



September 18, 2014

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Ave. SE
West Building Ground Floor, Room W12-140
Washington, DC 20590-0001

**Comments of Consumers Union and U.S. PIRG
To the U.S. Department of Transportation
“Transparency of Airline Ancillary Fees and
Other Consumer Protection Issues”
Docket No. DOT-OST-2014-0056**

Introduction

Consumers Union (CU)¹ and the U.S. Public Interest Research Group (U.S. PIRG)² submit the following comments to the U.S. Department of Transportation (“Department”) in the above-referenced matter. We believe the proposed rule will constructively build on the Department’s recent initiatives to strengthen legal protections for consumers of air transportation. We support the proposed rule, and offer additional recommended improvements, as discussed below.

Background

The Department has undertaken a number of important initiatives in recent years to strengthen protections for airline passengers, including its December 2009 rule limiting the

¹¹ Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union is an expert, independent, nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. It conducts this work in the areas of health reform, telecommunications reform, food and product safety, financial reform, and other areas, including air travel. Consumer Reports is the world’s largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

² U.S. PIRG serves as the federation of state Public Interest Research Groups, which are non-profit, non-partisan public interest advocacy organizations.

duration of tarmac delays and requiring domestic airlines to provide related passenger services, protections, and transparency,³ and its April 2011 rule extending those protections to foreign and charter airlines and international travel, and also requiring up-front disclosure of additional fees and taxes, better compensation for lost baggage and for being bumped from an oversold flight, and 24-hour holding of reservations at the confirmed fare, and prohibiting post-purchase fare increases.⁴ Consumers Union and U.S. PIRG have supported these past initiatives,⁵ and we support the additional protections contained in the proposed rule.

Support for Specific Proposals

1. Clarifying the Definition of “Ticket Agent”

We support the proposal to clarify the Department’s definition for who is covered as an airline “ticket agent.” The introduction of online bookings in the mid-1990s transformed the face of airline sales distribution. Prior to the advent of the Internet, the Department closely regulated airline-owned Computer Reservations Systems (now known as Global Distribution Systems) used by travel agents. Online sellers of travel may employ different technological tools today, but their role remains the same: They distribute airline products directly to consumers and therefore convey to those consumers vital pricing and fee information, as well as critical contractual obligations.

In 2013 the travel research firm PhoCusWright reported that just 34% of airline passengers purchased tickets directly from the carriers’ own branded web sites, and another 12% purchased directly through the carriers’ telephone reservations centers.⁶ Therefore, the other 54% of airline tickets are sold through other distribution channels. All of these ticket purchases should carry the same consumer protections – including pricing and fee transparency, the full-fare advertising rule, disclosure of airline code-sharing, and the other protections contained in the Department’s rules.

We believe the interests of consumers are best served by adopting the broader of the two options the Department is considering – to include all whose website (or other location of contact with consumers) could be the place at which a consumer selects a particular flight for travel, regardless of whether the purchase is completed at that site or how that site obtains revenue in connection with providing the service.

³ U.S. Department of Transportation; “New DOT Consumer Rule Limits Airline Tarmac Delays, Provides Other Passenger Protections,” December 21, 2009; www.dot.gov/briefing-room/new-dot-consumer-rule-limits-airline-tarmac-delays-provides-other-passenger.

⁴ U.S. Department of Transportation; “U.S. Department of Transportation Expands Airline Passenger Protections,” April 20, 2011; www.dot.gov/briefing-room/us-department-transportation-expands-airline-passenger-protections.

⁵ See ConsumerReports.org; “Good News for Airline Passengers: DOT Strengthens Rights,” April 22, 2011; www.consumerreports.org/cro/news/2011/04/good-news-for-airline-passengers-dot-strengthens-rights/index.htm?loginMethod=auto. Consumers Union and U.S. PIRG were active in the development and passage of the Boxer-Snowe Airline Passengers Bill of Rights legislation that helped lead to this rulemaking. U.S. PIRG commented in the rulemaking. Both Consumers Union and U.S. PIRG testified before the DOT’s Advisory Committee for Aviation Consumer Protection (ACACP).

⁶ Tnooz; “A New Problem for OTAs: Airlines are Outselling Them in the U.S.,” May 2, 2013; www.tnooz.com/article/a-new-problem-for-otas-airline-websites-are-outselling-them-in-the-us.

2. Display of Ancillary Service Fees Through All Sales Channels

Additional ancillary fees – for flight-related services running the full range from telephone reservations, seat assignments, ticket changes, checked baggage, carry-on baggage, and priority boarding to soft drinks, snacks, pillows, and inflight entertainment – have become increasingly widespread. They are now a major source of airline revenue: According to a July 2014 study from the independent firm IdeaWorksCompany, they generated \$31.5 billion for the global airline industry in 2013.⁷ Three U.S. airlines – United, Delta, and American – together accounted for a third of that ancillary fee revenue, or \$10.3 billion.

We believe consumers should be able to easily determine the full price they will be charged for their travel, at the outset of their purchasing process – at the point at which fares are being compared – and so we support the Department’s proposal to require that airlines and ticket agents disclose all significant ancillary fees at every point of sale, early in the purchasing process.⁸ Too many U.S. carriers have made this information difficult or impossible to obtain until close to or at the point of actual purchase. In some sales channels they are not made available at all.

We agree with the Department that it is appropriate to extend meaningful ancillary fee transparency requirements so that they apply not just to the airlines themselves, but to all sellers of airline tickets, through all sales channels – whether airline-owned or independent third-party sellers, and whether online, telephone, or in-person. To enable third-party sellers to reliably provide current information, the airlines need to be required to make it easily available to them.

Consistent with our recommendation in (1), we believe the interests of consumers are best served by adopting the broader of the two options the Department is considering – to include all whose website (or other location of contact with consumers) could be the place at which a consumer selects a particular flight for travel, regardless of whether the purchase is completed at that site or how that site obtains revenue in connection with providing the service.

We agree with the Department’s proposal that the ancillary fee information should be displayed automatically alongside the fares on the first page displayed in response to the prospective ticket purchaser’s itinerary request, without the need for the prospective purchaser to specifically request it. We believe other ancillary fee information – in addition to fees for seat assignments and checked and carry-on bags – should also be readily available. If providing information for all such ancillary fees alongside the fares would unavoidably crowd the page, then at a minimum the first page displayed should provide a link to the full ancillary fee information, and indicate clearly and conspicuously that other fees apply to the ticket in addition to the quoted fares.

⁷ IdeaWorksCompany; “2013 Airline Ancillary Revenue Lifts to \$31.5 Billion—Up Nearly 1,200% Since 2007,” July 16, 2014; www.ideaworkscompany.com/wp-content/uploads/2014/07/Press-Release-89-Ancillary-Revenue-Top-10.pdf.

⁸ We recommended such disclosure through our representation on the Department’s Future of Aviation Advisory Committee in 2010. See U.S. Department of Transportation; The Future of Aviation Advisory Committee, Final Report, April 11, 2011; www.dot.gov/sites/dot.gov/files/docs/faac-final-report-for-web.pdf.

It is not clear to us why the Department proposes not requiring ticket agents to provide information on “customer-specific” variations in fees, such as special rates for military personnel or for frequent flyers. We believe it would be feasible for this information to be provided by airlines to ticket agents, and therefore by ticket agents to consumers.

Ideally, we believe the ancillary services should be “transactable” with – i.e., actually purchasable from – a third-party ticket agent if the ticket itself can be purchased there. At a minimum, the quoted fee should be guaranteed so that it does not increase between the time the ticket is purchased and the time of travel.

The additional transparency for ancillary services contemplated should also apply to fees airlines are imposing for changing flights once a ticket has been purchased. Often the consumer needs to change the flight for reasons beyond the consumer's reasonable control, such as on account of serious illness or other personal emergency. These fees can be a significant, even prohibitive, expense – often \$200 to change a domestic ticket, and up to \$700 to change an international ticket.⁹

Although it might appear at first look that accommodating a ticket change could be a significant imposition on an airline, it should be noted that the consumer is simply asking to make seats available on one flight in exchange for taking seats that were available on another flight. The airline has still sold the same number of seats. In some instances, the airline may have less opportunity to resell the seats on the first, original flight than on the second flight. But that will not always or even usually be the case. In fact, given the increasingly common practice of overbooking, on many occasions it will end up saving the airline the expense of having to compensate other ticketed passengers for bumping them from that flight or persuading them to switch flights voluntarily.

We are concerned that, especially for consumers who have genuine emergency situations, these fees are an unfair and surprising imposition on the consumer, out of line with the expense, if any, the airline reasonably incurs in making the change. We therefore urge the Department to require that flight-change fees be conspicuously disclosed to the consumer at the same time as other ancillary fees, so that the consumer can easily consider those fees in comparing flights. The Department may ultimately wish to consider using its authority to ensure that these fees are not allowed to be exploited as another opportune source of additional revenue for airlines – that they are kept in line with the airlines’ actual costs incurred, and are appropriately sensitive to the impact on consumers, and especially consumers with genuine emergency situations.

3. Expanding the Definition of “Reporting Carrier”

We agree with the Department that it is appropriate to expand the definition of “reporting carrier” so that the required performance information disclosures apply to airlines that account for at least .5 percent of annual scheduled domestic passenger air traffic. Having this information – regarding on-time performance, mishandled baggage, and ticket oversales – available for a wider group of airlines will be useful for consumers and regulators alike. With

⁹ SmarterTravel.com, “Airline Change Fees: ‘Optional’ Fees That Punish,” Ed Perkins, April 22 2014; www.smartertravel.com/blogs/today-in-travel/airline-change-fees-optional-fees-that-punish.html?id=18297283.

current technology, compliance costs for the additional airlines that would be covered would be minimal and entirely manageable. This is a modest proposed expansion, and if feasible, the Department should go further, and require that this information be reported for all airlines providing domestic scheduled passenger service.

As the Department suggests, we also recommend eliminating the “reportable flight” factor, so that the covered carriers are reporting this information as to all flights.

4. Reporting Data for Flights Operated by Code-Share Partners/ Mishandled Baggage Reports

We fully support the proposed inclusion of flights operated by an airline’s code-share partners in its performance data disclosures, in light of the significant increase in code-sharing arrangements in recent years, particularly code-sharing between mainline carriers and smaller regional carriers. A 2001 Congressional Research Service study found that “61% of the advertised flights of American, Delta, United, and US Airways were operated by regional airlines under code-share agreements, up from 40% in 2000.”¹⁰

This change was proposed in the 2011 final report of the Department’s Future of Aviation Advisory Committee, on which Consumers Union participated.¹¹ We agree that this change will make the monthly Air Travel Consumer Report, which provides critical and helpful information to consumers about domestic airline performance (including on-time flights, canceled flights, mishandled baggage, consumer complaints, and denied boardings) even more useful for consumers. And we agree that it will also increase airline incentives to improve performance, not only in their own operations but also in the operations of the carriers with whom they partner.

We believe the information would be of maximum usefulness if provided in the aggregate for a mainline carrier and all of its code-share partners, and also disaggregated for each of the mainline carrier’s code-share partners separately.

We are not certain why the Department chooses to limit its proposal to non-stop flights operated by code-share partners. We would recommend that the Department consider including all flight segments that are marketed by the mainline carrier.

Also in this part of the rulemaking, the Department proposes changing the way mishandled baggage is reported, to be computed in relation to the number of checked bags rather than in comparison to the number of enplaned passengers. We support this proposal as a more accurate measurement, in keeping with the wide variation in baggage checking among passengers today. The widespread introduction of fees for checked baggage (and in the case of at least three U.S. airlines, carry-on baggage as well) has transformed how airline passengers pack and travel.

¹⁰ Congressional Research Service; “Airline Passenger Rights: The Federal Role in Aviation Consumer Protection,” May 20, 2013; fas.org/sgp/crs/misc/R43078.pdf.

¹¹ U.S. Department of Transportation, The Future of Aviation Advisory Committee, Final Report, April 11, 2011, Recommendation 11; www.dot.gov/sites/dot.gov/files/docs/faac-final-report-for-web.pdf.

5. Minimum Customer Service Standards for Ticket Agents

We support the Department's proposal to extend the customer service standards that apply to airlines to apply to larger ticket agents. These standards – such as prompt ticket refunds; holding reservations at the quoted fare, or permitting them to be cancelled without penalty, for at least 24 hours after booking; disclosing cancellation policies and seating configurations; notifying travelers of changes in travel itineraries; and promptly responding to consumer complaints – are important consumer protections. They should not depend on how the consumer obtains the ticket.

We believe the 24-hour grace period should be prominently disclosed, by the carriers themselves as well as agents, and should be reiterated as necessary to avoid confusion if the purchaser calls back during that period requesting to change or cancel.

To the extent feasible, we believe the standards should be extended not only to the larger ticket agents, but to all ticket agents. That will provide greater protections for consumers.

6. Website Disclosure of Code-Share Service

We support the Department's proposal to codify the statutory requirement that carriers and ticket agents disclose any airline code-sharing agreements on their websites. It is important that consumers be aware when a carrier other than the marketing carrier (i.e., the airline that sold the ticket) will be operating the flight. There can be significant service, comfort, reliability, and even safety factors that differ among airline code-sharing partners, and these can be critical factors for consumer choice among carriers. These disclosures are now required by statute, and were also recommended by the Future of Aviation Advisory Committee.

We agree with the Department's view that this requirement should cover all websites that market to consumers in the United States. And we agree that the code-sharing information should be displayed with equal prominence in all oral communications, written communications, website displays, printed flight schedules, and advertisements.

7. Disclosure on Ticket Agent Websites Regarding Carriers Marketed

We support the proposal that a ticket agent be required to disclose if it is not marketing all airlines that fly a particular route, and to disclose which of those airlines it is marketing. This is essential in enabling consumers to know whether they are receiving a complete set of options, or to know the more limited "marketing universe" from which their flight choices have been selected. Preferably, the ticket agent should be required to disclose all airlines that serve a particular route, and which of those airlines are included in the ticket agent's marketing. A general alert that "not all carriers" are listed is of more limited usefulness.

8. Prohibition on Undisclosed Airfare Display Bias by Ticket Agents and Carriers

We support both the proposal to prohibit undisclosed bias in the display of competing carriers, as well as the proposal to require full disclosure of any preference – which carrier or

carriers are being given preferential placement, and how the ticket agent is being compensated for the preference. Consumers should know not only whether they are receiving the complete universe of options, but also whether the scales are being artificially tilted in favor of certain carriers.¹²

9. Prohibition on Post-Purchase Price Increases for Baggage Fees

We support the Department’s proposal to clarify that there can be no increase in baggage fees charged to a consumer after the consumer has purchased the ticket, even if the fees have not yet been incurred. We would urge the Department to consider extending this requirement to other flight-related fees that are significant enough that cost-conscious consumers may have considered and budgeted for them at the time they chose to fly, chose their carrier and flight, and purchased their ticket – such as fees for seat assignments, to name one example.

Additional Recommendation – Searchable Public Database of Complaints

We would urge the Department to adopt the recommendation, included in a 2014 report by U.S. PIRG, that the “Department of Transportation (DOT) establish a searchable public database of consumer airline complaints to supplement its monthly summary reports.”¹³

Conclusion

We have supported the initiatives the Department has taken in recent years to protect the rights of airline passengers. And for the foregoing reasons, we support the proposed increased protections for airline passengers, with the additional recommendations discussed above.

Respectfully submitted,

William J. McGee
Consultant, Aviation and Travel
Consumers Union

Ed Mierzwinsky
Consumer Program Director
U.S. PIRG

George P. Slover
Senior Policy Counsel
Consumers Union

¹² In 2000, Consumer Reports conducted an investigation of online travel sites and found evidence of proprietary marketing agreements under which the online sites agreed to give preferred placement to favored carriers. Consumer Reports Travel Letter, “Travel Web Sites: Look Around Before You Book,” October 2000, p. 1. Consumers Union forwarded the findings to the Department, asking it “to consider regulating online travel sites using the same basic standards it now employs with [Computer Reservations Systems] used by travel agents.” Consumer Reports Travel Letter, “All’s Not ‘Fare’ with Online Bookings,” October 2000, p. 2.

¹³ The Unfriendly Skies: Five Years of Airline Passenger Complaints to the Department of Transportation, U.S. PIRG Education Fund, 10 April 2014, <http://www.uspirg.org/reports/usf/unfriendly-skies>.