to us either

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1 contact us directly or they cc us in a letter.
2 And they are going to write to, if not us
3 directly, they are going to write to a local or
4 a state or other federal agency. And they refer
5 them to us. Chances are some of the airline
6 complaints that have gone to the Illinois
7 Attorney General's Office may have been
8 forwarded to our office. We receive them from
9 other consumer organizations, from the media, as
10 well as referrals from the congressional offices
11 that have been contacted by their constituents.

12 Our phone system, Sam mentioned
13 before regarding that the FAA Reauthorization
14 Act is pushing for a toll-free hotline for
15 consumer complaints. Without funding, we are
16 not going to be able to do that. But we
17 currently do have a toll-free hotline system
18 that is intended for passengers with a
19 disability to contact us. That way, the intent
20 is to assist those individuals whose issue is
21 associated with a disability to receive
22 real-time assistance.

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1 Next slide, please.

2 All cases that we receive are
3 reviewed by an analyst. My staff are referred
4 to as analysts or investigators. Every case
5 that comes in is reviewed by them.

6 In addition to complaints, we also
7 receive people who are asking questions. They
8 are asking about what their rights are, what the
9 carrier's obligations are. They are also
10 providing opinions about the airline service.
11 And on occasion, we receive a compliment about
12 airline service -- on occasion.

13 (Laughter.)

14 It is nice to receive those as well.

15 Every case that we receive, whether
16 it comes in by letter, whether it comes in by
17 phone call, whether it comes in by our online
18 electronic submission, is acknowledged back to
19 the inquirer. They are aware that we have
20 received it.

21 We code all of our cases based on
22 passenger perception. For those who deal in the

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1 consumers affairs field, perception is reality.
2 If the person believes it, then it doesn't
3 necessarily mean it is true, but that is what
4 they are representing to us. We code based on
5 passenger perception.

6 That doesn't necessarily mean that
7 there has been a violation of one of our
8 regulations, but we are coding it into our
9 database. And every case we get gets coded and
10 tracked into a database, so that we are able to
11 monitor it through its entire process.

12 It gets coded in one of twelve
13 different categories. We are, because of
14 limited staff size -- and we only have 20 people
15 to deal with all this -- while we are referring
16 every case we receive to the airline or online
17 ticket agency about which the person has come to
18 us, everything goes to them. We really, because
19 of our resources, are only going after or
20 pursuing the cases that touch on one of our
21 regulations. That is a broad-based statement,
22 but for the most part we are pursuing cases that

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1 touch on one of our regulations.

2 Our goal is that, if a person is
3 entitled to something because it touches on one
4 of our regulations, we want to try to get it for
5 that person, if they have not already received
6 it. So, we can talk about denied-boarding
7 compensation. If a passenger is bumped from
8 their flight, if they are entitled to
9 denied-boarding compensation, but didn't
10 receive it, after they contact us, our goal would
11 be to recover for them what they are entitled to.

12 If they are entitled to a refund, not
13 that they just want a refund, but if they are
14 entitled to a refund, and they haven't received
15 it, then our goal would be to try and recover that
16 for them as well.

17 The same thing with a baggage issue.
18 If an airline has not resolved an issue
19 applicable to either our domestic or
20 international baggage liability rules, we want
21 to try to resolve that for the passenger as well.

22 The majority of the cases that we

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1 receive do not touch on one of our federal
2 consumer protection regulations. The majority
3 of the cases that we get are people who are upset
4 with an airline policy or procedure, and the
5 airline is in the best position in that case to
6 resolve and respond to the consumer. And if the
7 person is looking for something tangible, then
8 the airline is in the position to give it.

9 Our office, the federal government,
10 does not have sort of a slush fund with which we
11 can pay consumers because they are unhappy with
12 airline service. If somebody wants something
13 in the federal government and it touches on a
14 regulation then they are required to get it, if
15 not, then they need to go to the airline or the
16 court to try and recover that.

17 Primarily, what we are looking for
18 patterns in practices regarding cases that we
19 receive. And if we see those and when we see
20 those, we are working very closely with the
21 office's enforcement attorneys to pursue those
22 cases, although there can be a single incident

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1 in which an incident is so egregious that we will
2 proceed with potential enforcement action
3 against a carrier.

4 Next slide, please.

5 I mentioned before that not every
6 case that we receive is a complaint. Some
7 consumers contact us, many consumers contact us,
8 wanting to know their rights and the carrier's
9 obligations. So, we speak to consumers. We
10 are a consumer-friendly office. We actually
11 speak to people. We talk to them. We give them
12 advice. We give them information, not only to
13 consumers, though. On a daily basis, we are
14 also speaking with representatives from the
15 airlines, both their liaisons and legal people,
16 operations people, to provide them with
17 information and advice, whether a specific issue
18 or a particular policy issue.

19 We have established contacts with
20 just about every airline for which we forward a
21 case. The largest U.S. carriers have
22 designated a primary and a backup liaison with

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1 our office. This helps to facilitate the
2 handling of cases and issues.

3 I see at least one representative
4 from an airline here. Heather Harvey from
5 Spirit Airlines is participating today, and she
6 is the carrier's designated liaison with our
7 office.

8 In addition to talking to consumers
9 and attorneys, we also speak to Members of
10 Congress and to their staff, providing the
11 information about what we do and how we do it;
12 private attorneys; the news media; academics,
13 and foreign governments, who on a
14 fairly-frequent basis we provide briefings to
15 them about what the U.S. Government does in terms
16 of aviation enforcement and consumer
17 protection.

18 Next slide, please.

19 Consumer complaints that we receive
20 as well as the airline data required to be
21 provided to the Department's Bureau of
22 Transportation Statistics: flight performance

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1 data, mishandled baggage, and oversales, as well
2 as traffic and financial data are used to review,
3 examine, cure specific issues as well as issues
4 that involve the entire industry. This helps us
5 to identify areas for consideration about
6 issuing guidance, considering enforcement
7 action, or considering consumer rules.

8 Next slide, please.

9 Always an interesting slide, this
10 talks about the number of complaints that my
11 office received. This is not carrier-supplied
12 information. This is complaints that came into
13 the Aviation Consumer Protection Division. We
14 are looking here at calendar years 2010 and 2011.
15 You can see the totals on the bottom.

16 The numbers of complaints that you
17 see at the top regarding flight problems,
18 baggage, customer service, reservations and
19 ticketing, refunds and fares, those have been
20 the top six categories since we have been putting
21 out complaint numbers going way, way back.

22 Flight problems, there has always

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1 been -- maybe there was an exception with one
2 month -- have always been the No. 1 complaint
3 category. Delays, cancellations, missed
4 connections, some sort of flight irregularity.
5 In most of those, they did not touch on one of
6 our regulations. It was just somebody was
7 upset, somebody was expressing some discontent
8 regarding how the airline handled their
9 particular issue.

10 Again, these complaints do not
11 necessarily represent a violation of a
12 regulation. It is just how we captured the
13 passenger's perception of what they were
14 bringing to the attention of the federal
15 government.

16 For January through June of this
17 year, so far we have received just about 6500
18 complaints. So, we are kind of on target where
19 we are from last year.

20 Next slide, please.

21 We educate the public. We just
22 don't take complaints and enforce our

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1 regulations. We spend quite a bit of time
2 educating the public.

3 Let's go to the next slide.

4 I made available a copy of the Air
5 Travel Consumer Report, if people have something
6 like that. Everybody has that.

7 We have been putting out -- we, the
8 government, have been putting out -- statistics
9 about air travel and consumer complaints since
10 1970 at the Civil Aeronautics Board. Numbers
11 were first published about consumer complaints.

12 It, then, evolved to add oversales
13 data. And then, at the Department of
14 Transportation in 1987, we added on-time
15 performance and mishandled baggage data. And
16 then, subsequent to that, we have added in
17 information that was provided to us by the
18 Transportation Security Administration and,
19 also, airline-provided data to us about the
20 loss, injury, or death of pets.

21 There are six components to the Air
22 Travel Consumer Report. There are seven

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1 bullets up there. But the delayed and cancelled
2 flights and the tarmac and chronic delays are all
3 part of the flight delay section.

4 The flight performance data, the
5 mishandled baggage data, the oversales data, and
6 the loss, injury, or death of pets data is all
7 airline-provided data to the Department of
8 Transportation.

9 The consumer complaint category,
10 again, is only information that comes to us, not
11 provided to us from the airlines. The only
12 requirement that the airlines have to provide us
13 with their complaint data is that on an annual
14 basis providing us with their disability
15 complaints.

16 Let's go to the next slide.

17 If anybody has any questions during
18 the break about the Air Travel Consumer Report,
19 it has been my responsibility for a bunch of
20 years, so I will be able to answer your questions
21 on that.

22 Other publications that we have

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1 available, they are all listed on our website.
2 Pretty good information for the traveling
3 public, and we have been told that these
4 publications on our website are one of the
5 largest hits offered by the federal government.
6 So, please take time to review those.

7 Next slide, please.

8 Our website,
9 www.airconsumer.dot.gov, again, we have been
10 told that it is one of the most active federal
11 government websites. We think it is a good one.
12 There is a lot of information on it. Our
13 publications, our complaint form, the industry
14 letters that we have issued, guidance for the
15 airlines, a number of fact sheets, and also
16 advising people how to link to other
17 organizations, and the site meets accessibility
18 standards. And we have a Spanish version as
19 well.

20 Next slide.

21 We also deal with the media. There
22 may be some media representatives here today.

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1 We issue consumer alert news releases on an
2 annual basis around the time of the Super Bowl.
3 We issue a release kind of putting consumers on
4 notice that, if they are going to be buying
5 something that says it is going to include a
6 ticket to the event, that they should be certain
7 that the ticket is really going to be provided
8 to them.

9 Interviews on a fairly-regular
10 basis to media organizations explaining what we
11 do and how we do it. And then, also, providing
12 to the media information, the types of
13 complaints that we receive, including examples
14 of complaints that we have received.

15 Next slide.

16 And then, information on here in
17 terms of our contact points, which will be
18 included on the website.

19 Is that it? That's good. Thank
20 you all very much. Appreciate it.

21 CHAIRPERSON MADIGAN: Can I ask a
22 quick one? So, I, actually, have gotten on the

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1 website. It is fascinating, but why aren't all
2 airlines required to report?

3 MR. STRICKMAN: All right. This is
4 based on carriers -- it goes back to 14 CFR Part
5 234. I will give you that kind of --

6 CHAIRPERSON MADIGAN: That was the
7 answer I was hoping for.

8 (Laughter.)

9 MR. STRICKMAN: Yes, which goes
10 back to 1987. There was a process that we went
11 through that advised any carrier that has at
12 least 1 percent of the domestic scheduled
13 passenger revenue is required to report on a
14 monthly basis their on-time performance and
15 mishandled baggage to the Department's Bureau of
16 Transportation Statistics. They, then,
17 provide that to us to include in the Air Travel
18 Consumer Report.

19 We determined -- I forget when it
20 was -- in an oversales rulemaking that the same
21 carriers that are required to report on-time
22 performance and mishandled baggage data would be

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1 the same carriers required to report oversales.
2 Prior to that, there were a whole lot more
3 airlines that were required to report.

4 For the consumer complaint section,
5 we rank the same airlines that are required to
6 report on-time performance, mishandled baggage,
7 and oversales data in the complaint section.
8 But every airline for which we received at least
9 five complaints during the course of the month,
10 they are identified by name. Whether it is a
11 U.S. carrier, a foreign carrier, or a travel
12 agency, or a ticket agency, they are identified
13 by name in the report. If we receive less than
14 five complaints about an airline during the
15 course of a month, then they are glommed under
16 a group of other U.S. airlines, other travel
17 agents, other foreign carriers.

18 Our database provides us with the
19 opportunity and the ability to provide an answer
20 to anybody who asks us whether we have received
21 a complaint about a particular company. But
22 just for size and manageability, it is limited

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1 to carriers, the ranking tables are limited to
2 carriers that account for at least 1 percent of
3 the domestic scheduled service passenger
4 revenue.

5 MR. PODBERESKY: When the rules
6 were originally adopted back in the 1987-88
7 timeframe, they had to take into account two
8 other statutes. One is the Paperwork Reduction
9 Act, which requires us to minimize paperwork,
10 and the reporting of on-time performance
11 information and oversales information and
12 mishandled baggage information is a reporting
13 requirement.

14 And the second statute is the
15 Regulatory Flexibility Act, which says that we
16 have to treat small businesses with kid gloves,
17 and in adopting the rule, we took into account
18 that some of the companies that we weren't going
19 to cover were the smaller companies. We were
20 covering like 90 percent of the people that were
21 traveling at that time by going after the, quote,
22 "major" carriers, the carriers that carried 1

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1 percent of the passengers.

2 You should note that in the Consumer
3 Rule III that we mentioned there are two
4 proposals in that rulemaking that could change
5 this. One is going from the 1 percent down to
6 perhaps .5 percent or .25 percent, which would
7 increase the number of carriers reporting to
8 include carriers like Virgin America and Spirit
9 Airlines and Allegiant Airlines, and a number of
10 other smaller airlines.

11 And another provision that is being
12 considered in that rulemaking is requiring a
13 separate set of reports by the major carriers
14 that have big code-share operations. The
15 numbers that they are reporting now, Delta will
16 report Delta numbers, but SkyWest will report
17 SkyWest numbers. Some of SkyWest's flights are
18 Delta flights. Some of the SkyWest flights may
19 be United flights.

20 And one of the things that is going
21 to be considered in that rulemaking is
22 requiring, for example, Delta to submit one

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1 report for Delta flights that are operated by
2 Delta and, then, a separate report of Delta
3 flights that includes everything that flies
4 under the Delta code domestically.

5 So, it is a good question, and it is
6 actually something we have been thinking about
7 and is going to be dealt with in our next
8 rulemaking.

9 CHAIRPERSON MADIGAN: I know David
10 has questions.

11 MEMBER BERG: Thanks.

12 You mentioned that most of the
13 complaints do not touch on your regulations. Do
14 you keep that data as to what percentage of the
15 complaints do touch on regulations and which
16 percentage does not?

17 MR. STRICKMAN: I don't have a
18 specific number. I am guessing -- I would just
19 be guessing, David; I really would.

20 MEMBER BERG: Well, no need to guess
21 now. I just wondered if you keep that
22 information.

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1 MR. STRICKMAN: The majority, yes.
2 We can break it down by complaint codes in terms
3 of what touches on our regulated areas and what
4 doesn't.

5 MEMBER BERG: Any consideration to
6 publishing that on a regular basis with your
7 monthly reports?

8 MR. STRICKMAN: Well, what we do is
9 we put out, we have our 12 complaint categories
10 in the Air Travel Consumer Report. Well, again,
11 the complaints don't necessarily mean a
12 violation of --

13 MEMBER BERG: Right.

14 MR. STRICKMAN: -- the regulations.
15 So, we have our complaint categories which we
16 think represent, I mean at least in terms of what
17 is out there in terms of the categories --

18 MS. WORKIE: Dave, one of the other
19 things we should mention is that, because in
20 Consumer Rule II, and actually even I, there are
21 a number of additional requirements, Norm and
22 some of our folks have been working on refining

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1 the existing categories so that we can capture
2 some of these new regulated areas.

3 So, for example, in the first
4 category that Norm was talking about for flight
5 problems, which involves delays and
6 cancellations, and so forth, there are things,
7 complaints when we have received them in the past
8 that were not in the regulated areas where the
9 same kind of complaint today would be in the
10 regulated areas. So, we do need to kind of go
11 back and fix our own method of categorizing,
12 particularly the subcategories.

13 MR. PODBERESKY: For example, three
14 years ago, it would have been safe to say that
15 flight problems, all complaints related to
16 flight problems didn't involve a regulated area.
17 That is not safe anymore because we get a lot of
18 complaints about tarmac delays now. And we get
19 complaints about flight delays in a context that
20 could implicate the chronically-delayed flight
21 rules. So, it is not very safe to say that.
22 There are some areas that are still fairly safe

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1 to say; others not.

2 I think Norm is right; the vast
3 majority of complaints we receive do not deal
4 with regulated areas.

5 MEMBER BERG: Thanks.

6 CHAIRPERSON MADIGAN: Let me ask
7 you a question. Norm, can you get us a chart
8 like that, even if it would be apples-to-oranges
9 based on how they are broken out over a longer
10 period of time --

11 MR. STRICKMAN: Sure. You bet.

12 CHAIRPERSON MADIGAN: -- like the
13 last five-ten years?

14 MR. STRICKMAN: We have data that
15 goes back a long way.

16 CHAIRPERSON MADIGAN: I bet. And
17 it is easy? I am not going to force one of your
18 few staff to -- excellent.

19 (Laughter.)

20 MR. STRICKMAN: No, we can do it
21 fairly quickly.

22 CHAIRPERSON MADIGAN: Excellent.

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1 That would be interesting.

2 MR. PODBERESKY: Just very
3 generally, the complaint numbers run anywhere
4 from 44,000 in the late 1980s; the more recent
5 cap or top was around 20,000 or 22,000 back in
6 the year 2000.

7 MR. STRICKMAN: Yes.

8 MR. PODBERESKY: And the numbers we
9 are running now have been about the same for the
10 last three or four years.

11 MR. STRICKMAN: But 45,000 was the
12 high mark in 1987. And that is when we had about
13 70 percent of the industry consolidating and
14 merging. So, it was nuts.

15 (Laughter.)

16 CHAIRPERSON MADIGAN: Deborah?

17 MEMBER ALE-FLINT: Yes, I have
18 become aware of a GAO report on the Department's
19 enforcement and regulations. Is that more
20 focused on Consumer I and II or more broadly
21 towards the enforcement areas of DOT? And can
22 we, as the Committee, learn more about any

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1 prescribed -- or how the DOT is addressing those
2 recommendations?

3 MR. PODBERESKY: A GAO report?

4 MEMBER ALE-FLINT: GAO.

5 MR. PODBERESKY: The only recent
6 GAO report that I am familiar with is the one
7 where they recommended that we develop more
8 information on ancillary fees that airlines are
9 collecting, just in gross revenue numbers, which
10 is a part of one of the rulemakings that was
11 mentioned earlier today, by Bob in fact, that we
12 are proposing to require more data filing by
13 carriers, more specific data on what they are
14 collecting in terms of gross revenues with
15 regard to the ancillary fees.

16 The IG's Office, or the Department's
17 Inspector General's Office, did have some
18 recommendations with respect to dealing with
19 flight delays, cancellations, and tarmac
20 delays. But some of the work we have done with
21 respect to regulating tarmac delays results from
22 that. That was also more than five or seven

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1 years ago.

2 They are conducting further
3 studies; they have to under one of the provisions
4 in the FAA modernization legislation.

5 CHAIRPERSON MADIGAN: Charlie?

6 MEMBER LEOCHA: Just real quickly,
7 the GAO report that you are referring to I
8 believe also talked about ancillary fees, and we
9 will be talking about that an awful lot in the
10 afternoon. So, that will be taken care of.

11 And the question of complaints going
12 into DOT, most of these complaints -- and your
13 responses require study, right, to find out
14 whether or not, you know, how DOT is going to
15 respond? Otherwise, you pass them directly on
16 to the airlines?

17 A consumer might get a response from
18 you and say, "Yes, we received your complaint."
19 And then, you pass it off to the airlines, and
20 the airlines might immediately solve the
21 problem.

22 But what you will do is, if it has

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1 to do with one of your regulations, you might
2 aggregate it with other problems and, then,
3 perform --

4 MR. STRICKMAN: That is correct.

5 MEMBER LEOCHA: Well, when will the
6 consumers hear from you again after they have
7 heard from you and you say, "Okay, we've got your
8 complaint?" Then, what happens?

9 MR. STRICKMAN: A lot depends on, if
10 it touches on one of our regulated areas, and we
11 are pursuing it to ensure compliance with the
12 regulation, then if it is something that the
13 consumer did not receive initially that they are
14 entitled to, then we are contacting the airline
15 to see that the passenger gets or try to get the
16 passenger what they are entitled to.

17 Again, going back to the majority of
18 the complaints we receive not touching on a
19 regulation and not something we are going to
20 pursue, the acknowledgment that they receive
21 from us may be our involvement with them, other
22 than providing them with information how to

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1 contact through our website, the brochures, the
2 publications to provide them with assistance in
3 the future.

4 So, the majority of our time is spent
5 pursuing those cases that touch on our
6 regulations. And then, my staff is going to be
7 back in touch with that consumer, whether it is
8 by email or by phone, after they are getting a
9 response back from the airline, to try to draw
10 a conclusion as to whether, in fact, the airline
11 violated one of our regulations or did not.

12 Again, it is based on receiving an
13 allegation. We receive a lot of allegations
14 where a passenger says the airline did not do
15 something. And there is the passenger's story
16 and there is the airline's story. And so, we are
17 trying to make a determination as to whether
18 there really was compliance with our regulation.

19 MEMBER LEOCHA: Okay. If a
20 consumer complained about something and it had
21 nothing to do with the regulation --

22 MR. STRICKMAN: Yes.

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1 MEMBER LEOCHA: -- and you sent it
2 to the airlines, do the airlines report back to
3 you what they did? Or is it just it has gone over
4 to them, and then the consumer may or may not hear
5 from the airline?

6 MR. STRICKMAN: Well, the airlines,
7 there is a requirement now for the airlines to
8 provide an acknowledgment within 30 days and a
9 substantive reply within 60 days.

10 MEMBER LEOCHA: And that applies to
11 those that you forward on?

12 MR. STRICKMAN: That applies not
13 just to the ones that come to us; it applies to
14 somebody who writes directly to an airline
15 without coming to us.

16 MEMBER LEOCHA: Okay.

17 MR. STRICKMAN: If the airline has
18 not received it directly from the passenger, and
19 we forward it to the airline, then the airline
20 has that obligation to do it. But if the
21 passenger never comes to us or they go to the
22 airline first, the airline still has that

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1 obligation to respond within the 30- and 60-day
2 period.

3 Many of the airlines, in fact, I am
4 guessing most of the airlines provide that one
5 reply that satisfies the substantive reply
6 without having to go through this two-stage
7 process.

8 But it is likely, it is probable that
9 the majority of the cases that we receive, we
10 provide the acknowledgment to the consumer, and
11 that is probably going to be the last time that
12 we are going to have contact with that consumer.

13 If we forward something on to the
14 airline, we are providing the airline with a
15 roadmap of what we want them to do. We are
16 providing them with something that says, "Here's
17 something we want you to look at. We want a
18 reply back." That happens with most of the
19 regulated areas. It certainly happens with
20 anything in our civil rights area, in which the
21 airlines are mandated by law to provide us with
22 a dispositive reply within 30 days.

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1 The airlines know when we are asking
2 them to provide us with a copy of the reply, and
3 we follow up with the airlines in those regulated
4 areas.

5 MEMBER LEOCHA: Thank you.

6 MR. STRICKMAN: Okay.

7 MS. WORKIE: You know, we do onsite
8 investigations. One of the things we look at
9 when we do onsite investigations of airlines is
10 whether they are complying with the rules,
11 including whether they sent such-and-such
12 responses within 60 days, as required.

13 MR. STRICKMAN: Just one comment.
14 Most of our work with the airlines is done on;
15 we are able to resolve the majority of all these
16 consumer issues on a very informal basis, by
17 referring things to the airlines, our contact
18 with the airline liaisons on a daily basis. So,
19 when we contact the airline or call the airline
20 and bring to their attention a particular issue,
21 most things are resolved informally that way.

22 It doesn't mean it does not record

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1 it as a potential violation of our regulations,
2 but most issues are resolved informally without
3 having to go through the more formal enforcement
4 process.

5 MEMBER LEOCHA: Okay. I just want
6 to commend you guys on your work. Because
7 anytime someone sends you an email and you
8 forward it on to the airlines, things happen.
9 And so, it is nice from a consumer's point of
10 view.

11 MR. STRICKMAN: Thank you. I take
12 it on behalf of my staff. Many are here today.
13 Sam, thank you.

14 CHAIRPERSON MADIGAN: So, Sam, I
15 would propose that we attempt to get back in this
16 room by 10 after, as opposed to 15 after, to try
17 to accommodate Paul Hudson's presentation, and
18 if it is all right with everybody if we could
19 start with him. No? No?

20 (Laughter.)

21 MR. PODBERESKY: I don't know. We
22 will have to check with the first speaker at

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1 1:15, who is scheduled to be out of here by 1:30,
2 I believe.

3 CHAIRPERSON MADIGAN: I am sure Ed
4 and Paul can arm wrestle.

5 MR. PODBERESKY: Yes, we will work
6 that out.

7 CHAIRPERSON MADIGAN: Okay.
8 That's no problem.

9 MR. PODBERESKY: Just one
10 announcement. People were asking about wifi, I
11 guess. I got network and username and password
12 information. I am going to leave it right on
13 this table.

14 MS. WORKIE: Let's put it on the
15 screen.

16 MR. PODBERESKY: Can you put it on
17 that screen?

18 MS. WORKIE: We can just type it up
19 and put it on.

20 MR. PODBERESKY: Okay.

21 CHAIRPERSON MADIGAN: Okay. We
22 are in recess.

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1 MR. PODBERESKY: We are in recess.
2 Ten after, we will be back.

3 (Whereupon, the foregoing matter
4 went off the record for lunch at 12:14 p.m. and
5 went back on the record at 1:11 p.m.)
6
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15 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N
16 1:11 p.m.

17 CHAIRPERSON MADIGAN: All right.
18 We are going to start with the presentations.
19 First up we have Ed Mierzwinski from U.S. PIRG
20 [Public Interest Research Groups].

21 MR. MIERZWINSKI: Thank you,
22 General Madigan, members of the Committee.

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1 I will be very brief. But I am Ed
2 Mierzwinski with the national association, the
3 Federation of State Public Interest Research
4 Groups, nonprofit, nonpartisan consumer
5 advocacy organizations that got involved in
6 airline passenger rights issues about five or
7 six years ago, when I know in the airline
8 contracts of carriage there is a force majeure
9 provision.

10 And a force of nature came to visit
11 me, Kate Hanni. And Kate Hanni was a stranded
12 passenger back in Austin, Texas. She and her
13 family were on the same plane for 10 hours. I
14 think I want to credit Kate for much of the
15 impetus for the airline passenger rights that we
16 have today that were first put into regulations
17 by Secretary LaHood -- I commend him for
18 that -- and then, codified by the Congress in the
19 reauthorization earlier this year.

20 And so, U.S. PIRG primarily works on
21 a number of other consumer issues, but we do care
22 about specific consumer issues and are very

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1 happy to work with not only flyersrights.org,
2 Kate's group, but also with Paul Hudson's group,
3 the Aviation Consumer Action Project, and with
4 airlinepassengers.org, Jack's new group. And I
5 think we share a lot of the same goals.

6 The Advisory Committee is, in
7 addition to the passenger rights that were
8 enacted, a very important part of the
9 legislation. I encourage this Committee to
10 continue to work. I hope that you don't have all
11 your meetings in this particular building. I
12 hope you reach out and have some meetings where
13 passengers will be able to find you more easily
14 and more quickly. If you don't have the money
15 to go to Chicago O'Hare or to JFK, go across the
16 river to National and have a hearing there and
17 talk to passengers about the issues that they
18 face. It won't cost very much on the Metro.

19 The key issues that I want to simply
20 highlight, I just want to lay out a few ideas for
21 you to look into over the next year. And I have
22 hard copies of a longer presentation that Katlin

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1 will leave with you.

2 Well, first of all, I think one issue
3 that is an overarching issue is it has been very
4 difficult for consumers over the years to
5 enforce their rights in airline complaint areas
6 because of preemption. Federal preemption is
7 limited or restricted. The rights of states and
8 state attorneys general to enforce the law, it
9 is restricted and made it almost impossible for
10 consumers to enforce the laws.

11 When you have got a situation where
12 the laws can't be enforced by private rights of
13 action or by local enforcers, that is a situation
14 where companies are going to take advantage;
15 companies are going to push the envelope. They
16 are going to ignore complaints. They are not
17 going to comply with the law if they know they
18 are going to get a slap on the wrist by some weak
19 federal regulator.

20 So, I just want to highlight a few
21 issues that we encourage the Committee to look
22 into. A lot of this comes from my

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1 communications with flyersrights.org.

2 But we believe there is a lack of
3 concern for delayed and cancelled passengers.
4 We encourage the Committee to investigate the
5 general lack of cooperation, information,
6 compensation, or protections. When handling
7 passengers of flights who have been delayed or
8 cancelled, their problems have been exacerbated
9 by the switch by bigger planes to smaller,
10 narrow-bodied planes and the consolidation in
11 the industry, the fewer routes that planes are
12 flying, the lack of the old reciprocity rule that
13 gave you the opportunity to get on another
14 carrier and your carrier would pay for it.

15 Roundabout travel is a new problem.
16 Because of these changes in routes, more
17 consumers are getting stuck with roundabout
18 routes and getting stuck missing planes, flying
19 on the wrong planes, and not getting
20 compensation.

21 The obvious big issue related to
22 that is lost or delayed luggage. I think one

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1 thing I would encourage the Department to
2 do -- and you can encourage the Department to
3 do -- is to do a better job of telling people
4 their rights to refunds and compensation, not
5 only when their luggage is lost, but also when
6 their luggage is delayed.

7 The flyersrights.org's view, by the
8 way, is that the airlines simply game the system.
9 They don't care if you get your luggage back.
10 They sell it to websites by the pound to make a
11 little bit of revenue back. And customers that
12 come in for complaints, they try to push them to
13 not get compensation. Consumers end up in a
14 kind of version of those odd TV shows "Storage
15 Wars" or "Pawn Stars," trying to look for their
16 luggage. But it is a serious problem to arrive
17 somewhere without luggage or to never get your
18 luggage and not be told that you have the right
19 to compensation.

20 Flyersrights.org has also
21 identified that, with the new a-la-carte seating
22 on airlines, the need to extract a dollar for

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1 every possible seat on the plane, it costs more
2 to sit in a seat that you got early. It costs
3 more to sit in a seat by the aisle. It costs more
4 to sit in a seat in the front, et cetera, et
5 cetera. People are squeezed in the back, and
6 families are being separated.

7 Every time I fly now, there are
8 families that find that they are all separated.
9 The flight attendants try to help them get back
10 together, but other people have to move. If
11 they paid for an aisle seat, they don't want to
12 give it up.

13 The back of economy is possibly a
14 safety hazard as well. The seats are too small.
15 The problems that people have with less leg room
16 include DVT [Deep Venous Thrombosis], a serious,
17 life-threatening disease caused by being
18 cramped in a small place for a long time. That
19 is something that maybe the Committee could look
20 into.

21 One of the things that I have been
22 encouraged by some of the other consumer

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1 agencies in Washington to do lately is making it
2 easier to find out about competition and
3 complaints. While the DOT's complaint database
4 has been around for a long time, I would
5 encourage the DOT to take a look at the Consumer
6 Financial Protection Bureau's new database, the
7 Consumer Product Safety Commission's
8 saferproducts.gov searchable database. And I
9 would encourage the Department to take all of its
10 data on airlines -- and I don't know if this is
11 true, but I couldn't find it -- and put it into
12 downloadable databases, so that researchers can
13 look at something other than a PDF summary of the
14 data.

15 The CFPB [Consumer Financial
16 Protection Bureau], the new consumer financial
17 agency, also has a very excellent tool on its
18 website called "Ask the CFPB a question." And
19 it populates new questions and new answers based
20 on a very simple website that consumers simply
21 go on and ask questions or look for the answers
22 to the questions that are already up there.

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1 So, I think that we could do a lot
2 with making more information available in a more
3 machine-readable way to help consumers and
4 researchers analyze the data about airline
5 passenger rights and about whether companies are
6 complying.

7 The point that I know that Paul
8 Hudson will be making, and that I have long
9 supported, is that there is no funding for
10 airline consumer advocacy. There is, General
11 Madigan, right in your home State, the Citizens'
12 Utility Board, Illinois CUB, that is funded
13 through inserts in State motor vehicle mailings.

14 There is another club in Oregon that
15 receives its funding from intervener status.
16 It applies to the Department of Public Utilities
17 whenever there is a rate case, and it says, "We
18 are experts. We have expert lawyers and
19 advocates. We, however, can't afford to
20 participate in this case to balance the scales
21 unless we get some funding."

22 And so, here in the airline

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1 passenger rights area, I would encourage you to
2 look at ways to figure out a way to get one penny
3 of the airline taxes somehow into a dedicated
4 fund for consumer protection. The airlines and
5 the airports have extracted billions of dollars
6 of subsidies and payments for their purposes.
7 We should have more money going to consumer
8 protection.

9 I want to summarize very briefly
10 with just a couple of points. The Department
11 should both evaluate and regulate the airlines'
12 notification to passengers during flight delays
13 and cancellations.

14 The Department should disaggregate
15 mishandled luggage into three categories:
16 lost, damaged, and stolen to make it easier to
17 analyze the results.

18 Again, the Department should do a
19 good job of educating consumers about their
20 rights to compensation in all the categories
21 where they are allowed compensation.

22 The Department should upgrade the

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1 website. Take a look at the CFPB website for
2 ideas.

3 Flyersrights.org recommends the DOT
4 should mandate for safety reasons alone minimum
5 standards for seat pitch, seat size, and leg room
6 in economy.

7 And the DOT should manage that a
8 schedule change not damage the passenger in any
9 way, and the airline should be responsible for
10 those losses and returning the passenger to
11 whole on his or her trip.

12 I think there is a great opportunity
13 for this Committee to provide a lot of benefits
14 to the flying public, and I look forward to
15 working with you over the next several years of
16 your work.

17 Thank you very much.

18 CHAIRPERSON MADIGAN: Thank you,
19 Ed.

20 Do we have any questions from the
21 members of the Committee?

22 (No response.)

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1 If not, next up is Paul Hudson.
2 Paul is with the Aviation Consumer Action
3 Project.

4 MR. HUDSON: Thank you, Chairman
5 Madigan, members of the Committee.

6 I am here also representing Kate
7 Hanni with flyersrights.org. As many of you may
8 know, she was the principal advocate for what is
9 now called the three-hour rule or the
10 tarmac-delay rules that were really a major
11 victory for consumer protection.

12 I would like to focus, my remarks,
13 on the complaints that are most prevalent by
14 consumers and what can be done to deal with some
15 of these problems and complaints.

16 Overwhelmingly, delays are the No.
17 1 complaint that airline passengers have had.
18 To put it in a little context, up until 1980,
19 every decade saw air travel get faster and more
20 reliable. But since 1980, every decade has seen
21 air travel get slower and less reliable. That
22 means more delays, more cancellations, and

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1 generally a slower flight schedule.

2 Now we feel there are a number of
3 reasons for this. They are systemic. I have in
4 my printed remarks what they are. But it is
5 basically the capacity has been reduced in
6 various ways while the number of people has
7 increased.

8 The airlines, since 1978, have been
9 deregulated, as everyone knows. That means
10 that there are no restrictions that used to be
11 put on them to try to balance the capacity with
12 the demand.

13 With respect to delays, there is no
14 regulation for compensation right now for
15 domestic delays. Internationally, in theory,
16 you can get up to \$7,000 for a delay on a strict
17 liability basis under the Montreal Convention of
18 1999. But nobody knows about this. Consumers
19 have never been informed. Most lawyers have no
20 idea it exists.

21 When someone says, "Well, I was
22 delayed in my international flight," say coming

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1 back from China, the airline says, "Well, we are
2 not going to pay you anything." So, they go to
3 small claims court or they go to a state court.
4 And the airline, then, has the right now to
5 remove that case to federal district court. And
6 so, then you have to hire a lawyer and your legal
7 fees are going to be 10 to 100 times what you
8 could potentially recover.

9 This is also a similar problem with
10 EU [European Union] flights, which also provide
11 for delay compensation. Once again, consumers
12 are not informed, and their rights are generally
13 ignored and there is no enforcement by any agency
14 of that.

15 With respect to passengers stranded
16 overnight, it used to be common practice that you
17 would get a voucher for a hotel room and for
18 transportation and for meals. But, for the most
19 part, that is not available anymore. Or, if it
20 is, it is only in a very limited, begrudging way.

21 Then, we have insurance that is
22 supposed to protect you against delays and

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1 cancellations. But if you look at the policies,
2 they are really largely a scam because they don't
3 cover anything, but they want to charge you up
4 to 10 percent of the airline ticket price for
5 this insurance.

6 I had a recent experience a year or
7 so ago. I was flying to Brazil on a U.S. Airways
8 flight. Excuse me. I was flying to Paraguay and
9 I was going through Brazil. And the airline
10 assured me I didn't need a visa for Brazil
11 because I was just changing planes there. Well,
12 that turned out to be wrong. I was delayed a day
13 and a half.

14 I had insurance, but the insurance
15 wouldn't cover my time. The most I would get is
16 maybe \$10 for a meal I had to buy and I had to
17 sleep in the airport..

18 The Committee here, I think, should
19 look at insurance and, at the very least, I think
20 a study needs to be done that will determine
21 whether the rates being charged are excessive,
22 to possibly be unconscionable under normal

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1 insurance standards.

2 And secondly, whether there should
3 be a set policy that is required if you are going
4 to buy insurance. Insurance should also cover,
5 if you have something valuable in your luggage,
6 you should be able to get excess-value
7 insurance. It is something that consumers are
8 willing to pay for. Most airlines are not
9 willing to offer it.

10 And for lost baggage, it is only
11 \$3,000 max for domestic and \$1,400 for
12 international. That is not enough to cover many
13 things.

14 The reports presently on lost
15 luggage do not unbundle them. They do not say
16 how much is lost versus how much is mishandled,
17 how much is delayed. They do not report what we
18 estimate is probably a 94 percent rejection rate
19 on claims to the airlines for lost luggage.

20 I would like to touch on another
21 complaint category. It is frequent flyer
22 programs. Now, once again, there are no

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1 regulations on this by the federal government as
2 a rule, and states are prohibited from consumer
3 regulation in this area.

4 There was a recent study done
5 independently, and it found that the use of
6 frequent flyer miles varied from 100 percent to
7 5 percent. So, for instance, two airlines,
8 American and Delta, which I happen to have their
9 cards and I am always trying to build up miles.
10 And it was shocking to me to find out that only
11 5 percent are actually getting used.

12 At the very least, there should be
13 disclosure required by the airlines as to the
14 real nature of these frequent flyer programs.
15 There is, actually, at least a potential
16 liability for the airlines because, in effect,
17 you are building up a credit for free travel, and
18 the airlines have incentive to change the
19 programs or devalue them. They do not consider
20 them to be enforceable contract rights, just
21 marketing programs which they can change or
22 eliminate at will.

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1 Now, for oversales and bumping,
2 which coincidentally was the lawsuit that Ralph
3 Nader brought many years ago that resulted in the
4 bumping rule, and also the establishment of
5 ACAP, the airlines have recently proposed that
6 the reporting on bumping be eliminated. This
7 would be a real mistake, and we have suggested
8 how we think it should be reformed.

9 I would like to finish with talking
10 about enforcement, remedies, and advocacy.
11 Consumer protection is great. I was general
12 counsel for nine years to a major state agency
13 that provided regulations and compensation for
14 violent crime victims. But it is no substitute
15 for individual action. And when we talk about
16 consumer rights, we are normally talking about
17 individual rights that can be enforced in some
18 reasonable, efficient, cost-effective way.

19 Airline passengers, as consumers,
20 as far as their rights are concerned, even if
21 they theoretically have them, are in a black
22 hole. No other category of consumers is

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1 deprived of going to state and local courts.

2 Other speakers have talked about
3 this preemption thing. What it really amounts
4 to is immunity because, when you bring an action
5 into local court, the airline has the automatic
6 right to remove it to district court. If you are
7 one of, say, a thousand people that has had the
8 same problem, you will not get class action
9 status. Therefore, it is completely, as a
10 practical matter, inefficient to deal with that
11 kind of case.

12 There are many other areas where the
13 federal government and states cooperate with
14 each other -- the lemon law, for instance, is a
15 well-known success story -- and where consumers
16 are able to deal with the complaints in an
17 efficient manner.

18 There are some things that the DOT
19 could do without legislation I think that would
20 at least give consumers a little more of a chance
21 to get their complaints resolved. Some of these
22 things involve the methods that are used by the

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1 consumer protection people at DOT.

2 Lastly, I would like to talk about
3 the airline passenger emergency hotline, which
4 Kate Hanni and flyersrights.org has set up. It
5 is completely funded by volunteers right now,
6 operated by volunteers. It has been operating
7 now for almost two years.

8 There is no reason why there
9 shouldn't be a real consumer hotline. This
10 could be funded with far less than the millions
11 that are requested by DOT staff for this.

12 We have suggested here a tax or an
13 amount allocated of one penny, one single cent,
14 per airline ticket, would generate \$6 to \$10
15 million, which could easily fund this and a
16 number of other necessary consumer protection
17 activities.

18 Thank you.

19 CHAIRPERSON MADIGAN: Thank you,
20 Paul.

21 Any questions from the Committee?

22 MEMBER LEOCHA: Just a quick

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1 comment. To Ed, the CFPB website, I have looked
2 at it. They do a very good job, and it is
3 something I think we can look at, encouraging DOT
4 to look at, and it is probably non-regulatory and
5 nothing we really need to deal with. But it is
6 a very good suggestion.

7 And then, once again, thank you very
8 much, Paul.

9 And for those of you who don't know,
10 Paul is an important person in the airline
11 industry. Singlehandedly, he has been fighting
12 for the Pan Am victims and successfully working
13 to move consumer issues forward where the rubber
14 really meets the road. He has been successful
15 internationally. He is someone we should
16 really look up to, a good man.

17 CHAIRPERSON MADIGAN: Thank you,
18 Paul.

19 Next up, Jack Corbett with
20 airlinepassengers.org.

21 MR. CORBETT: Good afternoon.

22 I am Jack Corbett, a Director of

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1 airlinepassengers.org. We thank you for the
2 opportunity to suggest some issues that this
3 Advisory Committee can consider during your
4 statutory two-plus years of operation.

5 You have our one-page list of
6 recommendations in front of you. And for the
7 people in the audience, copies of that one-pager
8 should be available at the registration desk.

9 Our comments also represent the
10 views and positions of the Association for
11 Airline Passenger Rights, AAPR.

12 The first question we are addressing
13 today is, is this Advisory Committee really
14 needed? The scheduled airlines have suggested
15 that the recent FAA Reauthorization Act plus two
16 past sets of airline consumer regulations have
17 already imposed more requirements on a seemingly
18 deregulated domestic airline industry than most
19 of the segments of our society receive. As a
20 United Airlines CEO said yesterday, "We are
21 brutally regulated."

22 We are very sensitive to that. From

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1 the viewpoint of airline passengers, they need
2 airlines who can make a profit, because without
3 a profit, there is going to be fewer airlines and
4 less competition, and more competition is very
5 important for airline passengers.

6 Our answer is, yes, this Advisory
7 Committee is needed for two important reasons.
8 First, there are a number of airline consumer
9 issues that still need federal regulatory or
10 statutory solutions, and we will help you to
11 identify them over the next two years.

12 The second -- and Paul and others
13 have spoken about this -- if the federal
14 government doesn't act to protect airline
15 passengers on these remaining areas, it just
16 won't happen. Because of federal preemption,
17 there are no effective state ways for enhancing
18 consumer rights. So, unless DOT does it, it
19 ain't going to happen. We will talk about
20 preemption later on.

21 What are the issues that we hear most
22 about from airline passengers? Our numbers may

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1 be a little bit different than ACAP's. No. 1 for
2 us is frustration with TSA's passenger and
3 baggage screening operations, but your
4 Committee doesn't have jurisdiction over TSA
5 matters. That is really a shame.

6 Issue No. 2 is consumer confusion in
7 calculating the total cost of flying. The
8 airlines are resisting sharing all of the
9 information consumers need about their
10 unbundled ancillary fees, so that consumers can
11 compare costs among competing carriers in a
12 side-by-side fashion. Price transparency is a
13 huge issue for airline passengers. One of the
14 major benefits of this internet era has been the
15 consumer's ability to compare each airline's
16 prices against it's competitors' prices and
17 quality of service to determine the best deal.

18 As you heard this morning, this
19 issue is before the DOT. What can you, as an
20 Advisory Committee, do? Well, the comments
21 will be received in the docket, and DOT will make
22 its decision based on those comments. We urge

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1 you to keep pressure on DOT to resolve this
2 regulation as quickly as possible because there
3 will be a minimum of five years since the first
4 time the airlines announced their ancillary fees
5 before DOT can have a regulation effectively on
6 that issue.

7 The next issue is federal aviation
8 taxes. As everybody knows, the airlines are
9 sensitive to governments imposing aviation
10 taxes and fees that collectively can total some
11 20 percent of the fare. Airline passengers have
12 a similar, but narrower issue on which we could
13 use this Advisory Committee's help.

14 It irritates passengers who have
15 purchased non-refundable fares on tickets that
16 they don't use that the Treasury keeps all the
17 federal ticket taxes that have been prepaid by
18 the passengers, but they never use. There is no
19 problem with the airline keeping the
20 non-refundable fare. That is the deal the
21 passenger has made with the airline, and that is
22 not an issue. The amount of money the Treasury

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1 keeps from prepaid and unused taxes is really
2 large. It can be as much as \$50 on a long-haul
3 flight.

4 A statutory change is needed.
5 Specifically, we need your support in DOT's
6 first report to Congress next February for
7 amending the federal aviation tax statute to
8 allow passengers to get refunds for federal
9 taxes paid on flights not taken.

10 The last issue has already been
11 raised, and I won't go into the weeds on it. It
12 has to do with the enforceability of airline
13 contracts of carriage and federal preemption.

14 As you know, contracts of carriage
15 is supposed to be the airline's promise to the
16 passengers as to what they will abide by. We
17 think that this is a serious issue, and this
18 Advisory Committee should focus its time on this
19 and maybe a few other issues in its two years of
20 operation.

21 Before you consider the issue of
22 contract of carriage and whether it is really

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1 effective, we think you should ask DOT's Office
2 of the Inspector General to take this issue up
3 for a year. They should review the airline's
4 contract of carriage to determine whether their
5 provisions are often so hedged by legalese to the
6 extent possible, that passenger rights are not
7 practically enforceable in courts.

8 You should also ask the OIG to review
9 past federal litigation, as Paul mentioned, as
10 to whether the provision in the Federal Aviation
11 Act preempting state regulation of airline
12 services has been so broadly interpreted, so
13 that you can make a recommendation to the
14 Secretary as to whether this provision should be
15 narrowed by Congress when the next FAA
16 Reauthorization Act is enacted.

17 This legal analysis and your
18 subsequent review will take considerable time.
19 If we request it now, this important project
20 could be completed well before your Advisory
21 Committee finishes its work and has to make its
22 final recommendations.

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1 Again, we appreciate the
2 opportunity to present our initial and AAPR's
3 suggestions to this Advisory Committee, and we
4 hope to participate fully in all of your future
5 agenda items.

6 Thank you very much.

7 CHAIRPERSON MADIGAN: Thank you,
8 Jack.

9 Questions?

10 MEMBER BERG: Mr. Corbett,
11 regarding the preemption issue --

12 MR. CORBETT: I thought you might
13 raise that.

14 MEMBER BERG: Yes. You are aware
15 that the majority of the circuits that have
16 considered it support the broad reading of the
17 statute as well as the Supreme Court's review of
18 the statute?

19 MR. CORBETT: We do, and I think
20 Paul has been more active than we have on this
21 issue. We think the term "services" has been so
22 broadly interpreted by a majority of the federal

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1 circuits that it goes well beyond what
2 passengers think should be services, and that
3 the OIG should look into this issue, make some
4 findings, come back to you. And this Advisory
5 Group should make a decision as to whether you
6 agree that this is too broadly interpreted and
7 whether you should recommend a narrowing of it
8 to some just basic issues to the Congress next
9 year.

10 MEMBER BERG: And you are aware that
11 the Department has filed briefs in several cases
12 supporting the current view and interpretation
13 of the preemption provision as being very broad?

14 MR. CORBETT: And that is why we are
15 looking forward to this Committee for a new look
16 at the issue, and maybe a recommendation that it
17 is much broader in many circuits than it should
18 be.

19 We have been working with the
20 National Association of Attorneys General
21 [NAAG], and we are hoping that they and we and
22 you can look at this issue and say, "Gee, it is

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1 worth a new look."

2 CHAIRPERSON MADIGAN: Any more
3 questions, comments?

4 MEMBER LEOCHA: One other thing, I
5 mean, I would like to ask if you think this might
6 work. In discussions that I had earlier this
7 week, actually, with the National Association of
8 Attorneys General, they informed me that under
9 the Consumer Financial Protection Bureau there
10 are federal laws which allow the airlines to not
11 have -- in this case, it is the financial groups,
12 but we could have something similar that allows
13 the airlines to only be subject to the same law
14 across -- they don't have to deal with 50
15 different state laws. But the states are
16 allowed to enforce the Consumer Financial
17 Protection Bureau federal regulations.

18 MR. CORBETT: Yes.

19 MEMBER LEOCHA: That might be a
20 solution to this kind of an issue.

21 MR. CORBETT: I am happy for you to
22 look into that. We have looked at that

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1 language.

2 Because the court decisions that
3 Dave Berg just mentioned are so detailed, I think
4 we would be much better off with an aviation
5 approach to this, coordinated with the NAAG,
6 rather than using the new and untested Consumer
7 Rights Bureau's language as the basis of our
8 attack.

9 So, we would hope that aviation
10 could do its own look, and then maybe we can get
11 a broader look by other groups, such as the new
12 consumer group established by Congress.

13 Thank you very much.

14 CHAIRPERSON MADIGAN: All right.
15 Thank you, Jack.

16 Next up, we have Sally Greenberg who
17 is with the National Consumers League.

18 MS. GREENBERG: Well, good
19 afternoon. I am very pleased to be here.

20 This is a really exciting
21 opportunity, I think, for consumers. It is
22 really democracy in action. This is what

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1 democracy looks like. We have brought four of
2 our interns with us because I really wanted them
3 to be part of this session and to see what happens
4 when we open the windows and let everybody have
5 their say.

6 The Committee's charge is a very
7 serious one. And some have cast their doubts on
8 whether this Committee is going to be effective
9 and can do what it will do as consumer advocates.
10 And that is to make the experience a much better
11 one for consumers who fly in airplanes in the
12 United States and abroad.

13 Someone said that the group won't be
14 effective because at least two seats will be
15 filled by people whose employers have opposed
16 most, if not all, aviation consumer protection
17 regulation. So, that is of concern.

18 However, I am cheered -- I am reading
19 from a USA Today article -- by the airline
20 industry's comments that they hope that the
21 airlines are committed to building, they believe
22 airlines are committed to building on their

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1 record operational performance and delivering
2 an even better customer experience through
3 passenger feedback and coordination with other
4 industry stakeholders.

5 So, we truly do believe that
6 sunshine is the best disinfectant. I think this
7 process will be not only good for consumers, but
8 I think it will be good for the airlines as well.

9 So, the National Consumers League
10 has been in operation since 1899. We were
11 formed in the progressive era, and we have always
12 championed the interests of both consumers and
13 workers.

14 So, our comments are going to be
15 focused today on several areas: privacy, fare
16 and fee transparency, fair pricing, frequent
17 flyer program changes, and I am going to also
18 sign on to the comments of some of my colleagues
19 that we believe that consumers should have
20 access to state courts. If the law has been
21 interpreted that preemption means that they
22 don't have access to state courts, I think we

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1 need to take a look at what the law currently
2 says.

3 So, let me launch into my comments
4 on the privacy issue. I will start there. The
5 airlines collect a lot of information about each
6 of us when we make a reservation. They get our
7 name and address, our telephone numbers, our
8 date of birth, our gender, our traveler number,
9 our email addresses, cell phone, fax, SkyMiles
10 account, credit card or debit card information;
11 also, the travel-related information about our
12 health, emergency contacts, passport numbers.
13 That is a lot of information, personal
14 information.

15 So, what are the obligations on the
16 airlines to keep that information confidential?
17 Well, most airline sites give assurances that
18 they don't sell personal information, but their
19 privacy statements are so full of caveats that
20 you could drive a truck through them.

21 For example, I went to Delta Air
22 Lines' site. And what I saw there was a

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1 statement that this privacy policy, quote, "This
2 privacy policy will answer frequently-asked
3 questions about the kinds of information we or
4 our agents collect and how well it is used."

5 Then, it says, "Delta reserves the
6 right to modify this privacy policy at anytime
7 and without prior notice." I always love those
8 very open-ended statements in any kind of
9 so-called policy protections that companies
10 provide. Because what that means is that they
11 can change the rules at anytime, and you, as a
12 consumer, have no rights or protections.

13 And then, they also say, "We
14 routinely share your information with our
15 SkyMiles partners and promotional partners" -- I
16 don't know who those folks are -- "and
17 subsidiaries, including Delta connection
18 carriers."

19 So, we are going to make a
20 recommendation to this Committee that the
21 Advisory Committee recommend adoption of an
22 airline-wide privacy protection standard for

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1 personal information.

2 Let me move next to airline change
3 fees and cancellation fees. I am going to take
4 issue with Jack Corbett about it being fair that
5 the airlines get to keep all my fees if I need
6 to change or cancel or postpone a trip to a later
7 date.

8 I think, we think, we know that
9 consumers strongly dislike the hefty fees they
10 are asked to pay for simple transactions like
11 changing the time or date they need to fly or
12 canceling a flight because circumstances have
13 changed. Things happen in all of our lives that
14 make it sometimes impossible to fly on a certain
15 day or at a certain time. Why should the
16 airlines enjoy a windfall as a result of these
17 changed circumstances?

18 These inflated charges imposed by
19 the airlines for what is often a
20 quick-and-simple transaction doesn't set well
21 with the public. You know, Consumer Reports did
22 a survey in March of this year, and what they

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1 found was that 40 percent of consumers who fly
2 regularly said they are flying less these days
3 because of increased fees, and that was their
4 major reason, far more than those who blamed
5 flight delays, poor service, or any other
6 annoyance.

7 So, our recommendation is that the
8 Committee determine from airline and DOT data
9 what the actual cost is of changing or canceling
10 a flight, and that the Advisory Committee
11 recommend that fees be tied closely to the actual
12 cost to the industry, insisting that consumers
13 not be gouged if their plans change.

14 Let's talk for a moment about
15 consumer information. This is my third point.
16 As with all consumer rights and protections,
17 very often, we don't know what our rights are,
18 and we suspect the airlines like it that way
19 because they can create their own rules for
20 compensation when consumers are bumped from a
21 plane, their luggage is lost, their flight is
22 cancelled, or they are delayed without

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1 explanation.

2 But there is a better model. We
3 would like the Advisory Committee to review the
4 posters that the European Commission requires be
5 displayed in airports throughout the European
6 Commission countries, letting consumers know in
7 clear and concise language what their rights
8 are.

9 Here is an example, and I would be
10 glad to submit this for the record. But this is
11 a European Commission poster and it says -- and
12 this is posted in airports throughout Europe,
13 throughout all the European Commission
14 countries -- "Denied boarding, cancelled,
15 delayed for a long time? Your rights and where
16 to complain."

17 So, as I said, I will leave this with
18 you. But, for the record, I think that this
19 would be a really important piece of basic
20 consumer information. Right now, consumers
21 really have no concept of what their rights are
22 or where to go to vindicate those rights.

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1 Moving along, frequent flyer
2 programs, let me talk for a moment about that.
3 Consumers who are a member of frequent flyer
4 programs have very few protections because the
5 terms of these programs are subject to the whim
6 of the airlines. The way in which airlines
7 advertise their frequent flyer programs and what
8 they actually require in miles has become a form
9 of bait and switch. The rules have changed.
10 Now you need stepped-up award levels, usually
11 50,000 miles, to travel on nearly any date you
12 are likely to want.

13 Now frequent flyer programs are
14 beneficial to the airlines because it gives them
15 a way of building customer loyalty and getting
16 consumers to buy their tickets as opposed to
17 those of a competitor.

18 So, *Time* magazine did a piece on
19 attempting to cash in frequent flyer miles just
20 a couple of years ago. They had a reporter try
21 to get a round trip from New York City to Los
22 Angeles. This was in 2010. Now that is one of

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1 the nation's most heavily-traveled routes.

2 What Time found was that on American
3 Airlines not a single 25,000-mile award round
4 trip was available for the month of July. A few
5 outbound seats were available in August, but
6 only a single return.

7 Delta Air Lines had not a single
8 frequent flyer trip available in July. For
9 August, just one outbound flight was available.
10 Continental, similar results, by the *Time*
11 magazine researchers.

12 As the reporter noted, this was all
13 done according not to your schedule as a
14 consumer, but according to the airlines'
15 timetable and the airlines' budget.

16 So, our recommendation is that the
17 Advisory Committee look at airline practices
18 regarding frequent flyer miles and recommend
19 standard contract protections for consumers.

20 The next point, fees for seat
21 assignments on coach flights. Others have
22 mentioned this, but it has gotten to the

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1 point -- I mean, several years ago, it was
2 unheard of to charge consumers for getting a seat
3 ahead of time. Now it is de rigueur.

4 Today several airlines charge
5 anywhere from \$6 to \$36 for assigning seats.
6 And it presents significant added cost to
7 consumers, especially for families traveling
8 with young children. Some of the seats are,
9 let's say they are priced at \$20. You are
10 traveling with a family of five. You have three
11 little kids. You want to sit together. That is
12 an additional \$100 each way. So, it is not fair
13 to consumers and may, in fact, be prohibitive for
14 families traveling.

15 Our recommendation is that the
16 Committee review, in particular, the charging of
17 fees for the simple act of having a reserved seat
18 in your name in advance of a flight.

19 And it does feel like the airlines
20 nickel-and-dime the flying public, and more so
21 every day. It is what we would regard as just
22 old-fashioned gouging for those who want the

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1 ability to travel.

2 I am going to sign onto the comments
3 of my colleagues on access to state courts to
4 bring claims. I think what Jack said is
5 absolutely right. If the federal government
6 doesn't have a process to protect consumers, it
7 ain't going to happen because we get thrown out
8 of state court unless you are going to small
9 claims court.

10 I noted that sometimes the claims
11 can be well in excess of the limits of small
12 claims courts. There was a woman who organized
13 an Alaskan cruise for her husband's 70th
14 birthday. It was supposed to be a
15 once-in-a-lifetime celebration. She had 11
16 family members going on the cruise. Her party
17 of 11 arrived at Phoenix Sky Airport with plenty
18 of time, but United Airlines, because of long
19 check-in lines, they somehow failed to listen to
20 the concerns of the passengers and didn't manage
21 to get them on the plane in time.

22 The result was the family missed its

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1 flight and the cruise, and they ultimately lost
2 the entire cost of the cruise. So, not until a
3 consumer reporter for an Arizona television
4 station intervened did United up the amount of
5 voucher they agreed to pay to members of the
6 family who never got on their flight.

7 So, our recommendation is that the
8 Advisory Committee allow consumers to use their
9 state courts to bring this kind of claim for
10 damages against the airline.

11 Let me just conclude by noting that
12 we, too, really like a database idea. I thought
13 Ed Mierzwinski's idea, it makes a lot of sense.
14 We use the database for the Consumer Product
15 Safety Commission. We will use it for the
16 Consumer Financial Protection Bureau. Very
17 important avenue for consumer information, and
18 I think helpful to the industry as well to learn
19 what is going on with consumers.

20 And I love the idea of a penny on
21 every domestic flight, Paul's idea.

22 Let me say thank you again. We are

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1 very grateful to have this opportunity. Thank
2 you to the members of the Committee for your hard
3 work. I hope you live up to the standards that
4 were laid out by one representative of the
5 airlines. And we really think this is an
6 historic body, formed to hear and respond to
7 concerns of the consumers and the flying public.

8 Thank you very much.

9 CHAIRPERSON MADIGAN: Sally, thank
10 you.

11 Do we have questions/comments from
12 members of the Committee?

13 MEMBER BERG: A question. So, I am
14 just curious, what do you think would happen to
15 the price of tickets if all these rules and
16 regulations that you are proposing, and others
17 have proposed, including access to state courts
18 and state litigation, what would happen to the
19 price of tickets if all of these came about?

20 MS. GREENBERG: Well, I would say
21 that if airlines had to be concerned about
22 answering for some of the egregious treatment

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1 that consumers experience, that their practices
2 would improve significantly. So, I am not going
3 to line up with you that lawsuits are necessarily
4 a bad thing. We believe that lawsuits are an
5 important avenue for consumers' ability to
6 vindicate their rights, and we think that it will
7 keep the industry more attentive to concerns
8 about being brought into court.

9 MEMBER BERG: I understand your
10 point of view. But the question is, what is
11 going to happen to the price of tickets?

12 MS. GREENBERG: Well, you won't get
13 sued if you are treating consumers right.

14 MEMBER BERG: So, you are not going
15 to answer the question?

16 MS. GREENBERG: That is my answer.
17 My answer is you figure out how to better provide
18 for the rights and take care of customers in a
19 more robust way, and you don't have to worry
20 about --

21 MEMBER BERG: But I am talking about
22 more than just state court access. You proposed

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1 a number of regulatory concepts, including
2 addressing frequent flyer programs, EU-style
3 posters, limitations on change fees. All of
4 these are regulatory changes.

5 So, I am trying to get at what your
6 understanding of the impact of those changes
7 would be.

8 MS. GREENBERG: Well, we could take
9 them one-by-one, if you would like.

10 A poster, I mean, I think consumer
11 information --

12 MEMBER BERG: No, I would like to
13 know what you think would happen to the price of
14 tickets.

15 MS. GREENBERG: It depends. It
16 depends on how the airlines respond to these
17 concerns. If you put posters up in airports, is
18 that a significant cost? And isn't consumer
19 information important?

20 I mean, your industry thought that
21 having a forum like this would probably -- I
22 mean, you probably have many, many regulatory

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1 lawyers here today. But I think this is a very
2 important process.

3 So, I can't sign onto an argument
4 that says providing consumers with information,
5 making sure consumers get a fair deal when they
6 do an exchange of tickets, and that you don't get
7 to pocket the money of consumers who do not
8 fly -- I am sorry, I can't sign onto we can't do
9 any of that because it is going to raise prices.
10 Because industries always argue that any form of
11 consumer protection is likely to raise prices.

12 MEMBER BERG: So, if the result were
13 that prices did go up for everyone -- for
14 example, if you were to eliminate, let's say, bag
15 fees. All right? So, not everyone checks a
16 bag. Lots of people fly without checking a bag.
17 If you eliminate bag fees, the cost of that
18 service is going to get spread across everyone
19 who flies. That is going to raise ticket
20 prices. Would you agree with that?

21 MS. GREENBERG: Well, notice I did
22 not mention bag fees. We want transparency

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1 about bag fees, but we have not taken a position
2 that there shouldn't be bag fees.

3 But that is why I said, if you want
4 to ask me one-by-one, I would be happy to answer.
5 I think posters are a great idea. I think
6 consumers ought to be able to change a ticket and
7 not be gouged because their plans have changed.

8 MEMBER BERG: Do you not think there
9 is a cost associated with changing tickets?

10 MS. GREENBERG: Well, sometimes,
11 you know, you have to weigh the relative value
12 of ensuring that consumers get a fair deal. And
13 I think everything I have said is -- you know,
14 certainly, the airlines are entitled to a fair
15 profit. That goes for every industry. We do
16 not want the airlines to go out of business. We
17 don't want any industry to go out of business.
18 But fees have skyrocketed over the last several
19 years.

20 MEMBER BERG: Do you know what the
21 profit margin was for the airline industry last
22 year?

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1 MS. GREENBERG: Well, I read a Wall
2 Street Journal article that looked at number of
3 seats sold, but I understand the data came from
4 an industry study. So, I'm not sure, you know,
5 whose data we need to look at.

6 That is why, let me just say, I think
7 this body is really important because we can look
8 at objective data, data that DOT is able to
9 collect and review. We should look at airline
10 data as well.

11 But I am not going to go on what the
12 airline says were the profit margins. I do know
13 that airlines earned, you know, the fees have put
14 airlines in the black. So, I don't have those
15 figures right in front of me, but I would be happy
16 to have a conversation offline with you.

17 MEMBER BERG: I can tell you that
18 the profit margin last year was about 4/10ths of
19 a percent, 0.4 percent.

20 MS. GREENBERG: And I know some
21 airlines are more profitable than others. So,
22 it depends on the airline and how it is operated.

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1 MEMBER BERG: Thank you.

2 MS. GREENBERG: Okay. Anyone
3 else?

4 CHAIRPERSON MADIGAN: Any other
5 questions or comments? Charlie?

6 MEMBER LEOCHA: Yes. One thing
7 that I will just mention in terms of Sally's
8 presentation is that the change fees we are
9 talking about aren't some minor thing. We are
10 talking \$150 and \$250. This is why her call to
11 sort of look at maybe trying to tie fees to the
12 actual cost might make some sense when we start
13 to talk about astronomical numbers.

14 Frequent flyer programs, I think
15 that you are exactly right. Just this year -- I
16 don't know if it actually happened, but I think
17 it did -- banks actually sent out [IRS form]
18 1099-Miscellaneous to consumers for frequent
19 flyer miles that they got. So, frequent flyer
20 miles are no longer just a marketing tool. All
21 of a sudden, they are becoming real currency, and
22 people might have to pay taxes on them. So, it

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1 is something that makes it fair game right now.

2 And in terms of the database, I will
3 say that the BTS (Bureau of Transportation
4 Statistics) part of the DOT collects an enormous
5 amount of data. They probably can do a better
6 job of making it more accessible or easier to
7 access for consumers, but they do a great job.
8 If you are interested in looking at, digging out
9 data, it is a good place to go. They just need
10 to look at better ways to set up their interface.

11 But thank you very much for your
12 presentation.

13 MS. GREENBERG: Yes. Thank you.

14 CHAIRPERSON MADIGAN: Thank you,
15 Sally.

16 Next up, we have Erik Hansen with the
17 U.S. Travel Association.

18 MR. HANSEN: Thank you to the
19 Committee for having me here today.

20 I am pleased to be here on behalf of
21 the U.S. Travel Association, which is the
22 national nonprofit association which represents

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1 large portions, almost all aspects of the travel
2 and tourism industry. So, we have both the
3 public and private side of travel, so anywhere
4 from convention and visitors' bureaus to promote
5 destination, to almost every state director of
6 tourism, to also the private side of travel,
7 including hotels, car rental companies,
8 amusement parks, casinos, Disney, destinations.
9 So, we represent a broad range of stakeholders
10 in travel.

11 One of our challenges is finding
12 advocacy issues that we all agree on, right?
13 The online travel associations and online travel
14 companies certainly have some differences with
15 the hotels. And the airlines and the airports
16 often have differences in viewpoints on any
17 number of issues.

18 So, we have to navigate what can be
19 a tricky landscape to find issues that we all
20 agree upon. And I think we have found a mission
21 that has allowed us really to do that. That
22 mission is to increase travel to and within the

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1 United States by eliminating barriers to travel.

2 The reason that that mission
3 statement works is because travel is viewed by
4 the consumer as a single product. It is a single
5 experience which they go through. Our customer
6 becomes our customer not when they enter a rental
7 car, not when they enter an amusement park, but
8 a traveler becomes a traveler when they think
9 about how they are going to purchase travel,
10 where they are going to go. And they evaluate
11 that experience all along the way. So, our
12 identity as an industry is actually derived from
13 the viewpoint of the consumer.

14 And that actually aligns us
15 oftentimes with the viewpoints of the consumer.
16 So, you have the unique situation here where the
17 consumer and the businesses have a single point
18 of view, and it doesn't happen always.

19 One of the examples of that, and why
20 that is so important, is travel agencies. They
21 sell travel as a single product. So, travel
22 industries and travel agencies are just as

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1 important to amusement parks, to hotels, to car
2 rental companies, as every other aspect of their
3 individual businesses. They are connected.

4 So, in business school they call
5 this the value chain. It is the series of
6 decisions that a consumer makes before
7 purchasing a product. To the extent that one of
8 the links in the chain is broken, it can have a
9 trickle-down effect to the entire industry. It
10 can impact entire segments, entire parts of our
11 business.

12 So, one of the things I want to talk
13 about today are two areas, two links in that
14 value chain that we believe need to be considered
15 by the Committee. Understandably, we have
16 spent a lot of time conducting research on the
17 decision points that a consumer goes through
18 before they decide whether or not to take a trip.

19 In 2010, we did a survey of the
20 air-traveling public and found that consumers
21 said price was the first decision point in
22 whether or not they were going to take a trip by

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1 air. If the price was too high, they wouldn't
2 go on the trip. That was the first thing they
3 thought about. And in fact, it was an
4 overwhelming statistic. It was 71 percent of
5 the traveling public said they consider price
6 first. So, we know that is important.

7 But in today's environment, we also
8 know that it can be difficult to compare prices
9 for the entire package of traveling. Now
10 airlines have certainly been great partners in
11 selling travel packages. They do that on their
12 website. But they also have competition from
13 travel agencies, brick-and-mortar, and online
14 travel.

15 But to the extent that in certain
16 venues consumers are not able to compare prices,
17 it impacts other elements of our industry. So,
18 it is not just a consumer issue. If travel isn't
19 transparent and open in the marketplace, it
20 affects all the downstream businesses. So,
21 think of car rental companies, hotels, amusement
22 parks, bed and breakfasts, small businesses.

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1 It has an impact.

2 And we haven't taken a position on
3 how to solve this issue yet. It is something we
4 are willing to look into. But we do think it is
5 an issue that this Committee should consider.

6 I would just want to reinforce again
7 that it is not just a consumer issue; it is an
8 economic issue as well.

9 In the same survey that we conducted
10 in 2010, the second decision point that
11 travelers identified as being important was
12 hassle. There are a lot of hassles in the air
13 travel system.

14 To the airlines' credit, they did
15 not always rank as the highest source of hassle.
16 There are great services that the airlines
17 provide.

18 But one of the problems in aviation
19 is hassles in the security screening checkpoint.
20 In 2011, we asked travelers to rank what their
21 frustrations were with the security screening
22 checkpoint. They identified an increase in

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1 carry-on bags as being one of the greatest
2 challenges and one of the highest frustrations
3 that they face.

4 Now, since 2009, or actually since
5 2008, the number of carry-on bags has almost
6 exploded. There were 59 million more carry-on
7 bags in 2010 than there were in 2009. And from
8 2010 to 2011, that went up to 89 million. That
9 is well above the number of increased travelers
10 for the same year.

11 So, this is impacting efficiency and
12 hassle, which has an impact on our business.
13 But if you listen to TSA, it also impacts
14 security.

15 Travelers, oftentimes now, to avoid
16 checked bag fees, will pack their carry-on bags
17 more densely with items. And it becomes harder
18 for TSA agents to resolve if dangerous items are
19 in those bags.

20 We have also heard from flight
21 attendants' unions that they oftentimes spend
22 more time before a flight figuring out what to

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1 do with carry-on bags than they do paying
2 attention to certain security elements and
3 certain responsibilities that they have for
4 security and safety before that flight. So,
5 that can become a challenge.

6 We had a panel that was commissioned
7 by the U.S. Travel Association to look at this
8 issue, and they came forward with some
9 recommendations. I am not going to talk about
10 them today, but I would encourage you to review
11 that report and to see what that Commission said.

12 But we think this is another
13 important issue that this Committee should
14 consider because we know that it is a high source
15 of frustration, and we do need to improve the
16 efficiency of that checkpoint process in order
17 for the entire travel experience to be improved.

18 So, with that, I am happy to answer
19 questions. And again, thank you for having me
20 here today.

21 CHAIRPERSON MADIGAN: Erik, thank
22 you.

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1 Why don't you, since you have a few
2 more minutes, give us some of the
3 recommendations that your organization has on
4 bags?

5 MR. HANSEN: Sure. You know, once
6 again, we commissioned a blue ribbon panel of
7 aviation security experts to look at the issues.
8 One of the things we said is we don't want to
9 cherry-pick certain recommendations that will
10 benefit us and not be credible on the issue.
11 That is what we will risk if we kind of censored
12 their work.

13 The recommendation that they came
14 back with was that the Department of
15 Transportation should issue regulations
16 requiring that airlines include in the contract
17 of carriage the price for one bag that could be
18 checked at no additional charge. So, that is
19 not saying that the airlines cannot charge for
20 the cost that they incur for that bag, but only
21 that it had to be included in the base fare of
22 the ticket.

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1 And they thought that that would
2 incentivize travelers, those who wish, to check
3 a bag when they are purchasing a flight. We know
4 it is particularly important to age groups like
5 the elderly, also families oftentimes traveling
6 with children and extra items. So, that was one
7 of the ways in which they thought they could
8 solve the problem.

9 CHAIRPERSON MADIGAN: Give us one
10 more.

11 MR. HANSEN: That was the only
12 recommendation they came forward with.

13 CHAIRPERSON MADIGAN: Oh, okay.
14 Terrific.

15 (Laughter.)

16 MR. HANSEN: I know there are some
17 proposals in Congress. I know others have taken
18 a look at this issue.

19 CHAIRPERSON MADIGAN: Okay.

20 MR. HANSEN: But that was the only
21 one that the Committee did.

22 CHAIRPERSON MADIGAN: All right.

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1 I had a sense there was more than one.

2 Any other questions or comments from
3 the Committee?

4 MEMBER LEOCHA: On your first issue
5 about knowing the price, so what you are talking
6 about is people don't know what the price to
7 travel is because it is hard to figure out what
8 your final price is going to be after you have
9 your airfare and, then, the other ancillary fees
10 are added in? Is that what you are generally
11 talking about?

12 MR. HANSEN: Yes, I think that is
13 one element of it, yes. I mean, I think, as
14 carriers and others have often said, the
15 marketplace is a very valuable tool for
16 facilitating travel, right? So, having
17 openness in the marketplace benefits the overall
18 levels of travel.

19 Airlines on their own websites will
20 sell travel products and packages. They work
21 with our industry to do that. It is a great
22 tool.

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1 But, also, the travel agencies
2 perform an essential function in allowing
3 travelers to have that single product
4 experience. To the extent that they are not
5 competing on a level ground, we would be
6 interested in seeing what the overall impacts to
7 the industry are. So, that is one element.

8 Two is that, if they have a negative
9 experience while traveling, that can impact
10 their willingness to travel in the future. That
11 can impact all travel businesses.

12 We have heard just anecdotally that
13 there are international travelers now who will
14 come into the United States. They are
15 incredibly important to our economy. They will
16 shop here in the United States. They will use
17 foreign currency. It counts as an export.
18 They will go to retail stores. They will
19 basically buy out the store. In Miami, in
20 particular, Brazilian travelers will do this all
21 the time.

22 They come back and they fly back to

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1 Brazil, and they have more bags that they have
2 with them than they did on the way in.
3 Oftentimes, they are surprised and frustrated,
4 and they feel aggravated by having to pay
5 checked-bag fees that they weren't aware of.

6 Now I understand that there are
7 certain requirements requiring disclosure for
8 international travel, but that, still, the fact
9 that we are hearing about it points to some
10 elements or some problems in the system where
11 they are not getting the information that they
12 may need. And it may be on the consumer; I don't
13 know.

14 CHAIRPERSON MADIGAN: All right,
15 Erik. Thank you very much. We appreciate your
16 testimony here.

17 Kevin Mitchell with the Business
18 Travel Coalition [BTC] is up next.

19 MR. MITCHELL: General Madigan,
20 thank you very much for the opportunity to
21 present today to the Committee.

22 And I would like to begin by

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1 congratulating Charlie Leocha for his inclusion
2 on the Committee. I think he is going to
3 represent consumer groups here quite well.

4 I would also like to echo some of the
5 sentiment about the contribution of Kate Hanni.
6 I do believe that she moved the ball quite
7 significantly for the three-hour rule, which was
8 embodied in what is termed Consumer Protection
9 Rule No. I, which led to No. II, which led to No.
10 III. And it could be that we wouldn't be here
11 today were it not for her accomplishments.

12 I would also like to echo the need
13 for some permanent funding for consumer groups
14 along the lines perhaps as they do in Europe.

15 For nearly 20 years, BTC has
16 represented the large corporate buyers of
17 commercial air transportation systems or
18 services. Together with travel management
19 companies, we call this area of the industry the
20 managed travel community.

21 In providing some 70 percent of the
22 airlines' revenues, these corporations, the

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1 business travelers that travel throughout the
2 system, largely underwrite the finances of the
3 airline industry.

4 As issues that BTC follows, there is
5 none more important than this one to the managed
6 travel community, and that is to say that
7 consumers, whether they are leisure travelers or
8 business travelers, depend on the ability to
9 comparison shop when they go about their travel
10 initiatives.

11 So, the Deregulation Act of 1978 led
12 to the democratization of air travel in this
13 country, and around the world as it was copied.
14 So, we went from a system that was really
15 designed early on for the affluent to one where
16 people of all means today can travel.

17 The hallmark of this deregulation
18 initiative was the ability to efficiently
19 comparison shop. This brought about a
20 discipline to the marketplace that kept fares in
21 check throughout the system.

22 What was not deregulated, of course,

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1 was safety and passenger protection. You have
2 heard enough already about federal preemption.
3 Suffice it to say that the protection of
4 consumers in this virtual no-man's land of
5 consumer protection resides with the DOT solely.

6 It has not been a pretty picture
7 financially. As Mr. Berg noted, the margins in
8 this industry are thin and volatile. In fact,
9 no mass transportation industry in the history
10 of the world has been profitable over time.

11 Ancillary fees, the primary focus of
12 my comments today, are potentially very good for
13 the airline industry and for all the
14 stakeholders connected to the industry. They
15 can generate sustainable and profitable revenue
16 streams and allow these carriers to reinvest in
17 equipment and services and safety.

18 However, consumers need safeguards.
19 The DOT is the sole place to go for consumers to
20 have some protections in this area. To
21 reiterate, this is the most important issue
22 facing the managed travel community today.

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1 Let's take a look at this ancillary
2 fee issue in terms of the problem, the effects,
3 the causes, and the solutions. There are a
4 number of issues surrounding the ancillary
5 problem, but the problem itself is that the
6 airlines for nearly five years have refused to
7 share the ancillary fee data, how much a bag
8 costs, in a format with the management travel
9 community that would facilitate the purchasing
10 of these fees at the point of sale where the
11 entire trip is being purchased.

12 In terms of the managed travel
13 community, there are a lot of impacts, and I put
14 them all in the written submission to the
15 Committee. They include budgeting and
16 forecasting issues, having the data in terms of
17 what you have spent during the year to negotiate
18 with carriers, travel policy compliance, and
19 auditing, fraud, waste, and abuse. But the
20 three I would like to call to your attention
21 today are these:

22 Without the fee data being provided

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1 to the travel management companies, it results
2 in costly workarounds, searching different
3 websites for various fees. And likewise, if you
4 are an employee of a major company and you are
5 doing your purchasing, your shopping and your
6 purchasing on what is called an online booking
7 tool, that information is not there. So, you
8 actually have to get out and manually write down
9 from website to website what these fees might be
10 and try to calculate the all-in cost of travel.

11 Now, for a travel management
12 company, it may not seem like a lot, but if a
13 process that took three minutes suddenly takes
14 six minutes, your cost of labor just doubled.
15 Of course, that gets passed on to the consumer,
16 to the corporations, in the form of higher fees.

17 The second bullet here, fees and
18 fares are undisciplined. These fees, because
19 they are not able to be compared side-by-side in
20 an electronic fashion, are not disciplined by
21 market forces. Therefore, it is reasonable to
22 conclude that they are artificially-inflated.

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1 What's more, where the airfares
2 themselves used to be efficiently compared, they
3 now are all over the map. Consumers don't
4 understand what is in some fares and what is not
5 included in others. So, actually, the base
6 fares now are not being fully disciplined by
7 market forces.

8 And then, finally, anything that
9 weakens the travel management company or the
10 travel distribution system is not good for
11 consumers because we are in an era now where we
12 have increased domestic airline consolidation,
13 and it might get worse with American and United
14 or U.S. Airways, should they tie up. But we now
15 have all these global antitrust-immunized
16 alliances. So, more than ever, we need a
17 healthy, independent distribution system as a
18 check-and-balance on airlines' policies,
19 practices, and prices.

20 Now you might ask why it is that the
21 airlines are not providing the fee information
22 in a format that would allow consumers to see the

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1 product, compare the product, and buy the
2 product. Well, the first problem is that there
3 is first-mover dilemma for the airlines.

4 Ben Baldanza of Spirit Airways
5 testified to this in July of 2010 by saying, the
6 first carrier to put its fees in the travel agent
7 display and show the all-in price is going to
8 look 20 or 30 or even 40 percent higher than its
9 competitors. So, it is a non-starter. It is
10 commercial suicide.

11 The second issue is that the network
12 carriers look more favorable when they unbundle
13 and lower the base fare compared with the
14 low-cost carriers that are in the marketplace.

15 The third is a theme that began 30
16 years ago. Airlines want to control the
17 passenger. When frequent flyer programs were
18 begun at American Airlines, the objective was to
19 circumvent the corporate travel department and
20 get travelers to book directly with American
21 Airlines. The same is the case today. The
22 carriers want to attract as many individual

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1 travelers and business travelers to their
2 websites as is possible, where there is no
3 comparison shopping and where the airlines will
4 over time generate higher yields.

5 The fourth issue is there is profit
6 in confusion. When consumers can't see
7 everything in front of them and compare it
8 efficiently, oftentimes they are going to
9 purchase an itinerary that may be higher than
10 what was necessary, or perhaps if they knew the
11 full cost, they wouldn't travel in the mode that
12 they chose.

13 And then, finally, there are some
14 carriers that would like to flip the current
15 economic model in the industry. By that, I mean
16 that they are resisting giving the fee data for
17 so long to try to get travel management companies
18 so frustrated about it that they would be willing
19 to pay for it.

20 Now, once that happens, the travel
21 management companies and the travel agencies are
22 going to have to recoup that cost by charging

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1 higher fees to service the traveler. So, in
2 effect, you are going to have the traveler paying
3 for the privilege of merchandising and
4 distributing the airlines' own ancillary
5 services.

6 So, what is the solution here? It
7 is a DOT rule that requires both disclosure of
8 the fees and requires them to be purchasable or
9 salable at the point of sale.

10 What is the rationale for this
11 solution? First of all, for the consumers to be
12 able to see, compare, and buy is a central DOT
13 tenet of truth-in-advertising regulations. It
14 would restore comparison shopping, which really
15 is the ungirding of airline competition. When
16 millions of consumers are looking at the all-in
17 price of travel day-in and day-out and making
18 these transactions, that is disciplining the
19 entire market. It is a beautiful thing and it
20 is how it works, but it hasn't worked for close
21 to five years.

22 There is this first-mover dilemma.

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1 In this case, a very light touch with a rule like
2 this from the DOT can solve that problem for the
3 carriers. If they all have to jump in the pool
4 together at the same time, no one gets out of
5 competitive position vis-a-vis any of the
6 others.

7 We definitely have what is
8 considered a market failure here. If you
9 consider that the airlines' largest companies
10 that buy their products, the IBMs and the
11 Lockheed Martins of the world, the Black and
12 Deckers of the world, have been demanding the fee
13 data for four years from the carriers, and they
14 don't get no for an answer. They get, "Hell,
15 no." So, if an industry's top customers can't
16 get an essential requirement to run their
17 programs, we have a failing marketplace, and DOT
18 can help here.

19 And then, finally, there is massive
20 computing power that is needed to run the fare
21 and the fee system. Static lists in PDF formats
22 or other static formats on a website do not solve

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1 the problem.

2 Next slide, please.

3 This is just San Francisco to
4 Boston. There are billions of possible
5 solutions to get a traveler from San Francisco
6 to Boston and back, and they are varied by
7 competitors and itineraries and routings and
8 fare, rules and exceptions, et cetera. And this
9 doesn't even include if you have to overlay
10 ancillary fees on top.

11 And there are 150, and growing,
12 ancillary fees on a worldwide basis across all
13 carriers. So, there is absolutely no way that
14 consumers can possibly navigate all this without
15 the power of these massive databases and
16 computing.

17 Next slide, please.

18 Conclusion: government
19 intervention in the marketplace is an anathema
20 to the companies that I represent. I testified
21 four times over 10 years against the three-hour
22 rule, or what was ultimately called the

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1 three-hour rule, because it is something that
2 the carriers should have been able to solve for
3 themselves. But after 10 years of
4 stonewalling, not only did my organization
5 reverse itself, but the American Society of
6 Travel Agencies and the Global Business Travel
7 Association also reversed. So, we take
8 seriously anytime we go to the government and say
9 we need some help in fixing a problem, but this
10 is one of those rare cases where it is necessary.

11 We have a failing market. DOT is
12 the sole protector of consumers. Only a light
13 touch is required here. And the solution
14 benefits all stakeholders.

15 If you consider that it is not
16 mutually-exclusive to say that more disclosure
17 will result in higher sales of ancillary fees,
18 it is possible and it is likely consumers that
19 trust a process are likely to buy more and buy
20 more often. We can increase competition with
21 this disclosure, increase market efficiencies
22 and carriage innovation, expand markets,

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1 increase sales of ancillary services, and
2 satisfy customers.

3 So, with that, I would like to
4 conclude with the final slide of see, compare,
5 and buy. This is a central principle of
6 commerce for a very, very long time. The
7 internet has strengthened this principle except
8 for the purchasing of air travel today. We hope
9 that that is reversed soon.

10 Thank you.

11 CHAIRPERSON MADIGAN: Kevin, thank
12 you very much.

13 If there is anybody else, but
14 including Kevin, please make sure we get a copy
15 of the PowerPoint presentation --

16 MR. MITCHELL: Sure.

17 CHAIRPERSON MADIGAN: -- that you
18 have just played. I don't think I have a copy
19 of that. Maybe it is somewhere else.

20 And it looks like Dave is going to
21 want the microphone first.

22 (Laughter.)

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1 MEMBER BERG: Sure.

2 Thank you, Kevin, for those
3 comments.

4 You say that comparison shopping was
5 a hallmark of deregulation. I have looked at
6 the Deregulation Act, and I am a little puzzled
7 because I don't see it in there. So, where is
8 it in the statute that comparison shopping is
9 obligatory on this industry?

10 MR. MITCHELL: Thank you for that
11 question, Mr. Berg.

12 Nowhere in the Deregulation Act does
13 it state that airlines are or will be at any time
14 permitted to withhold ancillary fee
15 information, either. It is not in the
16 Deregulation Act. I simply stated that
17 comparison shopping as it developed with the
18 GDSs or the CRSs of the time ended up being a
19 hallmark.

20 There were a lot of things that were
21 not foreseen from deregulation. This perhaps
22 is one of them. But it is, nevertheless, one of

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1 the great things about deregulation that brought
2 so much benefit to consumers all over the
3 country.

4 MEMBER BERG: You know, I would
5 agree with you that the airline industry has been
6 a cutting-edge industry and a leader in
7 transparency over the years. That has come
8 about, in my experience, through the workings of
9 commerce, commercial relationships between
10 airlines and GDSs and travel agencies and the
11 distribution networks that are out there.

12 Why is it that we can't rely on the
13 marketplace to continue that great leadership
14 that we have had up to this point?

15 MR. MITCHELL: Well,
16 unfortunately, the market has not, after four
17 years, has not done what you just espoused that
18 it should do. I agree with you.

19 When the airlines began
20 aggressively unbundling their product and
21 charging separately for services that used to be
22 included in the price of the ticket, there should

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1 have been more obligation on the carriers to
2 fully disclose where those fees would come out.
3 For the first few years, mind you, 2008, 2009,
4 there were many, many cases where travelers
5 showed up at the airport and were completely
6 surprised by these fees. There is no excuse for
7 that, and that is not leadership. And I
8 wouldn't think that you would want to
9 characterize it as such.

10 MEMBER BERG: Yes, but I am not sure
11 that that would be the fault of the airline if
12 someone is buying a ticket from a third party.
13 There are plenty of people involved in that
14 chain.

15 But let me go back to another point.
16 I mean, you said there have been no negotiations
17 between airlines and who. Who would that be
18 with?

19 MR. MITCHELL: I am not sure I said
20 that.

21 MEMBER BERG: You said that
22 airlines refused to share ancillary service and

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1 fee data.

2 MR. MITCHELL: Uh-hum.

3 MEMBER BERG: Now with whom would
4 they be sharing it?

5 MR. MITCHELL: They would be
6 sharing it with anyone in any channel where they
7 are currently selling their base product, their
8 base fare.

9 MEMBER BERG: So, the ability to
10 share is going to be based on a commercial
11 relationship?

12 MR. MITCHELL: Correct.

13 MEMBER BERG: So, there would have
14 to be negotiations between airlines and GDSs as
15 other parties --

16 MR. MITCHELL: Uh-hum.

17 MEMBER BERG: -- to share that data
18 and make it available in the third-party
19 streams?

20 MR. MITCHELL: Correct.

21 MEMBER BERG: So, you are saying
22 there has been no negotiations?

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1 MR. MITCHELL: No, I didn't say
2 that. I said there has been a failure. The
3 parties have not come to an agreement after four
4 years. The airlines have refused to share the
5 data after their largest, most important, and
6 valuable customers have been demanding the data.

7 MEMBER BERG: Oh.

8 MR. MITCHELL: There are collateral
9 damages throughout the entire system, and the
10 consumer is being harmed because of lack of
11 leadership on the airlines' part to provide this
12 fee data to the industry.

13 MEMBER BERG: I would have to
14 disagree with you. I am looking at a report, a
15 recent report, that says, "Delta and Travelport
16 in deal for seat upgrades". So, there is some
17 negotiation going on, and there is some ability
18 of the parties to reach mutually-acceptably
19 commercial arrangement to get ancillary
20 services into the third-party stream. Is that
21 not right?

22 MR. MITCHELL: It is correct that

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1 there is some movement. In fact, there is a
2 solution that was collaboratively reached
3 between the global distributions and the
4 airlines with ATPCO to create a process, an
5 electronic process, to provide all these data to
6 the industry. It was tested by 26 U.S. carriers
7 and reservation systems, and the only carriers
8 to implement this product are a handful in
9 Europe.

10 It still remains that the vast
11 majority of network carriers in this country
12 refuse to provide the data to the travel agency
13 channel, where they are selling their base
14 fares. And you can't say that it is leadership,
15 that a consumer can have one part of the product
16 here and has to go over there and to this website
17 and elsewhere in order to construct a product.
18 You can't say that that is leadership.

19 MEMBER BERG: And you can't say that
20 it is refusing to provide the information if
21 there has been discussions and the parties
22 aren't able to reach agreement on --

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1 MR. MITCHELL: The market has
2 failed.

3 MEMBER BERG: -- commercial terms.

4 MR. MITCHELL: The market has
5 failed. In 2008 --

6 MEMBER BERG: Well, then, that is a
7 marketplace that is at work because --

8 CHAIRPERSON MADIGAN: You know
9 what? Because we have someone who is a court
10 reporter --

11 MEMBER BERG: Thank you.

12 CHAIRPERSON MADIGAN: -- you guys
13 can't talk over each other because they can't
14 take down what you are saying. And it would be
15 a shame.

16 MR. MITCHELL: Since 2008, the
17 airlines have unbundled their product and have
18 provided services with associated fees. That
19 information has been withheld from the consumer,
20 and it is harming the consumer and it is harming
21 the corporations that rely on efficiency. It is
22 harming the distribution system.

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1 MEMBER BERG: Well, first, I guess
2 two points. One is, with all due respect, I
3 would disagree that it is being withheld. It is
4 the nature of the commercial relationship, and
5 the relationship is developing. In fact, we
6 have an example of the marketplace working in
7 this announcement of the Delta and Travelport
8 deal.

9 We also have the effort by a new
10 entrant into that market, Farelogix, working
11 with American Airlines and other carriers, to
12 get these services and fees distributed to
13 travel agencies.

14 So, I guess I would just say that the
15 marketplace is responding and it is working. It
16 may not be responding in the way you want it to
17 respond. It may not be responding in the
18 timeframe you want it to respond. But the
19 marketplace is working.

20 MR. MITCHELL: Thank you very much.

21 CHAIRPERSON MADIGAN: Deborah?

22 MEMBER ALE-FLINT: One question.

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1 Early in your discussion, you referenced
2 consumer groups and a model in Europe of
3 long-term stable funding.

4 MR. MITCHELL: Yes.

5 MEMBER ALE-FLINT: Can you
6 elaborate on that?

7 MR. MITCHELL: To my understanding,
8 the consumer groups at the national level in
9 Europe, and also groups that are based in
10 Brussels, get funding in part from the national
11 governments and from the EC. That helps them
12 remain sustainable, and it helps them enjoy
13 revenue streams without conflicts that
14 sometimes are entered into around the world,
15 only so that consumer groups can continue. So,
16 it is a much better model, in my view.

17 CHAIRPERSON MADIGAN: Charlie?

18 MEMBER LEOCHA: Everybody knows
19 that I support transparency of ancillary fees.
20 Just only to mention some things, and I will put
21 words in a friend's mouth or in an acquaintance's
22 mouth.

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1 Jim Davidson, who runs Farelogix,
2 would totally support the open sharing of
3 ancillary fee data, so that the whole market
4 could work. It would actually make his business
5 better and he could spread out and learn more
6 things.

7 I think that withholding these
8 fees -- and I think from Kevin's point of view,
9 and I will make this a question -- by withholding
10 these fees, I think it makes it harder for large
11 corporations to budget. And it also, I
12 believe -- let me know -- does it make it harder
13 for large corporations to reimburse their sales
14 people who are working all the way across the
15 country?

16 MR. MITCHELL: Charlie, the lack of
17 fee information and the ability to account for
18 it efficiently creates problems from the moment
19 a trip is initiated all the way through returning
20 home, where the traveler submits the expense
21 report. There are gaps in the information along
22 the way that, as I mentioned, harm the

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1 negotiating results of corporations when they
2 sit down.

3 I will give you an example. If you
4 are committed to spending \$5 million in a given
5 quarter with a given carrier, and the carrier
6 comes in for the meeting, and it looks like you
7 only spent \$4,500,000, the carrier says, "Look,
8 that nice 10-percent discount that we agreed on
9 was contingent upon your fulfillment of your
10 obligations in this agreement."

11 Well, in the meantime, fees became
12 greater and greater and greater, but you can't
13 account for them. So, the 10-percent discount
14 goes away or gets sharply reduced.

15 That is a real-time problem that
16 corporate travel departments are having because
17 they don't have the data, because it is outside
18 the system.

19 MEMBER LEOCHA: So, would you say
20 that the problems that individuals have in
21 trying to figure out ancillary fees, basically,
22 are multiplied by thousands of people when you

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1 have to deal with a large corporation?

2 MR. MITCHELL: The problems are
3 more vexing for corporate travel programs by
4 orders of magnitude, without a doubt.

5 CHAIRPERSON MADIGAN: Businesses
6 are consumers, too.

7 With that, thank you very much,
8 Kevin.

9 MR. MITCHELL: Thank you.

10 CHAIRPERSON MADIGAN: Next up, we
11 have Arthur Sackler with Open Allies.

12 MR. SACKLER: Good afternoon,
13 General Madigan, members of the Committee.

14 I am pleased to be here today on
15 behalf of Open Allies for Airfare Transparency.

16 I am going to be picking up on a lot
17 of what you just heard from Kevin Mitchell.
18 Open Allies is here today because we believe
19 fairness requires consumers being able to see,
20 compare, and buy all-in airfares at any outlet
21 where an airline chooses to do business.

22 To do that, we have to address a

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1 market that isn't working, because data on fees
2 generally is not being made available. But
3 don't just take our word for it.

4 Look to GAO, which titled a 2010
5 report, in part, "Consumers Could Benefit from
6 Better Information about Airline-Imposed Fees."

7 Look to the Federal Trade Commission
8 with jurisdiction over unfair and deceptive
9 practices that parallels DOT's on air travel,
10 which says that, "Withholding or failing to
11 generate critical price data leaves buyers with
12 insufficient information for informed
13 comparisons which undermines an essential
14 precondition to a free and informed consumer
15 transaction and, in turn, to a well-functioning
16 market."

17 Look to the Department itself where
18 disclosure has been so central to its
19 truth-in-advertising regulations.

20 Or, most viscerally, look to
21 consumers themselves, more than 60,000 of whom
22 in less than a month signed a petition to

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1 Secretary LaHood urging full disclosure of fees.

2 Open Allies represents nearly 400
3 independent travel sellers and distributors and
4 works closely with consumer organizations.
5 Travel agents, online travel companies,
6 corporate travel managers, TMCs, global
7 distribution systems, travel trade
8 associations, and more, are members of Open
9 Allies. Several of the organizations,
10 including Kevin's, which are speaking here today
11 are members of Open Allies.

12 And we collectively represent more
13 than 50 percent of all airline tickets which are
14 sold through this independent channel.

15 Open Allies appreciates the
16 opportunity to appear here today. Our members
17 were pleased that Congress directed the
18 formation of this Advisory Committee. The
19 Department of Transportation has been doing a
20 good job on consumer issues, but expert advice
21 can only help.

22 Our members are united in the view

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1 that full disclosure is key to resolving the
2 controversy surrounding fees. Full disclosure
3 means transparency; transactability, which is
4 both the ability to sell and the ability to
5 purchase; dynamic presentation, and all of that,
6 to enable full comparison shopping. This
7 should apply at least to core fees, those
8 unbundled from traditional airline fares, such
9 as baggage or seating, at least.

10 Enabling consumers to compare on
11 their selected itineraries all-in prices,
12 apples-to-apples, across airlines and all sales
13 outlets where the airlines choose to do business
14 is what the goal needs to be for consumers. This
15 is no simple business-to-business squabble.
16 This is about vindicating the interests of
17 consumers. It is not about GDS/airline
18 negotiations. It is about ensuring consumers
19 have all the information they need to make
20 informed choices, that they are not
21 disadvantaged by airlines withholding data.

22 Open Allies takes no position on

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1 fees themselves, but, once they are charged,
2 they should be fully disclosed. It is a new
3 world. Fees are here to stay, it appears. We
4 ask only that business and leisure air travelers
5 not be kept in the dark.

6 Failure to fully disclose, in our
7 view, is unfair to consumers; as a matter of
8 common sense, traditional expectations in
9 commerce and avoiding unpleasant experiences at
10 airports, some of which you have already heard.

11 Consumers have been accustomed to
12 comparison shopping for air travel for decades,
13 the pioneer in digitization, e-commerce, and
14 comparison shopping, and still one of, if not
15 the, largest segments of e-commerce. With that
16 kind of track record, we shouldn't be going
17 backwards.

18 And the unpleasantness we are
19 talking about, again, as you have already heard,
20 is not just in unexpected additional fees, but
21 in seating of families together and other
22 non-tangible outcomes.

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1 In the legal sense, under the
2 Department's jurisdiction, which is parallel,
3 again -- its unfairness jurisdiction, which is
4 parallel to the FTC's in Section 5 of the Federal
5 Trade Commission Act -- it is useful to take a
6 look at what the FTC says, and its unfairness
7 policy targets outcomes, intentional or
8 inadvertent, that may prevent consumers from
9 effectively making their own decisions.

10 The current rule from Consumer
11 Rulemaking II is a solid first step toward full
12 disclosure, but much more needs to be done. And
13 as you heard from Kevin, "consumers" means more
14 than individual air travelers and families. It
15 also means businesses. Corporations are
16 consumers, too.

17 So, why is full disclosure so vital
18 to protecting consumers? It is a prerequisite
19 for true comparison shopping. Transparency is
20 necessary, but not sufficient to establish
21 comparison shopping. Transactability is
22 essential. Consumers must be able to purchase

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1 what they see, and independent sellers must be
2 able to sell it to them.

3 Dynamic presentation ensures all
4 fee information is current. Static
5 presentation on airline sites presented in
6 ranges and changed once a quarter offers not only
7 no precise information on fees, but no
8 information at all on availability.

9 It saves on search time for
10 consumers, which the Department values at \$42 an
11 hour. When you multiply that over the universe
12 of consumers searching for air travel, that
13 number is huge. And in the end, it spurs
14 competitive pricing.

15 Technology for independent
16 distribution of fully-disclosed fees is
17 available and in use. Effective software
18 protocols developed among industries, including
19 the carriers through the airline tariff
20 publishing company, ATPCO, and fully tested by
21 more than two dozen airlines, are in use.

22 GDS technology, GDSs are the

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1 conduits and assemblers of this information to
2 be sent out to travel agents and other
3 independent sellers. The technology they use
4 is state-of-the-art. They use 21st century
5 mainframes, server technology, and already are
6 handling, as you heard from Mr. Berg, detailed
7 fee information for some airlines, including
8 airline customization of services to individual
9 consumers. It is not your father's GDS. Joe
10 Rubin of ITSA [Interactive Travel Services
11 Association] will address this issue in some
12 depth.

13 But there are a couple of things that
14 Open Allies does not want. It doesn't want to
15 force airlines to do business with any entity
16 with which they do not choose to do business, nor
17 to force airlines to share fee information with
18 any entity with which they are not doing
19 business.

20 So, again, to echo directly what
21 Kevin had to say, unbundling with full
22 disclosure has benefits for all: needed

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1 additional revenue stream for the airlines,
2 enabling comparison shopping for consumers,
3 passengers pay only for services being used and
4 at competitive prices, and innovation,
5 ultimately, will be enabled to enhance
6 marketing, revenues, and jobs, if this
7 information is out there.

8 So, Open Allies believes the best
9 way that the Department can protect consumers is
10 to compel full disclosure in Consumer Rulemaking
11 III. No airline wants to look more expensive
12 than its competitors, of course. There are
13 marketing advantages to opacity.

14 And I have to say airlines have
15 ignored the voices of consumers, including the
16 60,000 who signed the petition to DOT, media
17 reports, Members of Congress, and their business
18 partners and customers, and have generally
19 declined to provide full disclosure
20 voluntarily.

21 So, in conclusion, once again, Open
22 Allies believes consumers must be enabled to

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1 see, compare, and buy fares and fees. The only
2 way that will happen is if the market works. And
3 the only way the market will work is if the
4 Department of Transportation simply requires
5 it, which is what we urge your advice to the
6 Department to be.

7 I will be happy to answer any
8 questions you may have.

9 CHAIRPERSON MADIGAN: Thank you,
10 Arthur.

11 Does anybody on the Committee have
12 any questions?

13 (No response.)

14 All right. With that, I think this
15 is where we have the change in schedule. So,
16 next up is Roger Cohen with the Regional Airline
17 Association [RAA].

18 MR. COHEN: Chairwoman Madigan and
19 Committee members, good afternoon. And I want
20 to thank you for the opportunity to appear here
21 today.

22 I would like to share just a couple

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1 of takeaways. No. 1 is to give you a clearer
2 snapshot of the regional airlines and the role
3 we play in the scheduled service here in the
4 United States. And second, to pledge our
5 assistance to you and the Department in your
6 mission of improving customer service.

7 While he is getting the presentation
8 set up, if you would pardon me with an aside, I
9 got a big kick out of Kevin's slide with the
10 Neanderthal. That is when I started in the
11 airline business.

12 (Laughter.)

13 When I started to take reservations,
14 it was before we had computers, though.

15 Next slide, please.

16 We have come a long way since
17 deregulation. These were RAA's 80 member
18 airlines or so back at the dawn of deregulation.
19 They were very small airlines flying small
20 aircraft independently between small cities
21 with modest, difficult, if not impossible,
22 connection to the broader national and

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1 international system.

2 Next slide, please. Just click
3 through, if you can, please.

4 Today the case could be made that the
5 regional airlines are the U.S. system. We are
6 50 percent of the flights and, most notably, of
7 the 600-and-some communities that -- click
8 through, please -- nearly 500 communities of the
9 600-and-so we serve have service exclusively
10 from regional airlines. That is about
11 three-quarters of the United States.

12 Next slide, please. And you can go
13 through these real quickly.

14 Our growth has been exponential.
15 This is the growth in revenue passenger miles,
16 passengers, the average size of the aircraft,
17 which has grown from about 16 seats to now over
18 56, and the average trip length now approaches
19 about 500 miles.

20 Next slide, please.

21 Here is another huge difference,
22 then versus now.

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1 Yes, there we go.

2 Virtually all of our passengers
3 flying on our member airlines enjoy the
4 benefits, including frequent flyer miles, of
5 flying in partnership with the recognizable
6 brand-name airlines.

7 Next slide.

8 The result of this is that the
9 passenger in Springfield, Illinois, or
10 Springfield, MO, Chattanooga, or Monterey
11 enjoys the exact same benefits as passengers
12 from New York, Chicago, and Los Angeles.

13 And if you look at this map from the
14 flip side, without regional airlines,
15 three-quarters of the airports in this country
16 would have no scheduled service at all.

17 Next slide, please.

18 And kind of walk through this a
19 little bit, flip through this with me.

20 In today's global economy for these
21 communities, scheduled service on an airline is
22 just as critical as an internet connection.

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1 Because of regional airlines, a passenger, with
2 one click of the mouse, one website, one ticket,
3 checks their bags once, and can travel
4 seamlessly from Bakersfield to Buenos Aires,
5 from Montgomery, Alabama to Prague, and from
6 Appleton, Wisconsin, to Beijing, on an
7 increasing number of flights. And it is usually
8 just one connection. And on many flights, you
9 can do it all in premium or first class and,
10 again, collect frequent flyer mileage to boot.

11 Because of this popularity -- next
12 slide, please -- our role has expanded. If you
13 will click through, you will see the growth rates
14 of the regional airlines in green, although I am
15 color-blind, compared to our mainline partners
16 over that same period of time.

17 As you conduct your very vital work,
18 you're advising the DOT on these consumer
19 issues, I would urge you to focus on two words,
20 please, that best describe the consumer benefits
21 of regional airlines.

22 The first is "seamless". For our

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1 passengers, it is designed to be a one-stop-shop
2 from when the trip is being considered to when
3 the journey is completed, including, most
4 importantly, a single customer point for
5 feedback from that consumer. So that it is not
6 one of these deals; that is critical.

7 The second word we would
8 offer -- flip through, please -- is
9 "transparency". So that at all times, from when
10 the reservation is first being researched to
11 when the passenger leaves the airport, the
12 airline is clearly identified.

13 The result of all this has been
14 through years of experience and improvements in
15 customer service, based on that consumer
16 feedback. And as recent DOT statistics would
17 indicate, mishandled bags are at an all-time
18 low; on-time performance at an all-time high,
19 record high, with mainlines and regional
20 airlines virtually identical on the metrics.

21 Compare that passenger experience
22 to back in the day --- and you can flip through

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1 it--. The modern aircraft then, seamless
2 service then, no; baggage check. Most
3 importantly, back then there was not one level
4 of safety for all commercial airlines. Since
5 1995, there has been.

6 While it is one industry and one
7 customer experience, as you go about your work,
8 I would urge you to recognize and understand that
9 there are differences based on the broad
10 realities of serving 600 U.S. airports, 500 of
11 them exclusively, with all types and sizes of
12 aircraft and, as you can see, every type of
13 airport, those that are
14 geographically-challenged in mountain areas or
15 in valleys; small-terminal facilities,
16 including 130 very remote airports in Alaska.
17 So, as you go about this, I would urge you to
18 recognize that.

19 There are multiple code-sharing
20 partnerships amongst those carriers. And also,
21 it would be important to focus on the ownership
22 of the consumer process.

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1 So, I realize it is break time. I
2 don't want to take any more of your time.

3 Ultimately, our passengers expect
4 excellence and consistency, and that is what our
5 system is designed to deliver. When we don't
6 meet those standards, we want to work with you
7 and DOT to keep that feedback process for the
8 consumer as simple and convenient as possible.

9 So, thank you very much. I would be
10 glad to answer any questions.

11 CHAIRPERSON MADIGAN: Thank you,
12 Roger.

13 Does anybody have a question to ask?
14 Please.

15 MEMBER LEOCHA: Yes. Roger, you
16 spoke about the feedback process. You said
17 there is one single feedback process across the
18 regionals and the legacy carriers?

19 MR. COHEN: Well, for the consumer,
20 you know, I think the natural and the one that
21 is directed most is back to where that person
22 bought the ticket from, where he or she bought

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1 the ticket from.

2 Because when you are flying on Delta
3 Air Lines, it is a seamless service. You bought
4 the ticket from Delta Air Lines. You go back,
5 if something happens, your bag doesn't get
6 delivered, something is wrong with your ticket,
7 you go through Delta Air Lines. It only makes
8 sense that that portal, that entryway portal,
9 ought to be the portal for all of the experience.

10 MEMBER LEOCHA: And does the
11 Delta -- let's use Delta as an example -- does
12 their contract of carriage cover your flights as
13 well? Or do you have a separate contract of
14 carriage?

15 MR. COHEN: The contract of
16 carriage is with the passenger, and it is on the
17 ticket. No, it is the ticketing carrier's
18 contract of carriage.

19 MEMBER LEOCHA: Okay. So, that
20 carries through all the way to --

21 MR. COHEN: Absolutely.

22 MEMBER LEOCHA: -- to the end.

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1 Okay.

2 MR. COHEN: And we are responsible
3 for delivering the service, just like any other
4 service provider.

5 Okay. Thank you.

6 CHAIRPERSON MADIGAN: All right.
7 If we have no more questions, and Sam doesn't say
8 I can't release you, I am going to release you,
9 but only for 10 minutes. So, you will be back
10 here at 10 after -- oh, yes, you will be back at
11 10 after 3:00.

12 Thank you.

13 (Whereupon, the foregoing matter
14 went off the record at 2:58 p.m. and went back
15 on the record at 3:10 p.m.)

16 CHAIRPERSON MADIGAN: Next up we
17 have Bruce Bishins. He is with the Association
18 of Retail Travel Agents.

19 And he can start once the room is
20 quiet. Thanks.

21 MR. BISHINS: Thank you, Madam
22 Chairwoman.

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1 I have fully disclosed that I had a
2 stroke several months ago, and I am speaking
3 slowly and ask your indulgence.

4 ARTA will celebrate its 50th year
5 next year, and I am Managing Director of ARTA.

6 Next slide. Next slide,

7 ARTA fully supports consumer
8 protection which makes sense, but the
9 regulations must be based on fairness,
10 practicality, and, above all, commercial
11 viability.

12 Next slide.

13 ARTA will address three topics.
14 One, in Rule No. III, it is being proposed that
15 customer service standards will be enacted by
16 all travel agents, including the trade
17 practices, commissions, and incentives of the
18 retail travel agency community.

19 The second is based on errors from
20 the GDSs which cause, among other things,
21 code-share problems, and we are held responsible
22 for the code-share violations.

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1 And thirdly, ARTA doesn't feel among
2 its members that commercial negotiations
3 between airlines and third parties, GDSs, should
4 be subject to regulations. They need to work it
5 out for themselves. I address these
6 individually.

7 There is not a shred of evidence
8 pointing to the failure by travel agents who did
9 not provide excellent customer service. We do.
10 And there are too many ways for the DOT to set
11 a standard by which the myriad of bookings and
12 sources are provided to consumers, and nothing
13 is sacrosanct more than the trade practices,
14 commissions, incentives, not only in the travel
15 industry, but all retailing and all forms of
16 commerce. We do not think the DOT should delve
17 into this matter at all.

18 Errors caused by GDSs sometimes
19 happen. The data is too complex and oftentimes
20 glitches appear through the systems, where the
21 travel agent's liability falls on the GDSs, and
22 the DOT sometimes goes after the retailer,

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1 knowing full well that the GDS is at fault. The
2 Committee will look, please, into this subject.

3 Ancillaries. There is a huge
4 opportunity for ancillaries. I don't need to
5 tell you, with a stroke, you have appreciated the
6 huge opportunities to airlines and travel
7 agencies.

8 But ARTA members do not want the DOT
9 to have unintended consequences in the content
10 and delivery and technology and functionality in
11 the GDS environment. The airlines must come to
12 terms with the GDS community, and some have. It
13 was mentioned that Delta, Air France, KLM, all
14 began to enact ancillaries. Let the
15 marketplace be aware and let the marketplace
16 resolve, because travel agents do not want to pay
17 for the negotiation between the airlines and
18 GDSs, in particular.

19 The truth about comparative
20 shopping, most GDSs do not provide and can't
21 provide ancillary comparison today. They are
22 largely unwilling to adapt the systems necessary

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1 despite test market and test airlines. Years of
2 inaction are evidence enough.

3 The ancillaries are too diverse to
4 be compared. I note that Kevin Mitchell already
5 said that the fees are undisciplined and
6 alleged, also, that the fees have difficulty
7 being compared.

8 The Open Allies say this is about
9 transparency, comparative data, full
10 disclosure, ease of use, and consumers. What it
11 is really about is giving GDSs a free ride
12 because other companies have proven, such as
13 Farelogix, the result and successful result of
14 the agreement between airlines and third-party
15 travel technology providers.

16 The Open Allies case is so weak that
17 Congress is asked to make it for them. We think
18 the DOT should not get involved in the commercial
19 decision between air carriers and travel
20 technologies, including the GDSs.

21 Ancillaries represent a huge
22 benefit for the airline and the travel agents.

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1 We want to sell ancillaries, but not at a cost
2 to which we are unprepared and until the airlines
3 have negotiated the commercial terms.

4 Thank you.

5 CHAIRPERSON MADIGAN: Thank you
6 very much, Bruce.

7 Does anybody on the Committee have
8 any questions?

9 (No response.)

10 Bruce, thank you very much again.

11 Anybody with PowerPoint
12 presentations, please make sure that those are
13 submitted --

14 MR. BISHINS: Yes.

15 CHAIRPERSON MADIGAN: -- so
16 everybody can get a copy of those.

17 Next up, I have Eben Peck with the
18 American Society of Travel Agents, ASTA.

19 MR. PECK: I am having some
20 PowerPoint issues. I apologize. So, I am just
21 going to get started.

22 Chair Madigan, members of the

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1 Committee, my name is Eben Peck. I am the Vice
2 President of Government Affairs at the American
3 Society of Travel Agents. I want to thank the
4 Committee for inviting me here today.

5 ASTA is a long-time participant in
6 DOT consumer protection rulemakings, and we look
7 forward to working with you. I hope we can be
8 a resource for you in your work.

9 ASTA was established in 1931. We
10 are a 501(c)(6) trade association that
11 represents the interests of travel agents to all
12 levels of government and industry, while
13 promoting professional and ethical conduct, as
14 well as consumer protection for the traveling
15 public.

16 We have over 8,000 domestically and
17 about 900 members in 170 countries across the
18 world. Our members include all segments of the
19 travel industry, including what are known as
20 traditional or brick-and-mortar travel agents,
21 home-based travel agents, travel management
22 companies, online travel agencies like

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1 Travelocity, Expedia, et cetera, and travel
2 suppliers as well, such as tour, cruise, hotel,
3 and car rental companies.

4 I had a pithy slide here, but you
5 will have to bear with me.

6 About the travel agency industry, to
7 paraphrase Mark Twain, reports of our death have
8 been greatly exaggerated. While the industry
9 has been through a lot of changes over the past
10 20 years, I am happy to report that travel agents
11 are alive and well. In fact, those travel
12 agencies who have adapted to the internet era
13 have not only survived, but have thrived.

14 Consider this: travel agents,
15 traditional and online, sell the majority of air
16 travel in this country. Traditional travel
17 agents sell about two-thirds of cruise trips and
18 tour packages. This translates into \$136
19 billion in sales and 144 million trips in 2011.
20 Of that \$136 billion, \$95 billion was sold by
21 traditional travel agents, including \$60
22 billion worth of air travel or 45 percent of the

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1 market. The sales volume is expected to grow by
2 3 percent in 2012.

3 Our industry also generates
4 83,000-plus full-time jobs, produces an annual
5 payroll output of \$5.6 billion, operates
6 14,000-plus retail locations, the vast majority
7 of which, 98 percent, are SBA-eligible small
8 businesses.

9 I also wanted to touch briefly on the
10 travel agent value proposition, as we call it.
11 Why do consumers still use travel agents in this
12 digital age? Well, travel is a complicated
13 business, especially air travel, as we have
14 heard from presenters today.

15 Travel agents do two things for the
16 consumer: save them money and save them time.
17 They do this by using their expertise to
18 facilitate effective comparison shopping and
19 decision-making as to how to best spend
20 consumers' limited travel dollars.

21 So, why does ASTA and the travel
22 agent community care about consumer protection

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1 issues? Well, our members, most of whom are
2 small businesses, are on the frontlines every
3 day of consumer protection issues and issues
4 consumers have with travel suppliers. Cruises,
5 hotels, air travel, you name it, conflicts and
6 misunderstandings are inevitable in an
7 enterprise as large as the U.S. travel system,
8 and our members have seen it all.

9 So, no surprise that ASTA has been
10 a long-time participant in DOT's consumer
11 protection rulemakings, and my slide had some
12 examples of that.

13 With that as a little bit of
14 background, I wanted to turn to what we see as
15 the most important consumer protection issue
16 being considered by DOT today, one that you have
17 heard a lot about. I am part of the choir on
18 ancillary fees. So, I appreciate the
19 Committee's patience.

20 Why do we think this is so important?
21 Well, as I mentioned, every day our members
22 experience this frustration this issue brings

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1 about. When consumers are surprised by hidden
2 fees or have to go through multiple transactions
3 to purchase air travel, our members are the ones
4 who hear about it, whether on the phone from
5 regular customers or from walk-ins.

6 Just a few examples: the family
7 whose vacation budget gets blown up when they
8 realize that the flight they bought, the one they
9 thought was the cheapest, turns out to be
10 anything but when you add in baggage and seat
11 fees. Corporate travel departments can't keep
12 track of, or budget for, ever-changing ancillary
13 fees. A small businesswoman whose company is
14 too small to have a travel department finds her
15 travel budget similarly impacted.

16 The bottom line is that ASTA
17 believes under the current system consumers
18 can't effectively comparison shop for air
19 travel, nor can travel agents do so for them.

20 I will just give you a quick example
21 as to why we think the system as it exists today
22 does not truly provide comparison shopping for

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1 consumers. It is a hypothetical couple flying
2 to Ft. Lauderdale from DCA [Reagan National
3 Airport]. They are going to take a cruise.
4 They know they are going to check one bag. They
5 know they are going to carry on one bag. And
6 they want to make sure that they can sit
7 together. So, given the opportunity, they are
8 going to buy seats.

9 If they were to do the search
10 results, a quick search -- they don't have all
11 day to do this; they just want to get their ticket
12 and be done with it -- the quick search today
13 would show -- and we did some research
14 here -- Spirit Airlines would be about \$198; U.S.
15 Air, about \$205; JetBlue, about \$230. So, they
16 go with Spirit in that case.

17 The same hypothetical couple under
18 a different system, the one we have proposed to
19 DOT with full transparency and purchasability of
20 ancillary fees, under this scenario, if you add
21 in all the fees, Spirit goes from \$198 to \$333;
22 U.S. Air goes from \$205 to \$255; JetBlue stays

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1 at \$230. So, in this case, JetBlue is the
2 winner, and the couple has been saved \$210. It
3 looked better on the slide, I promise.

4 (Laughter.)

5 CHAIRPERSON MADIGAN: We promise
6 you we will look at your slides.

7 MR. PECK: Okay. I have a
8 PowerPoint. I am going to give you a copy of it,
9 I promise.

10 So, at the end of the day, ASTA views
11 this as a simple proposition. The millions of
12 consumers who fly every day, including my
13 hypothetical couple, should have the benefit of
14 full comparison shopping for air travel.

15 We agree with an airline executive
16 who told the GAO in 2010 that, quote, "Providing
17 the consumer an opportunity to pay for
18 additional services at the time of booking would
19 create both greater choice and transparency,
20 while still allowing the airline to offer
21 unbundled services."

22 So, in brief, we urge this Committee

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1 to recommend to DOT that the upcoming passenger
2 protection rulemaking include a requirement for
3 full transparency and purchasability of
4 ancillary fees and services.

5 Thank you, and I would be able to
6 answer any questions.

7 CHAIRPERSON MADIGAN: Thank you.

8 Does anybody have any questions?

9 MEMBER BERG: One question.

10 Thanks for your presentation.

11 MR. PECK: Yes.

12 MEMBER BERG: In your hypothetical,
13 your hypothetical involves, does it involve a
14 travel agency selling tickets?

15 MR. PECK: It does.

16 MEMBER BERG: So, what does the
17 travel agent tell the customer about ancillary
18 revenues, and isn't that part of the
19 relationship between your customer and the
20 travel agent?

21 MR. PECK: We use that method as
22 something that would be quick. We put ourselves

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1 in the shoes of a travel agent. So, this quick
2 search -- again, this couple does not have a lot
3 of time -- included a GDS as a travel agent would
4 see and, also, going to airline websites. And
5 then, we did a secondary search on the same
6 flights through Kayak as well.

7 MEMBER BERG: So, my question
8 really was about if you have a travel agent
9 selling to customers. Presumably, the travel
10 agent is experienced and knows that there are
11 ancillary charges associated with whatever it is
12 they want to buy.

13 MR. PECK: Yes.

14 MEMBER BERG: Isn't it the job of
15 the travel agent to inform the customer about
16 those charges and won't they know? In other
17 words, there is nothing hidden here. It is just
18 the way it is discovered.

19 MR. PECK: It is my understanding
20 that, under current requirements, ancillary
21 fees are reportable in a range and they are
22 reportable quarterly. In the GAO report, it

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1 makes a note that there are 170 different airline
2 websites. All this to say that we feel it would
3 be quite burdensome to have travel
4 agents -- maybe they haven't used a certain
5 airline in a couple of months and have to redo
6 that search each and every time.

7 CHAIRPERSON MADIGAN: Does your
8 hypothetical presume I pick up the phone, I say
9 to the travel agent, you know, "Hey, quickly, can
10 you tell me what the cheapest fare is if I want
11 to go with my husband from D.C. to Ft.
12 Lauderdale" as opposed to --

13 MR. PECK: Take a week and do it?

14 CHAIRPERSON MADIGAN: Right.
15 "Call me back in a day."

16 MR. PECK: That is the presumption.
17 We think that this example could also be used
18 just for them doing this at home.

19 CHAIRPERSON MADIGAN: It takes a
20 lot longer at home.

21 MR. PECK: Yes.

22 CHAIRPERSON MADIGAN: Charlie?

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1 MEMBER LEOCHA: Just quickly, as
2 you look at this, is there any way for a travel
3 agent to get all of this information when they
4 are asked to compare prices, let's say, with
5 three airlines, the ones that you put, for, let's
6 say, let's just ask for the first bag?

7 Do the airlines provide you, in an
8 online usable method, information about
9 checking your first bag, including exclusive
10 changes based upon frequent flyer levels,
11 including what credit cards they give exemptions
12 for baggage, and so on? Is that provided? I
13 mean, I hear from Mr. Berg that it is very
14 available, but is that sent to travel agents?
15 Or is that something that travel agents -- I
16 guess they have to go out and dig up. Or does
17 it come from the airlines in some way?

18 MR. PECK: My understanding is
19 that -- and thank you for raising this -- it is
20 not just a matter of going to the website once.
21 For a lot of ancillaries, there are a lot of
22 conditions on when they can be booked. It could

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1 be just based on the time the purchase is made,
2 whether they are a frequent flyer, you know, et
3 cetera, et cetera, whether it is at check-in or
4 at the gate. So, it is a very cumbersome
5 process, I would say.

6 MEMBER LEOCHA: And is there any
7 clear explanation somewhere that a travel agent
8 could find that tells you under what conditions
9 baggage fees could be waived based upon a wife
10 traveling with her husband or a group of friends
11 traveling together, whether they are using the
12 same PNR, the same record locator, or whether
13 they are not on that record locator, because that
14 just adds another level of complexity to it? Is
15 that clearly described anywhere by the airlines
16 to travel agencies?

17 MR. PECK: Not that I am aware and,
18 if it were, it would have to be frequently
19 updated by someone.

20 MEMBER LEOCHA: Thank you.

21 CHAIRPERSON MADIGAN: All right.

22 Thank you. Thank you all.

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1 Moving right along, Terry Dale with
2 the U.S. Tour Operators Association.

3 MR. DALE: Well, good afternoon,
4 everyone.

5 My name is Terry Dale. I am the
6 President of the United States Tour Operators
7 Association. This is the first time that our
8 association has participated in a forum like
9 this. So, as a newcomer, I believe in less is
10 more. So, I will be very succinct. I will try
11 to do this in six minutes.

12 Let's start with a snapshot of who
13 USTOA is. We are celebrating our 40th
14 anniversary this year, founded in 1972. We have
15 approximately 45 corporate members, and those 45
16 corporate members own and operate approximately
17 150 different brands. Now those 150 brands
18 carried last year, roughly, 11 million
19 passengers and generated annual sales in \$9
20 billion.

21 The one thing that binds all of these
22 members together is our commitment to consumer

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1 protection. It is mandatory for each of our
2 members to participate in what is called the
3 Travelers' Assistance Program. That requires
4 each member to post \$1 million in security,
5 either through a bond, letter of credit, or
6 Treasury bill. The USTOA Depositors' Trust
7 then holds that bond in the unlikely case of
8 insolvency or bankruptcy.

9 I think it is critical to also
10 highlight that this program is the only consumer
11 protection plan that is recognized by the
12 Attorney General's Office of California under
13 that State's seller-of-travel law.

14 So, today our tour operator members
15 are regulated by DOT as a ticket agent, but we
16 do differ significantly from online travel
17 agencies as well as brick-and-mortar retailers.
18 Tour operators have multiple products involved
19 and wrapped into the package vacation. That
20 includes not just airlines, but cruise, rail,
21 hotels, car rentals, et cetera.

22 We provide extreme flexibility for

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1 our customers to pay over time, which allows for
2 choice. Our booking window can go from 12
3 months or longer. And we take complete
4 responsibility for that customer's entire
5 experience from start to finish. It is
6 important for us to have repeat business. So,
7 we take that responsibility very seriously.

8 Now, if we talk about tour
9 operators' sale of air transportation,
10 actually -- I think we can move one more there
11 [referring to PowerPoint presentation]. There
12 we go. Sorry about that.

13 The airline is one subcomponent of
14 the package vacation. Between the deposit and
15 the time of airline ticketing, international
16 airline fuel surcharges, over which the tour
17 operator has no control, often increase. And
18 the volatility of fuel prices places pressure,
19 then, obviously, on the airlines to suspend or
20 discontinue in some cases unprofitable routes,
21 leaving some of our members with very few
22 alternatives to provide that customer with their

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1 vacation.

2 I think it is also important to point
3 out that we print our brochures a year in
4 advance. That is because of the long booking
5 window, notwithstanding the
6 constantly-shifting airline prices, rules, and
7 service patterns.

8 Although the sale of air constitutes
9 just a fraction of our business, tour operators
10 can struggle at times with new DOT requirements
11 mandating additional airline-specific
12 disclosures, particularly on e-tickets and
13 websites, given technological challenges and
14 the frequency of changes to airline rules,
15 policies, and fees.

16 I think it is important to note that
17 USTOA has been an active participant in DOT's
18 consumer rulemakings. During the second round,
19 we supported DOT's proposals to ban
20 post-purchase-price increases other than those
21 increases attributable to government taxes. We
22 also supported consumers with the information on

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1 airline baggage fees. And we expect to fully
2 participate in upcoming rulemaking processes.

3 We think it is important to stress
4 that we appreciate DOT's continued efforts to
5 adopt enforcement policies that allow sellers
6 the ability and means to comply with some
7 flexibility. Given the current challenging
8 economic climate, it is always good to continue
9 to review existing requirements, to ensure that
10 stated objectives are, in fact, achieved at the
11 least-burdensome means, and still provide
12 operational flexibility.

13 We would also like to encourage that
14 in the future we continue to look at ways that
15 we can balance the need to protect consumers and
16 the important objectives of the Airline
17 Deregulation Act. In the future, we believe DOT
18 should focus on addressing practices that are
19 likely to deceive or confuse consumers, and when
20 requiring new requirements, should be reserved
21 for cases where DOT is aware of actual consumer
22 injury.

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1 Let me just wrap up by saying we look
2 forward to working with the DOT to ensure that
3 their enforcement policies are understood by our
4 members, and that we are compliant, and that we
5 appreciate DOT's sensitivity to understanding
6 the role of the tour operator as they move
7 forward. We look forward to partnering with
8 this Committee and helping in any way that we
9 can.

10 Thank you very much.

11 CHAIRPERSON MADIGAN: Terry, thank
12 you.

13 Any questions/comments?

14 MEMBER LEOCHA: I would just like to
15 ask, you mentioned there are 150 brands --

16 MR. DALE: Correct.

17 MEMBER LEOCHA: -- which you
18 represent. What are some of the companies that
19 are members of your --

20 MR. DALE: Sure. Actually, Tauck,
21 Abercrombie & Kent, Globus, Trafalgar.

22 MEMBER LEOCHA: Okay. And do you

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1 think that it would make your job easier as you
2 plan out your clients' trips from soup to nuts
3 to have disclosed ancillary fees, so that you can
4 let your customers know in terms of their entire
5 package how much it is going to cost them in
6 totality?

7 MR. DALE: Well, it is important
8 that we be able to give them that kind of
9 information. So, certainly, it would make it
10 easier.

11 MEMBER LEOCHA: Thank you.

12 CHAIRPERSON MADIGAN: Terry, thank
13 you very much.

14 MR. DALE: Thank you.

15 CHAIRPERSON MADIGAN: Next up, we
16 have Deborah McElroy with Airports Council
17 International. I presume you guys are called
18 ACI.

19 MS. McELROY: Madam Chairman,
20 members of the Committee, thank you very much.

21 Airports Council International
22 represents local, regional, and state governing

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1 bodies that own and operate commercial service
2 airports in the United States and Canada. Our
3 345-member airports enplane more than 95 percent
4 of the U.S. domestic traffic and virtually all
5 of the international airline passenger and cargo
6 traffic in North America.

7 Airports are the public face of
8 aviation in hundreds of communities throughout
9 the United States, working with airlines and
10 other service providers to meet passenger needs
11 and provide a pleasant travel experience. We
12 believe that it is critical that the Advisory
13 Committee consider the airport perspective, and
14 I very much appreciate the opportunity to appear
15 before you today.

16 It is true that many of the issues
17 being studied by the Committee are the
18 responsibilities of parties other than the
19 airports. However, a recent ACI and a
20 nationwide poll showed that the traveler
21 knowledge about who does what at airports is
22 quite limited.

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1 For example, we found that 20
2 percent of consumers believe that airports were
3 responsible for delayed or canceled flights.
4 Almost a third blame airports for problems with
5 lost or mishandled bags. And almost half
6 believe that airports are responsible for planes
7 being stuck on the tarmac awaiting departure or
8 arrival at the gate.

9 Because the image of airports is
10 intrinsically linked to whether or not we are
11 meeting passenger needs, we have a critical
12 stake in resolving shortcomings throughout the
13 air travel experience. We also understand that
14 passengers expect airports to help resolve their
15 problems because airports are part of their
16 community, working not only to bring price and
17 service competition, but also to improve the
18 travel experience.

19 It is important to understand that
20 failure to meet consumer needs often has root
21 causes that also have significant impact on
22 airport operations and facilities. Whether the

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1 problem involves providing timely and accurate
2 information, on-time departure or arrival
3 performance, baggage-handling, or resolving
4 extended tarmac delays, improvements to any or
5 all of these would help airports more
6 effectively serve passengers, airlines, and
7 cargo services.

8 Enhancing the passenger experience
9 and meeting consumer needs also ensures that
10 airports can continue to generate jobs and
11 economic development in their communities. The
12 unfortunate fact is that passengers often
13 associate a negative travel experience with the
14 airport at which the incident occurred,
15 regardless of the reason for the problem. If
16 passengers lose confidence in the operations at
17 an airport because of failures in customer
18 service, they may choose to fly out of another
19 airport in the future or use a competing mode of
20 transportation. This impacts the finances of
21 individual airports, the airport industry as a
22 whole, and the local communities in hundreds of

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1 cities throughout the United States.

2 ACI-NA's [Airport Council
3 International - North America's] February 2012
4 study found that America's commercial airports
5 are a powerful economic engine generating 10.5
6 million jobs and \$1.2 trillion in total economic
7 impact in 2010. Airports are responsible for
8 about 8 percent of Gross Domestic Product and an
9 estimated 7 percent of jobs.

10 Over the last four years, ACI has
11 been very active in responding to DOT regulatory
12 proposals on behalf of airports, and we
13 appreciate the Department's consideration of
14 our comments.

15 I feel the need to correct something
16 that was said earlier by another speaker. Ms.
17 Greenberg with the National Consumer League was
18 incorrect in stating that airports have opposed
19 consumer protection initiatives. Whether the
20 proposal involved compensation for oversold
21 flights and denied boarding,
22 chronically-delayed flights, airline customer

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1 service plans, flight status change, delay data,
2 reporting of mishandled bags, or emergency
3 contingency plans, ACI-NA has consistently
4 advocated that the Department ensure that
5 passengers have relevant, accurate, and timely
6 information to assist them in making the most
7 informed travel decision.

8 ACI, also, has not only been active
9 in working with FAA and DOT, but also with the
10 U.S. Access Board, in improving access for
11 passengers with disabilities in the national
12 transportation system. Airport operators want
13 to ensure that the needs of passengers with
14 disabilities are accommodated, regardless of
15 who might be responsible for providing the
16 service to the passengers.

17 We have been a leader in working with
18 the airlines and organizations representing
19 passengers with disabilities. We have
20 participated in public hearings and seminars
21 provided by FAA, DOT, the Department of Justice
22 [DOJ], the Department of Labor [DOL], the U.S.

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1 Access Board, and the National Council on
2 Disabilities, and have provided extensive
3 training and information to our member airports
4 regarding the accommodation of passengers with
5 disabilities. This is an important issue for
6 the airport community.

7 We have also provided the airport
8 perspective on numerous regulatory proposals in
9 this area. ACI-NA is very pleased that DOT and
10 other federal agencies have adopted many of our
11 suggestions in developing rules over the last
12 four years. We were particularly pleased in
13 2011 when DOT expanded the tarmac-delay
14 regulations to cover small and non-hub airports,
15 and required domestic and international
16 airlines to coordinate their plans with each
17 U.S. large, medium, small, and non-hub airport
18 served as well as diversion airports. We have
19 long argued that it was critical to protect
20 passengers at these more than 300 smaller
21 airports, as the impact of tarmac delays at these
22 facilities can be even more pronounced than at

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1 larger facilities.

2 Even with these regulatory
3 enhancements, however, much work remains to be
4 done. As last year's early winter snowstorm in
5 the Northeast showed, there must be better
6 coordination before and during severe weather
7 events or other flight disruptions.

8 Further, airports must be empowered
9 to tell FAA and the airlines "No more flights,"
10 if the facility cannot accommodate the aircraft
11 or respond to airline requests for help in a
12 reasonable time. FAA and airlines also must
13 provide airports with accurate information
14 about diverted flights and other diversion
15 airports to prevent the overloading of any
16 single airport.

17 Effective means of communicating
18 information about rapidly-changing airport
19 conditions and flight status, including
20 diversion information in real-time among all
21 operational stakeholders, airports, airlines,
22 the FAA, air traffic organization, TSA, and

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1 Customs and Border Protection [CBP], is a
2 critical component of enhancing the passenger
3 experience and minimizing passenger
4 inconvenience during severe weather and other
5 mass-diversion events.

6 We are heartened by the actions of
7 airport operators to implement surface
8 management solutions which are improving
9 airport and airline situational awareness in
10 good weather and bad.

11 We have also been impressed by the
12 private sector's development of tools, some of
13 which have been provided to the industry for
14 free, to share information, key operational
15 information, in real-time throughout the
16 system.

17 We encourage FAA to follow these
18 examples and provide mechanisms for airports and
19 airlines to have better situational awareness,
20 so better operational decisions can be made
21 before and during diversion events, for the
22 benefit of passengers.

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1 In closing, we would ask this
2 Committee to recommend that DOT take action to
3 provide all consumers the same level of
4 protection. We believe it is long overdue for
5 DOT to expand delay and mishandled baggage
6 reporting as well as provisions related to
7 oversales and denied-boarding compensation to
8 all commercial airlines, not just those covered
9 carriers that count for at least 1 percent of
10 domestic scheduled passenger revenue.

11 To the passenger, the effects of
12 delays, baggage mishandling, or denied boarding
13 are the same, no matter which airline actually
14 operates the aircraft or the size of the
15 airplane.

16 Additionally, given the fact that
17 regional airlines now transport one out of every
18 four domestic passengers and operate half of the
19 daily domestic departures, as well as provide
20 the only scheduled service in more than 70
21 percent of U.S. airports, it is critical that DOT
22 include their operations in consumer protection

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1 regulations as well.

2 You heard Mr. Cohen earlier say that
3 passengers enjoy, quote, "the same benefits,"
4 but we respectfully disagree. He also asked you
5 to focus on transparency, and we agree and would
6 ask you to do the same. But the fact of the
7 matter is data on regional airlines is not
8 provided to DOT. There is no justification for
9 providing consumer protection only to those
10 traveling on the nation's largest airlines.
11 All passengers deserve the customer service,
12 passenger protection, and legal rights afforded
13 by DOT regulations.

14 Thank you for the opportunity to
15 present the U.S. airport industry perspective.
16 I look forward to answering your questions.

17 CHAIRPERSON MADIGAN: Thank you,
18 Deborah.

19 Do we have questions from members of
20 the Committee?

21 MEMBER LEOCHA: Yes.

22 CHAIRPERSON MADIGAN: Charlie?

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1 MEMBER LEOCHA: On the new DOT rule
2 that requires -- it might be the FAA bill -- that
3 requires the airport and airline coordination on
4 tarmac-delay rules --

5 MS. McELROY: Uh-hum.

6 MEMBER LEOCHA: -- I understand
7 most of those reports are into DOT already. Has
8 that been a positive process in coordinating
9 with -- I guess it would be between the airports,
10 TSA, Customs and Border Protection, and the
11 airlines. Has that been working about the way
12 you thought it might?

13 MS. McELROY: So, a couple of
14 things. The actual requirement for
15 coordination between the airlines and the
16 airport has been in effect for quite a while.
17 The recent FAA reauthorization bill signed into
18 law in February required airports and airlines
19 to file additional plans.

20 But regarding the coordination,
21 yes, it is going very well between the airlines
22 and the airports. We are working out systems to

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1 make sure that passenger needs are accommodated.
2 TSA has also been a really good partner in this.

3 I say there have been some
4 challenges with Customs in this area. We are
5 working with A4A [Airlines for America], IATA
6 [International Air Transport Association], and
7 the other airline organizations to address this.
8 But if I were to point out a concern, a potential
9 weak link in the system, it would be that
10 coordination with Customs, especially if you
11 have a diversion into an airport that has a very
12 small facility, limited staffing, or worst-case
13 scenario, where you don't have a federal
14 inspection service facility.

15 MEMBER LEOCHA: And did I hear you
16 right? You said that you urged more DOT/FAA
17 coordination with the industry in cases of
18 storms. It kind of sounds like the same thing
19 that the airlines are getting, that they need to
20 communicate with their passengers every 30
21 minutes. Would it almost sound like something
22 like that? You are looking for something like

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1 that from FAA/DOT?

2 MS. McELROY: I mean, all of us are
3 struggling now to determine the best way to
4 provide the up-to-date information. On a bad
5 weather day, for example, where you are having
6 irregular operations, the airports are putting
7 out what is called "Notice to Airmen," [NOTAM]
8 talking about the conditions at those airports.

9 But if I am a major airline operating
10 throughout the United States, there may be
11 hundreds of those that I am the recipient of.
12 So, we are struggling and working with FAA to
13 figure out what is the best way for all of us to
14 share that data in order that better decisions
15 can be made when the airline is looking to divert
16 a flight because it can't go to its scheduled
17 destination or if air traffic is also part of
18 that process.

19 Frankly, we haven't found that yet.
20 We are struggling to encourage the air traffic
21 organization to move a little more quickly on
22 this. I think it is just going to take time.

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1 But, again, as I said, we are very
2 pleased that there have been some private
3 businesses that have brought forth some tools
4 that are available free to the industry. Not
5 everyone is taking advantage of those. So,
6 again, we think this is an area that is going to
7 require more attention, and a lot of it is going
8 to come from FAA.

9 MEMBER LEOCHA: What are some of
10 those tools?

11 MS. McELROY: I am not the expert on
12 technical --

13 MEMBER LEOCHA: What do they
14 generally do?

15 MS. McELROY: Well, it provides
16 situational awareness. It lets you know what is
17 going on at that airport. It is a tool provided
18 by Passer.

19 MEMBER LEOCHA: Okay.

20 MS. McELROY: And so, I can provide
21 you additional information offline.

22 MEMBER LEOCHA: And then, your

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1 comment about the regionals not being included
2 in the reporting setup.

3 MS. McELROY: Not all of them.
4 Again, as was mentioned earlier, there are 15 --

5 MEMBER LEOCHA: Right.

6 MS. McELROY: -- airlines that are
7 mandated to report. Some of those are the
8 larger regional carriers. But our point would
9 be it should be all airlines providing services
10 to passengers should be required to provide that
11 information.

12 MEMBER LEOCHA: So, that kind of
13 goes together with your look at code-share
14 arrangements. So, let's say now we would
15 include, if it is United, it would be United plus
16 all of their regional; their partners would be
17 included in an overall figure or at least listed
18 together?

19 MS. McELROY: You know, I think that
20 how you provide that information is something
21 that the airlines and DOT could work with us on.
22 I don't have the appropriate solution. I think

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1 that is something that we need to look at.
2 Because, again, our interest is providing the
3 data to consumers most efficiently. I don't
4 know whether that is in one big report or whether
5 that is separate by the carrier that is actually
6 providing the service. But I think it is
7 something we need to look at.

8 Thank you.

9 CHAIRPERSON MADIGAN: Thank you
10 very much.

11 Next up, we have got the other
12 switch. So, it is going to be Joseph Rubin,
13 Interactive Travel Services Association, ITSA.

14 MR. RUBIN: Thank you very much.

15 My name is Joe Rubin. I am the
16 President of ITSA, the Interactive Travel
17 Services Association. I appreciate the
18 opportunity to come here today.

19 Like some of the others, we would
20 love to be a resource going forward. We have
21 quite a few members that are very engaged in the
22 travel industry, and we think we have a lot of

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1 expertise that we can help provide to this
2 Commission.

3 So, we believe the Consumer
4 Protection Division of the Department of
5 Transportation does an excellent job carrying
6 out the mandate of their office. But we welcome
7 the entry of another outlet for consumer voices
8 to help the Department establish timely and
9 effective rules to fulfill their consumer
10 protection mission.

11 So, what is ITSA? Who are we? We
12 are independent travel distributors; that is, we
13 are not controlled by travel providers. In the
14 travel space, that is a very important
15 distinction. That means that our search
16 results, our rankings, our consumer information
17 isn't biased by interested parties.

18 One of our roles is to help airlines
19 sell and distribute their seats, and to help
20 consumers find and purchase flights and other
21 travel services that best fit their needs. That
22 is, we foster competition and lower prices among

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1 airlines and provide them with a very valuable
2 service.

3 ITSA members are also technology
4 companies. They are sophisticated,
5 innovative, technologically-savvy, and they
6 make up some of the most cutting-edge,
7 award-winning, and advanced technology
8 companies in the world.

9 So, primarily for your benefit, Ms.
10 Madigan, you are obviously, presumably, aware of
11 ITSA's online travel company members, and who
12 they are and what they do. They were one of the
13 first industries to take advantage of the
14 internet, to provide consumers with unbiased
15 research results, the ability to research and
16 comparison shop, and purchase any travel service
17 that they need from the comfort of their own
18 home, and increasingly, from their mobile
19 devices. In fact, about one-third of the
20 world's travelers booked online, and about
21 one-third of all U.S. e-commerce is
22 travel-related. So, it is a very significant

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1 portion of e-commerce.

2 But you may be less familiar with our
3 Global Distribution System [GDS] members. And
4 I know they have been mentioned a couple of times
5 here. So, let me give you a little bit of a
6 background on them.

7 These are the companies that
8 consolidate all airline flight and fare
9 information, and they power the worldwide
10 airline market, consolidating schedule and fare
11 information from more than 500 airlines
12 worldwide, analyzing billions of flight
13 possibilities, as Kevin Mitchell pointed out,
14 just for one pairing, and delivering accurate,
15 relevant, and organized flight results
16 thousands of times every second.

17 GDS companies are the backbone of
18 flight distribution. And so, are approximately
19 50 percent of all airline tickets in the U.S.
20 They invest billions of dollars in technology
21 and in jobs, developing innovative ways to bring
22 products to market and working with their

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1 airline partners, travel agents, and others to
2 develop and run technology and reservation
3 services, and to fill other technological
4 requirements.

5 Now ITSA members and consumer
6 travelers, our interests are aligned. Let me
7 explain a little bit what I mean.

8 Among other things, consumers and
9 the companies that we represent all seek to
10 maximize and improve the consumer air travel
11 experience. We all want easy and efficient
12 purchasing of air transportation. We want
13 maximum information, transparency, and
14 transactability. We want competitive
15 airfares. We want to minimize hassles. And we
16 want vigilance against unfairness and
17 deception.

18 ITSA members also thrive on openness
19 and transparency. In fact, it has filed an
20 amicus brief in support of the Department of
21 Transportation's full-fare advertising rule
22 against the challenge brought by some U.S.

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1 airlines.

2 So, our recommended consumer
3 protection agenda, let me talk about that for a
4 moment. You have obviously heard a lot of
5 recommendations today about areas that you can
6 and should focus on. They range from relatively
7 simple and inexpensive to, as Dave pointed out,
8 potentially very expensive for the airlines.
9 It could be very disruptive for the travel
10 market.

11 We have one area in particular, and
12 it has been mentioned before, airline ancillary
13 fees, where we see problems with the market. We
14 see the need for additional consumer protection.
15 We see specific action that would benefit
16 consumers.

17 And perhaps most importantly, two
18 points that are perhaps most important. One,
19 the tables have already been set by the
20 Department of Transportation in at least their
21 enquiry and Consumer Protection Rule III. And
22 again, to Mr. Berg's point, the costs are de

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1 minimis. We see that this is a very easy
2 technological solution to what a number of
3 groups here today have complained about as a
4 major problem.

5 So, we recommend that the initial
6 focus of this Committee should be on
7 transparency and transactability of airline
8 ancillary fees. See it, compare it, and buy it.

9 Consumers want and deserve the right
10 to compare the all-in cost of their fare across
11 carriers and to purchase the core services they
12 need, such as pre-assigned seats, advanced
13 boarding, and checked-bags fees, in the same
14 manner that they purchase their tickets.

15 However, since unbundling began in
16 earnest a few years ago, many airlines, as we
17 have discussed before, won't disclose these core
18 ancillary services and fees to ITSA members and
19 other third-party distribution channels.

20 We don't begrudge the airlines the
21 opportunity to charge these fees as they attempt
22 to remain profitable. We all have a shared

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1 interest in that. But we are concerned about
2 how they are sold.

3 At the present time, the only
4 opportunity for consumers to directly compare
5 all-in costs in airfare is to click back and
6 forth between various sites, such as between an
7 online travel company to learn the base fare and
8 then back to an airline website to find out what
9 the ancillary fees are.

10 And the only way to purchase these
11 services is through the airlines directly,
12 adding unfairness, cost, time, and
13 inconvenience to consumers' traveling planning.

14 ITSA members have supported a simple
15 and inexpensive and technologically-feasible
16 solution that doesn't impose price or other
17 controls on airlines and, again, dovetails with
18 some of the rulemaking proposals that the
19 Department has already announced.

20 So, ITSA's recommendation here is
21 that you guys work with the Department on
22 proposed Consumer Protection Rule III to ensure

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1 that it is released expeditiously, and that it
2 has a limited and timely intervention to require
3 disclosure and transactability of core
4 ancillary airline services and fees to those
5 distribution channels that the airlines are
6 already doing business with.

7 The fact is that technology,
8 processes, and data already exist to make this
9 transparency and transactability of airline
10 ancillary fees for consumers a reality, and at
11 minimal cost, and with a very light regulatory
12 touch.

13 So, let me emphasize one additional
14 point. That is, this is not a fight between
15 airlines and their distribution partners. It
16 is a fight against unfairness in airline pricing
17 mechanisms, again, with a simple, feasible
18 solution.

19 Unfortunately, as Kevin Mitchell
20 pointed out, there is an economic disincentive
21 for each individual airline to release this data
22 to ITSA members and other third-party

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1 distribution channels, and that the airline that
2 goes first is likely to display higher costs and
3 is likely to be displayed lower in a neutral
4 display, making them appear more expensive than
5 their competitors.

6 So, the only solution we see in this
7 situation is to have the Department break this
8 logjam through a disclosure requirement that
9 imposes a minimal disclosure burden on all
10 airlines concurrently.

11 Unfortunately, I think as Mr. Berg
12 alluded to, you may hear some opposition to some
13 of this by the airlines. They may claim to be
14 supportive, but then throw roadblocks in the way
15 or may claim that there are other burdens and
16 reasons that they can't provide this data.

17 So, let me address some of the
18 arguments. First, "We would like to do it, but
19 the distribution mechanisms, and particularly
20 the GDS members of ITSA, 'are clunky,'"
21 quote/unquote, "and don't have the technology or
22 capability to do so."

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1 The response to this claim is simple
2 and straightforward: "Yes, we can." The GDS
3 companies are some of the most innovative,
4 advanced, and award-winning technology
5 companies in the world, and they actually run the
6 booking systems and websites for many of the
7 airlines around the world. So, this argument
8 simply rings hollow.

9 Further, if the airlines have a
10 better product such as more robust offering that
11 they think they should be able to offer, let the
12 market work. The solution here is to give
13 everybody the information and let consumers
14 decide where they want to book their tickets and
15 their travel, not to unfairly stifle competition
16 and create an unfair, unbalanced playing field.

17 Another claim you are going to hear
18 potentially -- and I think Mr. Berg, again,
19 raised this before -- is that there is already
20 available information on the website and the
21 market is already working. So, with regard to
22 the information that is available on the airline

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1 websites -- by the way, which was required by
2 Consumer Protection Rule II, and we think is a
3 good step, but it is not a sufficient step -- it
4 might otherwise not have been available at all
5 without Consumer Protection Rule II.

6 It is a static list, as I think Mr.
7 Peck mentioned before. It doesn't enable
8 consumers to accurately compare all-in costs
9 across airlines. They may present consumers
10 with a range of costs and fees, rather than the
11 real cost the consumers are actually going to
12 have to pay.

13 With regard to the functioning of
14 the market, if this is the market working, we
15 would hate to see what it looked like broken.
16 There is ample evidence that it most assuredly
17 is not working. As Kevin Mitchell indicated,
18 Ben Baldanza sort of peeled off the band-aid and
19 indicated we think why it is not. And that is
20 there is a real fear amongst the airlines that
21 the first one to jump is going to face a huge
22 economic disincentive.

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1 Setting that aside, however, even if
2 the market is working, which, again, we don't
3 think it is, but even if it is and one drip here,
4 one additional service there indicates that the
5 market is working, perhaps working slowly, but
6 working nonetheless, we think there is real
7 consumer harm that is going on regardless of how
8 long this may take.

9 So, IATA, for example, who is coming
10 up next, I believe, has in the past said, "Well,
11 this may take three years or more for a system
12 to be developed." I am not going to speak for
13 you. You can speak for yourself. But that
14 means three more years of consumers not being
15 able to compare all-in costs, comparing costs of
16 airline services and fees.

17 So, in conclusion, independent
18 travel distribution companies play a vital role
19 in protecting consumer interests and enhancing
20 consumer protection among travel providers.
21 Again, this Committee's recommendations should
22 be to urge the Department of Transportation to

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1 ensure the consumer benefits of independent,
2 third-party distribution are not degraded by
3 airline efforts to restrict their fee content in
4 unfair or deceptive ways.

5 Thank you, and I look forward to
6 answering any questions.

7 CHAIRPERSON MADIGAN: All right.
8 David?

9 MEMBER BERG: Thanks.

10 There is a report from May 2011 that
11 the Justice Department was conducting an
12 investigation or launched an investigation into
13 whether GDS practices violate the antitrust law.
14 I was wondering if you could give us a status
15 update on that.

16 MR. RUBIN: I don't have any
17 particular status update. But I can, I think,
18 easily conclude that the GDS share of the market,
19 the GDSs sell about 50 percent of all airline
20 tickets. That is down from 70-plus percent a
21 couple of years ago. And the distribution costs
22 are now lower per airline and per ticket than

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1 they were a few years ago.

2 So, it seems to us that sort of prima
3 facie evidence, if a company or group of
4 companies have a lower market share and lower
5 costs, that is prima facie evidence that there
6 is no monopolization going on there.

7 MEMBER BERG: But, to your
8 knowledge, that investigation is still going on?

9 MR. RUBIN: To my knowledge, it is.
10 I don't know the status of it.

11 MEMBER BERG: Thanks.

12 CHAIRPERSON MADIGAN: Go ahead.

13 MEMBER ALE-FLINT: A question
14 regarding your statements on the technology. I
15 heard you say technology is now available or it
16 can be developed. Is that technology
17 available, sort of part one? And what is the
18 additional incremental cost borne by the
19 carriers, and potentially consumers?

20 MR. RUBIN: Sure. Well, the
21 technology is available. A number of folks have
22 mentioned ATPCO, which is an airline-owned

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1 consolidation service.

2 MEMBER ALE-FLINT: The trial, that
3 trial that was --

4 MR. RUBIN: Right. So, that trial
5 was gone through. The data, ATPCO has been
6 working to try to make sure that the airlines
7 provide that data to them. And then, we have the
8 capability -- we, the GDSs, I should say -- have
9 the capability to, then, take that data and make
10 it work and make it displayable for consumers
11 fairly quickly.

12 ATPCO has said that the cost is about
13 \$20,000 per airline. So, when we say de
14 minimis, we really mean relatively de minimis.

15 MEMBER LEOCHA: Just a quick
16 question. You said ITSA, and you haven't
17 really -- who are the members of ITSA?

18 MR. RUBIN: Sure. Sorry, Charlie.
19 Sorry. That is a good question.

20 ITSA represents the major GDS
21 companies, Amadeus, Sabre, and Travelport, and
22 then some of the major online travel companies,

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1 Expedia, Travelocity, Orbitz, and Priceline.

2 MEMBER LEOCHA: And you mentioned
3 core fees. What do you mean by core fees?

4 MR. RUBIN: Core fees are the main
5 fees that traditionally the airlines have
6 provided consumers for free. So, seat
7 reservation fees, baggage fees primarily, and
8 then, also, early-boarding fees.

9 CHAIRPERSON MADIGAN: Joe, thank
10 you very much.

11 MR. RUBIN: Thank you.

12 CHAIRPERSON MADIGAN: And last up,
13 we have Doug Lavin and Sharon Pinkerton with the
14 International Air Transportation Transport
15 Association, IATA, and Airlines for America,
16 A4A.

17 And I apologize if I leave in the
18 middle of your presentation. It is not because
19 I have taken a position on the ancillary fee
20 matter.

21 (Laughter.)

22 MS. PINKERTON: Good to know

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1 beforehand. Thank you very much, Madam
2 Chairwoman.

3 Thank you for having us here today.
4 Doug and I are combining our presentations in the
5 interest of time.

6 My name is Sharon Pinkerton. I am
7 here from the Airlines for America. I am just
8 going to start off, my whole time here, I am going
9 to try to step back a little bit from some of the
10 things we have heard to have a little bit of a
11 bigger picture.

12 And one of the things I would like
13 to do, although I know your specific mission is
14 to think about consumer issues, I also think it
15 is important to understand that part of DOT's
16 statutory mission is to place some emphasis on
17 competitive market forces in order to provide a
18 viable and private air traffic control system.

19 So, for those of you that don't know,
20 Airlines for America has undergone quite a
21 transformation in the last year and a half. We
22 have a new leader. And one of our initiatives

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1 has been to create what we call a National
2 Airline Policy.

3 In thinking about coming to talk to
4 you guys here today, it occurred to me that the
5 elements of our National Airline Policy are
6 absolutely in sync with what we think are in the
7 interests of consumers. The elements of our
8 National Airline Policy are having a rational
9 tax and regulatory burden, modernizing our air
10 traffic control system, reasonable jet fuel
11 costs, and increased global competitiveness.

12 And you might say, well, how does
13 that impact consumers? It occurred to me, when
14 Norm was talking about your No. 1 consumer
15 complaint being in the area of flight delays and
16 cancellations, our work on the air traffic
17 control system and NextGen has absolutely got to
18 be one of the most important things I think that
19 the DOT can do in trying to address consumer
20 issues.

21 And my hat is off to Charlie because
22 he has done a lot of work on the NextGen issues

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1 as well.

2 Again, stepping back and looking at
3 the bigger picture on consumers: we think that
4 today's air travel provides an enormous value
5 proposition for travelers. Travel today is
6 incredibly safe. It is on time. It is
7 reliable, and it is very affordable.

8 If you look at that bottom line right
9 there, fatal accidents are at an all-time low.
10 Fares are basically down since 1990 in real
11 terms. Our on-time performance, about 80
12 percent on time, not bad. And our fuel
13 efficiency keeps going up every day.

14 This is just another way to look at
15 that, if you look at the CPI, the Consumer Price
16 Index. Essentially, fares, when you look at
17 fares, including ancillary fees, fares haven't
18 kept up with CPI. In fact, if you look at it over
19 that same period of time, again, even when you
20 include ancillary services, the increase in the
21 fare and the services is about 15 percent
22 relative to a 30-percent CPI increase.

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1 You have heard us talk a lot about
2 the financial condition of the airlines. We do
3 that just to educate people about the fact that
4 this is an incredibly-volatile industry. We
5 are trying to make a profit. As Dave Berg
6 mentioned, the last two years have been better,
7 but not great when you are talking about a .4
8 percent profit margin.

9 And you might ask, well, why should
10 consumers care or why should you care about the
11 airlines' profit margin? And that is, the
12 reason you should care is because when carriers
13 make a profit, they are able to reinvest that
14 profit in new planes, which, as a member of the
15 flying public, I can say I like traveling on new
16 equipment.

17 We are able to reinvest in our
18 workforce and training to provide better
19 community service, customer service, and we
20 create jobs. And it is not just the quality of
21 the service that improves when we are able to
22 reinvest, but it is certainly the quantity of

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1 service.

2 What we have seen in the last couple
3 of years, in order to cope with our financial
4 condition, is that we have had to reduce
5 capacity. At the end of the day, reducing
6 capacity means less service, and that is not good
7 for consumers.

8 This is just a chart on the right.
9 If you look from 2001 to 2012, you can see what
10 reduced capacity looks like. And again, we
11 would like that to change. We think the
12 industry can be a growing industry, a robust
13 industry, but we are not going to be able to
14 achieve that unless we are operating in a policy
15 environment which, again, enables that growth.
16 And that means a rational tax and regulatory
17 burden.

18 So, despite this very negative
19 profit story that we have to tell, these are
20 DOT's statistics. And what I have done on the
21 next slide, which you can turn to, is I have kind
22 of turned those on their head. The DOT's

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1 statistics, the way you usually see them, are
2 cast in the negative, but we have recast them in
3 the positive, so that we can see on-time
4 arrivals. In the first quarter of 2012, almost
5 85 percent.

6 So, accommodated boardings, which
7 is the other side of denied boardings -- and I
8 think it is kind of humorous that my economist
9 decided he needed to go out three decimal
10 points -- 99.905 percent of passengers aren't
11 impacted by denied boardings.

12 Properly-handled bags, 99.7 percent
13 of passengers get their bags on time.

14 And then, completed flights, and
15 that is the other side of the cancellation
16 equation, almost 99 percent.

17 So, you can see, I think the point
18 I want to leave you with is consumers are
19 important to airlines. They are our lifeblood.
20 And so, we are committed to customer service.

21 We recognize when things need to be
22 improved, and we think we have heard a lot of

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1 consumer issues over the last several years. I
2 was struck, again, by something Norm said, that
3 consumer complaints have basically gone from
4 about 20,000 a year to 6,000-and-some; I think
5 he said 6500 for the first half of 2012, which,
6 if you think about it, is one complaint per every
7 100,000 passengers. So, we think everybody can
8 do better; we think we are doing a pretty good
9 job, as the data indicates. But we are
10 committed always to improving our customer
11 service.

12 Before I introduce Doug, I did want
13 to just address, because what Doug is going to
14 do is talk about kind of this most recent issue
15 that was brought up, and that is this robust
16 debate that the airlines are having with the GDS
17 community.

18 One thing I want to make sure, that
19 we are very careful about our language.
20 Carriers are transparent. We have a very strong
21 interest in transparency. That is because we
22 want to sell our ancillary products.

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1 And so, I don't think it is fair to
2 characterize to say we need to get toward
3 transparency. We are transparent. If we are
4 not, the Department should feel free to enforce
5 Consumer Rule No. II.

6 I think what you are going to hear
7 from Doug is what we have here is a very common
8 commercial dispute between carriers and GDSs
9 about how to distribute product. It is a
10 dispute that happens in many other industries,
11 not just this industry, but we would like to be
12 able to control how we distribute our product.

13 We are in negotiations right now
14 with the GDSs. And one of the things that we
15 have asked the Department is, as these very
16 delicate negotiations take place, we are asking
17 them not to put their thumb on the scale of those
18 negotiations in favor of one party or the other,
19 which is essentially what a mandate to force
20 us -- and I thought Kevin Mitchell worded it very
21 carefully. It is not about putting the
22 information out there; it is about putting the

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1 information out there in a format that is
2 convenient for the GDSSs.

3 So, Doug?

4 CHAIRPERSON MADIGAN: Before Doug
5 starts speaking --

6 MS. PINKERTON: Yes?

7 CHAIRPERSON MADIGAN: -- I don't
8 know if Charlie wants to ask you questions.

9 I need to leave, and I apologize for
10 that. I designate Deborah Ale-Flint as the
11 Acting Chair.

12 There will be time for questions and
13 for closing comments when Doug is done with his
14 presentation.

15 MS. PINKERTON: I will be here.

16 CHAIRPERSON MADIGAN: But do you
17 want an opportunity to ask questions of her now?

18 MEMBER LEOCHA: Sure. I just have
19 a quick one.

20 MS. PINKERTON: Sure.

21 MEMBER LEOCHA: Because I love
22 asking you questions.

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1 You just had a great chart up there
2 that showed everybody else's costs going up and
3 the airline not charging more. Why? Why
4 aren't the airlines charging what it costs us to
5 fly?

6 MS. PINKERTON: Well, that is an
7 age-old question, Charlie. We certainly would
8 if we could. We are trying our best to cover our
9 cost.

10 As you can see, in some years we do
11 cover our costs, just barely. So, I am not
12 really sure what your question is getting at.

13 MEMBER LEOCHA: I guess everyone
14 else in the economy has been able to increase
15 their prices. A loaf of bread costs more.

16 MS. PINKERTON: Oh, right.

17 MEMBER LEOCHA: A gallon of gas
18 costs more.

19 MS. PINKERTON: Yes.

20 MEMBER LEOCHA: A car costs more.
21 A house costs more. And an airline ticket costs
22 the same.

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1 I mean, I don't understand how does
2 that happen. I mean, the airlines have to make
3 conscious decisions in pricing.

4 MS. PINKERTON: Right.

5 MEMBER LEOCHA: So, someone is
6 deciding not to raise the prices.

7 MS. PINKERTON: Well, it is all
8 about what is happening in the market. The
9 airline industry is an incredibly-competitive
10 marketplace. So, we have got a lot of low-fare
11 carriers. We have got transparency. We have
12 got low-fare carriers like Spirit and others who
13 are doing a good job, I think, of keeping fares
14 low.

15 I think, at the end of the day, it
16 might not be great for us in terms of we have got
17 very small margins, but it is good, it is
18 certainly good for consumers in terms of what
19 they have seen in terms of fares.

20 But, I mean, we are trying to make
21 a profit. We do work to try to balance supply
22 and demand. That is part of why we have reduced

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1 capacity.

2 And again, I think, that cuts both
3 ways for consumers. So, we are reducing
4 capacity, so that we don't have empty seats
5 flying in the air. That is costly.

6 Am I answering your question?

7 MEMBER LEOCHA: Yes. I am just,
8 for me --

9 MS. PINKERTON: It is not an easy
10 industry, Charlie.

11 MEMBER LEOCHA: Yes, I understand,
12 believe me.

13 (Laughter.)

14 MS. PINKERTON: It is tough, but it
15 is sexy. That is why we love it.

16 (Laughter.)

17 MEMBER LEOCHA: That's right.

18 Okay. Thank you.

19 MS. PINKERTON: Great.

20 MR. LAVIN: Thank you.

21 For the few of you I don't know, my
22 name is Doug Lavin. I am the Regional Vice

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1 President for North America for the
2 International Air Transport Association. We
3 represent 230 international airlines,
4 including, along with our colleagues at A4A,
5 most of the major U.S. carriers.

6 I would like to spend a few minutes
7 this afternoon talking about the GDS issue.
8 Despite what you have heard today, it is very
9 clear, at least it is very clear to me, and I hope
10 it is clear to a lot of people in this audience
11 and to the panel, that the effort by some to
12 convince DOT to mandate airlines distribute to
13 GDSs has very little to do with passengers and
14 their rights -- very little to do with passengers
15 and their rights. In fact, it is somewhat of a
16 ludicrous argument on their part, as far as I am
17 concerned.

18 Rather, it is an effort by some to
19 push DOT in protecting monopoly suppliers and,
20 as Sharon said, to tip the scales on the
21 commercial negotiations between airlines and
22 those suppliers.

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1 So, let me explain what I wanted to
2 do today was explain yesterday, today, and
3 tomorrow in the distribution market at a very
4 high level. There are many details on these
5 slides I am going to show you that are not meant
6 to deceive you; I just think at a high level I
7 am sure this is factually correct.

8 So, let's go to the first slide.

9 Again, this provides a high-level
10 picture of the recent past of the airline
11 distribution model. As you can see, the GDS has
12 served as a primary channel, and continues to do
13 so, for airline tickets sales to consumers.

14 The GDSs are highly-profitable
15 organizations, unlike, Charlie, the airlines,
16 and they maintain market dominance in this area.
17 In fact, I guess we haven't given the statistics
18 that the two GDSs, two of the three GDSs that
19 dominate the market here control 92 percent of
20 the market in the United States, and our
21 calculations are 60 percent of the tickets by
22 value. Of course, that and their policies are

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1 what is getting the Justice Department quite
2 interested.

3 They have maintained this market
4 dominance for quite a long time. They charge
5 airlines very high transaction fees, which are
6 passed on to the consumers because the airlines
7 have no place else to send them.

8 So, if the GDSs were so determined
9 to support the consumer, it seems to me maybe
10 they should significantly cut those fees because
11 they know they are ending up in the consumers'
12 pockets. So, I know they are defendant of the
13 consumer; I just want to give them that option.

14 So, now let's go to today. What
15 happened is the internet came and gave airlines
16 something that only the GDSs could offer in the
17 past. And that was a channel to sell airline
18 tickets directly to consumers on a global basis
19 in real-time. Selling tickets and ancillary
20 services via airline websites reduced the GDS
21 market dominance.

22 Now some in the room today have

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1 argued that not selling those services via the
2 GDS prevents agents from meeting their
3 customers' needs. However, a recent study
4 showed that the majority of traditional and
5 online travel agents book ancillary airline
6 services via airline websites.

7 This has served to increase
8 competition, reduce costs, and better meet the
9 needs, the specific needs, of the passenger
10 which cannot be done via the GDS channel, and,
11 again, in a cheaper fashion. The transaction on
12 the websites is \$2 to \$3 for a transaction. The
13 average transaction on a GDS is between \$12 and
14 \$14. I am very curious to see how those prices
15 have gone down, as stated by some.

16 Now let's go to "coming soon",
17 because in the past GDS payments to agents and
18 restrictive airline contracts have made it
19 difficult for third parties to enter the airline
20 distribution market. Well, I am here to tell
21 you that change is coming, and whether the people
22 in this room and the people who have preceded me

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1 like it or not.

2 Later this year, the International
3 Air Transport Association will publish an
4 internet-based, open standard that allows all
5 different types of third parties to deliver the
6 dynamic, transactable, and fully-transparent
7 products and services that DOT suggests needs to
8 be available to consumers.

9 Now all different parties will be
10 able to offer those tickets and services to the
11 public, be it the existing companies like Google
12 and Facebook; new entrants that do not even exist
13 today will be able to provide those tickets and
14 provide those services.

15 Competition will reduce prices and
16 offer more choices and information to passengers
17 than GDSs can offer today. DOT's stated goals
18 will have been met not by a government mandate,
19 but by market forces, the market forces that
20 Kevin Mitchell was lauding in his remarks.

21 This is not an anti-GDS or agent
22 effort on the part of IATA. In fact, the GDS and

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1 agent community are participating in the
2 drafting of this statement.

3 We believe and are confident that
4 the distribution market is big enough for all
5 channels to thrive going forward, but they will
6 not be doing it in the monopoly setting that we
7 are faced with today. This market dynamic will
8 not be stopped by DOT regulation. It can only
9 be slowed down. But, certainly, it raises the
10 question, why would DOT step into this and stop
11 the competition that the GDSs themselves are
12 arguing for?

13 So, with that, I would stop on that
14 and just close my remarks with the next slide.
15 And that is really for the Committee, and it is
16 not on the GDS, but on your work generally.

17 Again, I would like to suggest, as
18 Sharon suggested, that you should consider in
19 your deliberations the positive impact aviation
20 has on the U.S. economy when you are considering
21 your recommendations.

22 On the screen are the highlights of

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1 a study done this year by Oxford Economics on the
2 contribution commercial aviation makes to the
3 U.S. economy. It is important to note -- and I
4 know that our colleagues at DOT know this because
5 they have studied it very
6 carefully -- regulations do come at a cost. In
7 this case, particularly on the GDS issues,
8 airlines will not be the only ones to pay for
9 these expensive government mandates.

10 Thank you very much, and I look
11 forward to your questions.

12 MEMBER ALE-FLINT: [presiding]
13 All right. Questions?

14 MEMBER LEOCHA: Okay. First of
15 all, as a consumer, I don't care; GDS, DDS, ITSA,
16 ASTA, IATA. All I want is tell me how much it
17 costs. Where's the beef? That is all we are
18 asking for.

19 We don't want the airlines to be
20 forced to give the GDS anything in the way they
21 want it. We want them to release it to the open.
22 If it is an HTML5 format, if it is through ATPCO,

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1 it is in some kind of a paired-out way -- all we
2 want is the information.

3 As I understand it, we are not only
4 talking GDSs. In your slide, you actually
5 managed to throw in Google.

6 MR. LAVIN: Absolutely.

7 MEMBER LEOCHA: Very good. I work
8 closely with Google. Google wants the same
9 information.

10 MR. LAVIN: Absolutely.

11 MEMBER LEOCHA: They can't get the
12 information.

13 MR. LAVIN: Ask them why they can't
14 get that information.

15 MEMBER LEOCHA: What's that?

16 MR. LAVIN: Ask them why they can't
17 get that information.

18 MEMBER LEOCHA: Because the
19 airlines won't give it to them.

20 MR. LAVIN: That is not what we
21 heard when the Google representative talked to
22 us in China three weeks ago.

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1 MEMBER LEOCHA: Okay.

2 MR. LAVIN: He pointed to the GDSs.

3 MEMBER LEOCHA: Well, I speak to
4 them all the time.

5 MR. LAVIN: Okay.

6 MEMBER LEOCHA: They have asked me.
7 You know, I am working with them on the same price
8 transparency issues.

9 MR. LAVIN: Uh-hum.

10 MEMBER LEOCHA: So, this has
11 become, it becomes a food fight between the GDSs
12 and the airlines. All we want is the
13 information, so we can make decisions.

14 I almost laughed when you got into
15 this fact that we have got a monopoly situation
16 with the GDSs, when airline alliances control 80
17 percent of international ticket sales. I mean,
18 everybody is, you know --

19 MR. LAVIN: Where do those ticket
20 sales go through? They go through the GDSs.

21 MEMBER LEOCHA: Yes, but those
22 three airline alliances are the ones who control

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1 setting their prices and developing their
2 routes. The GDSs don't set the prices. The
3 GDSs don't control the routes. The airlines do
4 that.

5 And then, finally, when you talked
6 about what the internet gave us, the internet
7 gave us the ability to compare prices. That is
8 what the American public loved. All of a
9 sudden, Expedia came out, and you could see how
10 much Airline A, B, C, and D cost against each
11 other.

12 And it wasn't because we want to help
13 the GDSs. We want to see what the comparisons
14 are. And the airlines have the same ability to
15 sell through the GDSs, but they don't provide the
16 chance for us to compare prices across airlines.

17 And then, the final thing is, when
18 you talk about how much the airlines sell, a lot
19 of the airline business comes from people who
20 first go to online travel agencies, powered by
21 Google, powered by Farelogix, powered by GDSs.
22 They compare the prices, and then they go back

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1 to the airlines and they buy directly from the
2 airlines.

3 So, the airlines, in some system
4 that you are looking at where everything is
5 stovepiped, are going to end up, or
6 currently -- I know your new system yet to be
7 described and created might change the world.

8 But this comes from being able to
9 compare prices. It is good for business to be
10 able to compare prices. That is how the free
11 market works, and that is what we, as consumers,
12 are looking for.

13 I don't want DOT to say, "You have
14 to give the information to GDSs." Every airline
15 tomorrow could stop their business with a GDS,
16 but you can't because that is how you live.
17 Sixty percent of your money comes from them,
18 maybe more of your profits.

19 So, I mean, there is a market based
20 on both sides. And I just want to frame it, so
21 that what consumers are looking for is
22 information so we can compare prices and so that

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1 we can see the prices. That's it.

2 MR. LAVIN: So, why do you think
3 that airlines are not selling ancillary services
4 through GDSs?

5 MEMBER LEOCHA: I've got no idea.

6 MR. LAVIN: I think you do.

7 MEMBER LEOCHA: I really don't.

8 MR. LAVIN: Okay. I would be happy
9 to tell you.

10 MEMBER LEOCHA: Okay. Well, I will
11 just say, my idea is, if the airlines were to sell
12 ancillary services through GDSs, and if they
13 were to release it overall, we could develop
14 within the airline industry a whole new
15 airline/passenger interface.

16 Someone might develop an airline
17 passenger wallet.

18 MR. LAVIN: They will.

19 MEMBER LEOCHA: And then, they can
20 come up -- you can't develop anything without
21 the data, and we don't have the data because the
22 airlines won't give it to us.

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1 MS. PINKERTON: So, Charlie, there
2 is, for example, nerdwallet.com that does
3 exactly that. They have taken the information
4 that is definitely on our website, and they have
5 built a website where you can go,
6 nerdwallet.com, and compare all the carriers.

7 So, like I said, this really isn't
8 an issue about the information being out there.
9 It is about, for the GDSs, not you, but I think
10 for the GDSs, it is what Kevin Mitchell said, in
11 the format that they can sell it in.

12 But, otherwise, the information, it
13 is out there for somebody who wants to spend the
14 money, which is what this is all about, to create
15 a website which will compare. And
16 nerdwallet.com has done exactly that on bag
17 fees.

18 MEMBER LEOCHA: Well, I have talked
19 with a lot of these developers. I am involved
20 in that. And I just have the feeling that we are
21 all fiddling while Rome burns. We are fighting
22 with each other, and the consumers are getting

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1 left out. We are the ones who don't know how
2 much our ticket is going to cost.

3 MS. PINKERTON: I think your point
4 about us needing the GDSs was a very good one.

5 MR. LAVIN: Yes, we do, and we will
6 continue to need them.

7 MS. PINKERTON: And that is why, for
8 example, Delta has made an agreement with
9 Travelport; U.S. Airways will be announcing an
10 agreement; United has an agreement to sell some
11 of their ancillary products.

12 So, again, I think this goes back to
13 the market is working. Technology has slowed it
14 down, and our negotiations have slowed it down.
15 But it is coming. It is coming. It will come.
16 And we will sell products.

17 MEMBER LEOCHA: Well, we, as
18 consumers, have waited half a decade, and we keep
19 hearing the market is coming. When we had the
20 problems of tarmac delays, I was involved way
21 back in 1999, when the first airplanes were stuck
22 on the tarmac in Minneapolis, and it was a big

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1 uproar. And we almost got something done, and
2 then the airlines said, "Don't worry. We can
3 handle it ourselves." And some of us believed
4 them.

5 And you know what? Ten years later,
6 they still haven't handled it themselves.
7 Finally, DOT said, "We've had it. No more
8 three-hour tarmac delays." Guess what? It
9 works.

10 We are in the same situation. I
11 don't want to wait a decade and then another
12 decade. We have waited half a decade.

13 I just think that we need to do
14 something now to get the data out there. If,
15 indeed, as you airlines said, the GDSs are old,
16 they are clunky, they can't work, this is your
17 perfect chance to put them out of business
18 because other people will come in, like Google,
19 like Farelogix, and they will clean the GDSs'
20 clocks because they can't do it.

21 MR. LAVIN: That's right.

22 MEMBER LEOCHA: That is the way

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1 competition works, if what you say is true.

2 MR. LAVIN: That is what we are
3 saying.

4 MEMBER LEOCHA: Okay.

5 MR. LAVIN: Look forward to
6 competition.

7 MEMBER LEOCHA: Release the data.

8 MR. LAVIN: Yes.

9 MS. PINKERTON: It is out there,
10 Charlie. It is there.

11 MEMBER BERG: I guess a comment and
12 a question. The comment is, Charlie, you
13 pointed to the fact that the internet came along.
14 Expedia took advantage of that and developed a
15 new product to comparison shop. That was the
16 marketplace at work. It didn't take a
17 regulation. And that is what we are looking to
18 happen here, and it is happening. So, the market
19 does work, and it does produce products that are
20 needed.

21 As Sharon said, to have DOT come out
22 with a regulation puts the thumb on the scale of

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1 the commercial relationship between parties,
2 and that interferes with the market. And it is
3 going to have consequences that aren't going to
4 be helpful for consumers.

5 The question, if I can remember it
6 now -- actually, let me stop here. Go ahead.

7 MEMBER ALE-FLINT: Well, I have a
8 question, and that is relative to your
9 statements on publishing the open-phase, the
10 open-space agreement. How definitive is that
11 and what timeframe can we expect it?

12 MR. LAVIN: It will be done by the
13 end of the year.

14 MEMBER ALE-FLINT: Meaning the
15 initiative or the platform is available?

16 MR. LAVIN: No, the standard itself
17 will be issued by the end of the year. We go
18 through a passengers' service conference, which
19 includes the GDSs participating in it. It
20 includes travel agents participating in it.
21 And they agree on the standard and, then,
22 developers will be able to build against that

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1 standard.

2 And again, that is important because
3 it unlocks the gridlock that we have now that
4 Charlie is concerned about. We are looking
5 forward to that day.

6 IATA sets standards for airlines,
7 and we think that it is an appropriate role for
8 us to play.

9 MEMBER ALE-FLINT: So, as we
10 consider, you know, as Charlie enumerated on a
11 timeframe and concerns about things not
12 happening, I mean, what would you project in
13 terms of truly having open-market information
14 for consumers?

15 MR. LAVIN: Well, that suggests the
16 question that they don't have market information
17 now. It will be up to individual developers to
18 develop those products and services to support
19 the industry. But I can almost guarantee it
20 will be much faster than it would take a GDS to
21 develop their platform to support ancillary
22 services. That is one thing I will take a bet

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1 on.

2 MEMBER LEOCHA: So --

3 MR. LAVIN: Charlie, why don't we do
4 this: why don't we look for a federal mandate
5 that GDSs, because they are so concerned about
6 consumers, charge the airlines \$1 per
7 transaction on ancillary fees? Is that
8 something the DOT, to protect consumers, should
9 intervene in?

10 MEMBER LEOCHA: That they what --

11 MR. LAVIN: In other words, what I
12 am saying is the GDSs are arguing that there has
13 been a market failure and it has hurt consumers.

14 MEMBER LEOCHA: Right.

15 MR. LAVIN: So, therefore, they
16 need to mandate that airlines provide the data.
17 Why don't we switch it and say, to protect the
18 consumers, we are going to mandate that the GDSs
19 charge a non-monopoly-based fare/fee on the
20 transaction to make sure that consumers get this
21 information? Is that something that the
22 Department should consider?

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1 MEMBER LEOCHA: No.

2 MR. LAVIN: Okay.

3 MEMBER LEOCHA: I don't want this to
4 become -- I am trying to say, you keep couching
5 this every time as a GDS/airline issue. It's
6 not. It is disclosure of information of how
7 much our tickets cost to the consumers. Google
8 is involved. You know, I don't know how we are
9 negotiating. Farelogix is involved.
10 FareCompare is involved. There are lots of IT
11 companies who are chomping at the bit, they are
12 salivating at a chance to change things.

13 I don't know what your proposal
14 implies, whether it is only the release of
15 information or whether you are providing a new
16 network for how to develop tickets.

17 MR. LAVIN: No. No, it is not a
18 network. It is a standard that will allow
19 developers to develop, just like apps on an Apple
20 app; they develop on a platform on Apple that
21 allows for these things to be transparent.

22 You will now have, for example,

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1 fishing companies. You will have a company that
2 is a small company that has a fishing lodge in
3 Canada. You will be able to go on that lodge
4 site, look at that lodge site, and buy tickets
5 on the same site to meet your needs. That is
6 what is going to happen in the industry.

7 The GDSs know that, and that is why
8 they are trying to get -- a monopoly provider's
9 standard operating procedures, when the
10 monopoly is going away, is to go to the
11 government and ask for intervention to protect
12 it for a few years, so it can milk the monopoly.
13 That is what we are facing here.

14 MEMBER LEOCHA: Okay. Well, we
15 will look -- you know, I will be watching it
16 carefully. If, indeed, this happens by the end
17 of the year, I am overjoyed because we are going
18 to be right in the middle of the rulemaking then,
19 and we can see it.

20 MR. LAVIN: You will see the
21 standard by the end of the year.

22 MEMBER LEOCHA: And then, there

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1 might not be any need for it. But, somehow --

2 MR. LAVIN: Agreed.

3 MEMBER LEOCHA: -- these things
4 take time.

5 MR. LAVIN: Agreed.

6 MEMBER ALE-FLINT: No further
7 questions?

8 MEMBER LEOCHA: No.

9 MEMBER ALE-FLINT: All right.
10 Thank you.

11 MR. LAVIN: Thank you.

12 MEMBER ALE-FLINT: We appreciate
13 that.

14 Well, we have come to the close of
15 our first day, and we appreciate everybody's
16 participation. I think, as a panel, we have
17 learned an incredible amount, as we set out to
18 do, to gain understanding from a number and
19 variety of different perspectives.

20 I will ask for Sam to help with the
21 housekeeping as we wrap up. But the panel is
22 going to be looking forward to convening and

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1 working on our next meeting, where we delve into
2 our approach for this fiscal year's report as
3 well as for the next two years.

4 MR. PODBERESKY: I am just going to
5 close with just housekeeping.

6 Again, you are in a secure building.
7 So, you have to be escorted out. Hopefully, we
8 have people available to do that. There are a
9 bunch of them with their hands raised in the back
10 of the room.

11 We have a tentative date for the next
12 meeting. Again, the meetings of this Advisory
13 Committee are going to be open to the public.
14 The tentative date is August the 7th. There is
15 no agenda for it as yet. We are going to be
16 working on an agenda. Under the Advisory
17 Committee Act, we are going to have to have a
18 Federal Register notice published within 15
19 days, at least no later than 15 days before the
20 August 7th date. So, just keep an eye out for
21 that.

22 We have the address list, the email

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1 contact list. To the extent we have that, we
2 will try to get that, you know, we will get that
3 notice out to the people that are on that list.

4 Presenters, to the extent that you
5 have not gotten us your written programs, you can
6 either get them to us in writing, you can get them
7 to us by email, or you can put them into the
8 docket yourselves. To the extent we don't get
9 them, we will contact you to get them because we
10 would like to have them, if they exist.

11 With that, I want to thank the
12 Committee members for their hard work and, for
13 some, long trips; for others, cab rides, which
14 could even be worse here in D.C., or Metro.

15 (Laughter.)

16 And thanks again for all your
17 attendance and the input you have given us.
18 Thank you.

19 (Whereupon, at 4:42 p.m., the
20 meeting was adjourned.)

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