

**BEFORE THE
US DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

Docket DOT-OST-2017-0069

Date: January 30, 2018

**REPLY COMMENTS OF CONSUMER GROUPS
TRAVELERS UNITED
FLYERSRIGHTS.ORG
BUSINESS TRAVEL COALITION
NATIONAL CONSUMER LEAGUE
CONSUMER FEDERATION OF AMERICA
USPIRG
CONSUMER ACTION
AIR TRAVEL FAIRNESS
Edward Hasbrouck and Ed Perkins, Individual Consumer Advocates**

Communications with respect to this document should be addressed to:

Charles Leocha, Travelers United, President, Charles.leocha@travelersunited.org
Paul Hudson, FlyersRights.com, paul@flyersrights.org
Kevin Mitchell, Business Travel Coalition, btcmitchell@gmail.com
John Breyault, National Consumers League, johnb@nclnet.org
Susan Grant, Consumer Federation of America, sgrant@consumerfed.org
Edmund Mierzwinski, USPIRG, edm@pirg.org
Kurt Ebenhoch, Air Travel Fairness, kurt@airtravelfairness.org
Linda Sherry, Consumer Action, linda.sherry@consumer-action.org
Edward Hasbrouck, independent advocate, edward@hasbrouck.org
Ed Perkins, independent advocate, eperkins@mind.net

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Fundamental Reform of DOT's Regulation and Enforcement Needed

The comments submitted by Airlines for America (A4A), the International Air Transport Association (IATA), the Regional Airline Association (RAA), and individual airlines advocate for the removal of virtually every applicable airline consumer protection under the US Code of Federal Regulations (CFR). They completely miss the point of the role of US Department of Transportation (DOT) and the intent of the Airlines Deregulation Act of 1978 (ADA) in protecting the interests of the flying public.

After reading through the airlines wish list for regulations to be removed from the federal rulebook, consumers and those groups that represent them are understandably alarmed. Quoting extensively from legal cases, it seems that the airlines find no justification for any rules and regulations that protect consumers from unfair and deceptive practices.

The ADA is clearly designed to protect consumers. In fact, the Congressional Record from the time of the Act's introduction indicated that this law is written to provide a better aviation system for the American public, ensure safety of the system, protect against monopolies and concentrations, and safeguard the public interest.

There is no mention of corporate interest other than allowing the free market to operate.¹ However, it is certain that Congress in passing the ADA never intended to abandon sound regulation of the aviation marketplace and allow unfair and deceptive practices to be the rule. Strong government controls were put in place such as:²

- Section 102 (a)(1): Calls for protection of safety to be the “highest priority.”
- Section 102(a)(2): Calls for the prevention of any deterioration in established safety procedures.
- Section 102(a)(3): Calls for the availability of a variety of adequate, economic, efficient, and low-price services by air carriers without unjust discrimination, undue preferences or advantages, or unfair or deceptive practices; the need to improve relations among, and coordinate transportation by, air carriers, and the need to encourage fair wages and equitable working conditions.
- Section 102(a)(5): Calls for a sound regulatory environment that is responsive to the needs of the public.
- Section 102(a)(7): Calls for “The prevention of unfair, deceptive, predatory, or anticompetitive practices in air transportation, and the avoidance of unreasonable industry concentration, excessive market domination, and monopoly power; and other conditions; that would tend to allow one or more air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation.”
- Section 102(a)(10): Calls for the encouragement of entry into air transportation markets by new air carriers, the encouragement of entry into additional air transportation markets by existing air carriers, and the continued strengthening of small air carriers so as to assure a more effective, competitive airline industry.

These requirements in the ADA show that unfettered capitalism of the sort the aviation industry desires is inconsistent with both the letter and the spirit of the statute as it was written in 1978. Clearly, the needs of the public are to be paramount.

DOT is not currently providing the protections that Congress envisioned under the ADA.

The litany of the DOT failures in light of an examination of the ADA helps show how far the DOT has strayed from its mandate to protect the public. Though the DOT runs an exceptionally safe air traffic control system, albeit somewhat outdated, its consumer protections, enforcement of common carrier law, and scrutiny of airline consolidation have been superseded by its keen interest in airline commercial welfare.

¹ Airline Deregulation Act 49 USC 1301of 1978" Sec.102(a)(4)&(9)

² ibid. Sec.102

Among these failures:

- DOT fails to inform passengers of rules and compensation
- DOT has allowed airlines to limit their duty of care
- DOT has not allowed full and efficient public availability of prices, ancillary fees, schedules and inventory
- DOT has not acted on equal duty of care for the disabled and able-bodied passengers
- DOT has not created rules to put laws passed by Congress and signed by the President into effect such as Families Sitting Together Act and refund rules for delayed checked baggage
- FAA (part of the DOT) has not responded to judicial requirements to justify important rules allowing less seat pitch and narrower airline seating.
- DOT's enforcement policies against airline abuses of consumers are lenient and not effectively enforced
- DOT is increasing international airline consolidation rather than discouraging through its program of antitrust immunity and encouragement of joint ventures

The responsibility of the DOT (and the FAA) is to ensure a safe aviation system, protect against monopoly power, carry on and enforce common carrier law, implement and enforce the law, and to protect travelers from unfair and deceptive practices.

The DOT authority over the airline industry replaces state and local protections.

When Congress considered and passed the ADA they did not discuss or consider as any part of the legislative process that consumers would be stripped of the long-available private right of action in commercial air transportation. Subsequently, the courts wrongly interpreted the intent of Congress and conflated that right to sue for harm from unfair and deceptive practices with the federal preemption doctrine.

As such, when it comes to virtually all legal protections, the public relies solely on the DOT when dealing with airlines. This is another reason it is particularly important that at DOT the public interest should come before commercial interests. The DOT has the power to be the lawmaker, prosecutor, judge, and jury for all aviation-related complaints that would otherwise be handled in the state and local courts.

If either corporate or individual consumers do not agree with the findings of the DOT, they must file a lawsuit with the federal court system. The DOT's enforcement role is therefore particularly important; if it does not act to prevent deceptive practices among sellers of air transportation, neither consumers nor other government agencies may take action in this area.

The US Supreme Court has ruled that the DOT's power to regulate airfare advertising is exclusive -- state consumer protection agencies may not regulate airline advertising. Every state has enacted consumer protection and deceptive advertising laws, each offering its citizens

important protections. However, in regard to airfare advertising by air carriers and their agents, these laws have been held to be completely preempted by the ADA.³

Moreover, the Federal Trade Commission's power to prohibit unfair methods of competition and unfair or deceptive acts or practices does not extend to airfare advertising. Additionally, federal courts have concluded that consumers cannot sue airlines for violating the federal law which empowers the DOT to prohibit unfair and deceptive practices.

The DOT should expand its approach to airline service regulation to allow market forces to work on behalf of consumers.

Courts have repeatedly upheld the DOT statutory authority to regulate air transportation despite persistent protests by the airline industry.

When the ADA was passed, Congress deregulated domestic airline prices, routes, and services. Congress also directed the Civil Aeronautics Board (CAB) to rely on "competitive market forces and on actual and potential competition."⁴ However, between 1978 and 2018 (40 years) the definition of competitive market forces has been corrupted by airlines and by the DOT that replaced the CAB.

The airlines' comments, with their litany of regulations -- that should be reconsidered for modification or removal -- reveal a misunderstanding of the competitive market forces as used in the US. Specific protections were included in the ADA to keep unfettered capitalism in check.⁵

Competitive market forces can only operate with price transparency. In other words, when consumers know the full price of a service such as flying from Point A to Point B, they can make an informed decision based on their personal needs and the free market.

In both corporate competition and price competition, the market can only operate effectively with full transparency of services and prices. That is why governments have found the need to demand complete and accurate prices and restraints on corporate actions that hinder the free market.

The ADA specifically addresses these issues by noting in its introduction that safety and competition are the "highest priority." However, Section 102 goes on to say:⁶

³ *Morales v. T.W.A.*, 504 U.S. 374 (1992). Since 2000 the National Association of Attorneys General has been asking for the right to apply state and local laws to the aviation industry especially in the area of advertising of air transportation services. Attorneys General note in letters that "some airlines may be providing false or misleading information to the traveling public." Advertising in these cases apply to both airline prices and to their published schedules. Additionally, the DOT has failed to require airlines "to provide customers with accurate and reliable information which would allow customers to make informed choices about their travel options."

⁴ 49 U.S.C. § 40101(a)(6),(12)

⁵ Airline Deregulation Act 49 USC 1301of 1978 Sec. 102(a)(7)

⁶ *Ibid.* Sec. 102

“(5) The development and maintenance of a sound regulatory environment which is responsive to the needs of the public and in which decisions are reached promptly in order to facilitate adaption of the air transportation system to the present and future needs of the domestic and foreign commerce of the United States, the Postal Service, and the national defense. And,

(7) The prevention of unfair, deceptive, predatory, or anticompetitive practices in air transportation, and the avoidance of—

(A) unreasonable industry concentration, excessive market domination, and monopoly power; and

(B) other conditions; that would tend to allow one or more air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation.”

“(9) The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services.”

“(10) The encouragement of entry into air transportation markets by new air carriers, the encouragement of entry into additional air transportation markets by existing air carriers, and the continued strengthening of small air carriers so as to assure a more effective, competitive airline industry.”

When the record is examined in its entirety, the DOT has failed the American public with its under-regulation of the aviation system in the United States. While the number of passengers flying is at a record high, the DOT has focused on only the corporate side of deregulation and has ignored the consumer protections clearly stated in the ADA.

Consumers are concerned about the demise of common carrier protections

There are three requirements for any common carrier:

- non-discrimination;
- duty of care; and
- public pricing.

The DOT has been delinquent in its responsibility to see that these requirements are met. Basic legal protections that have been developed over hundreds of years are being ignored by the DOT to the benefit of the airlines and at the expense of consumers.

Non-discrimination

These are examples of how the DOT has failed to ensure non-discrimination:

- DOT has not promulgated regulations enforcing the Airline Deregulation Act's non-discrimination requirements, including to ensure that individuals with disabilities are able to access air travel without undue burden.
- DOT has not produced final rules for reporting of damage to passenger wheelchairs and other mobility devices.
- DOT has no reporting system in place for determining how many mobility devices are damaged.
- DOT has not implemented systems to assist the blind in using airport kiosks.

Duty of care

Rules and regulations that once protected passengers from airline irregular operations that resulted in a break of a trip or an extended delay have been allowed to languish as airlines slowly but surely disclaim their responsibility for providing overnights and meals for passengers delayed or facing airline cancellations.

Today, the airlines' failure to adhere to schedules results in many missed connections. Misconnections harm the flying public. When missed connections are between different airlines passengers sometimes must pay large cancellation or change fee fines. The airlines pay nothing and keep the passenger's money, sometimes for the entire booked trip, including return travel. This should stop.

In the case of IT failures, airlines are allowed to treat the failures as if they were an "Act of God." They clearly are not. These incidents are failures of the airlines to protect their passengers and to deliver service. They should fall under the duty of care and passengers should be compensated, not faced with a runaround and having to meet deadlines for rebooking flights imposed by the very airlines that caused the problem in the first place.

Public pricing

All prices charged to passengers should be public and provided to all ticket agents with no restrictions. Before computers, complete airline prices were mandated to be posted by the door of the airline company offices. Today's Full-Fare Rule, requiring airfares and all mandatory airline charges and government fees to be included in advertised airfares, is a beginning but still falls short of what is needed for the free market to fully operate to deliver for the benefit of consumers.

Airlines refer to this call for an open pricing system as the GDS (Global Distribution System) issue. It is not. It is a basic component of long-held legal common carrier requirements. Public pricing is part of the fabric of the free market system that airlines claim to fully support.

Today, airlines only publicly price *airfares*. Airlines shroud all ancillary fees together with a complex system of exemptions and exceptions, resulting in a total pricing system that is very difficult to efficiently navigate.

In addition, beyond harm to airline consumers who cannot easily calculate prices for comparison-shopping, this refusal to publish open and public data harms the IT and software industry's ability to serve consumers. No significant changes to the passenger/airline information interface can be created without open data. There is no limit to the number of fees, thus there can be no fair airfare data system for the public to use to compare the cost of travel on different flights and different airlines.

Regulation by Regulation Replies to Comments from Airlines for America and Other Airlines

Airline Distribution of Fare and Fee Information

Airline request:

- Permanently Terminate DOT's Request for Information ("RFI") Regarding Airline Industry Practices on Distribution and Display of Airline Fare, Schedule, and Availability Information
- Permanently Terminate the SNPRM on Mandatory Display and Sale of Optional Services Through All Distribution Outlets

Consumer reply: By allowing airlines to withhold this basic information, the DOT is failing to promote the proper functioning of market forces by allowing airlines to withhold data. This is exactly the opposite of the intent of ADA. It was created, written, and passed by Congress to protect the public while allowing market forces to determine airfares, ancillary prices, routes, and aviation operations.

The airline requests to terminate these rulemakings concerning distribution are anti-consumer, anti-software development, and anti-free market. If the airlines truly believe in market forces, they must recognize that those forces must work for consumers, not just industry. Airline passengers make their decisions based on the full cost of travel. The airlines have been preventing consumers from making those kinds of market-driven decisions for a decade.

It is time that the DOT requires the airlines to find a way that their complex pricing system can be computerized so that consumers can make educated purchase decisions.

Furthermore, allowing airlines to publish only partial fares without associated ancillary fees is hindering pro-consumer development of technology. Open data can allow software developers to create new interfaces that can help passengers purchase in new and innovative ways as well as help the airlines sell more airline tickets.

Since the early 1990s, there has been no real change in the way that passengers interface with travel agents and airlines when purchasing airfares. In 1998 major airlines began to unbundle airfares and started charging ancillary checked-baggage fees. Over the following years, more and more ancillary fees were added and price comparison became far more difficult. No longer can consumers comparison shop with easy access to the full prices, and software developers lack the data necessary to make creating new software more feasible.

The airlines' attempts to drive more purchasers to their proprietary sites by restricting access to data distribution and publication by independent online travel agents and GDSs is against every principle of the ADA.

This concerted airline action violates hundreds of years of common carrier principles. It violates the anti-monopoly language of ADA. It stops market forces from operating effectively.

Today, the DOT is abrogating its responsibility to the public, the free market, and the ability to comparison shop. It is past time for the DOT to require the airlines to make their complex pricing system transparent and open so that consumers can use technology to help them make educated purchase decisions.

Airline Advertising and Marketing

Airline request: Repeal the “Full-Fare Advertising” Rule

Consumer reply: The Full-Fare Advertising Rule is central to ensuring the free market forces work for consumers. Consumers can only make informed buying decisions on the basis of the full price. Advertising prices that do not reflect the full cost are misleading and deceptive. This is a basic concept of consumer protection issue.

Taxes and fees on airline travel can add substantially to the cost. Advertising an airline ticket for \$62 each way without including taxes and fees is deceptive and misleading. The airlines have lost every challenge to the Rule at the District Court level and in the Supreme Court.⁷ These rulings leave the federal government with the authority it needs for ensuring that consumers “get what they pay for.” The DOT should strongly enforce and enhance the Rule, not backtrack on it.

Airline request: Clarify That the Prohibition on Post-Purchase Price Increases Does Not Apply to Mistaken Fares

Consumer reply: Airlines, prior to the DOT intervention, would charge passengers \$150 change fees for correcting errors made in destination or name spelling on airline tickets even when these mistakes were discovered within seconds of pushing the “buy button.”

Airlines are in complete control of the buying process and they are in control of setting their airfares and varying them regularly. Recently, a business class airfare from LAX to MAD was available for \$1,920. This ticket had been previously priced at about \$3,400. Some thought the new price was a mistake, but it was, in fact, a legitimate fare. If a ticket price can fluctuate so widely from \$3,400 to \$1,920 how is a consumer to know if a price is in error or not?

Airlines have social media experts working 24/7 and should be able to take mistaken airfares down relatively quickly. Recently, a “mistaken airfare” took airlines 48 hours to correct. Another reoccurred three times over a period of several months. It is up to the airlines to have personnel and procedures in place to address these problems. Consumers should not have to pay for airline mistakes and persistent lack of attention to detail.

⁷ USCA Case #11-1219

Airline request: Eliminate the Requirement to Display Flight On-Time and Cancellation Data During the Fare Purchase Process

Consumer reply: Though airlines only guarantee, through their contracts of carriage, that they will eventually get a passenger from Point A to Point B, most passengers expect them to maintain a schedule. Passengers have every right to know the time of departure and arrival and the on-time percentage of each flight. Otherwise, airline schedules are simply misleading.

The on-time and cancellation data are important aspects of the airline's competitive posture. Without such data, airlines would not have an incentive to compete based on being punctual, etc. In addition to thwarting price competition by not providing full prices including ancillary fees to consumers, eliminating on-time and cancellation data from the booking process would hinder market forces.

Airline request: Eliminate the Policy on Treatment of Chronically Delayed Flights

Consumer reply: On-time performance is an important factor in airline passengers' buying decisions -- even more so when connecting flights are involved. The ADA specifically encourages connecting flights at hub airports. The law was designed to improve the movement of passengers from smaller non-hub airports to their destinations via hub airports. Thus, delayed flights become a very important part of the aviation consumer's decision-making process and a vital cog in enabling market forces to work.

All airlines use the same air traffic control system. It is disingenuous for airlines to blame air traffic control (ATC) system problems for chronically delayed flights. The on-time and cancellation data becomes part of the airline's competitive profile. Without such data, airlines would not have to compete based on punctuality.

Already, airlines have reported that they "pad" their schedules to ensure better on-time performance.

Plus, without such a rule, airlines could advertise any schedule they want with no intention of ever operating an on-time flight. The DOT does not control the advertising and passenger complaint process for bus, rail, or cruise lines. It does for airlines, and just as the FTC holds the rest of the businesses in America liable for honest advertising, the DOT is right to do so for airlines.

Airline request: Eliminate the Requirement That a Single Baggage Fee be Charged Throughout a Passenger's Itinerary

Consumer reply: This is a situation created by the airlines themselves. It arises when tickets are sold and ticketed across airline alliances and between alliances and non-alliance-member carriers. When baggage fees are charged, they must be charged based on the total one-way flight itinerary including connections. They must be subject to the marketing airline's contract of carriage or the "predominant" airline's contract of carriage.

This requirement was put in place after a long rulemaking procedure. If airlines wish to sell code-share flights on international networks, consumers cannot be expected to know the various baggage fees and regulations controlling foreign carriers. Furthermore, the contracts of

carriage for other alliance airlines are not available when purchasing airline tickets. It is not unreasonable to ask that the advertised price be the price a passenger pays across the airline alliance network.

Airline request: Eliminate the 24-Hour Reservation Hold Rule.

Consumer reply: It is ironic that the airlines want to eliminate any responsibility for mistaken airfares while at the same time they want to take away any forgiveness for honest passenger booking errors. The current rule appropriately protects airlines by limiting it to tickets purchased more than a week before the departure date.

If anything, this rule should be strengthened to allow name misspellings and minor changes to be made without canceling the entire ticket and then starting over. Consumers may often lose out on flash sales that expire between the time of the original booking and the correction.

Airline request: Modify the PP3 Final Rule's Display Bias Prohibition.

Consumer reply: We believe that it is important to avoid concealed or deceptive biasing in order to protect consumers.

As we have already said, displaying only the base airfares without ancillary fees is deceptive and misleading. The DOT can and should intervene to ensure that all full pricing data, dynamic and static, is shown and available in a computer-readable format.

Not all screen biasing is detrimental to consumers. In some cases, it may provide consumers with new options and new ways to view the airline marketplace. Displays should not be limited to those based on airfare; there are many other factors that consumers may wish to consider when shopping for air travel.

Hipmunk sorts its displays based on the "agony factor." Some websites sort their screens based on length of layovers. Others enable consumers to sort their own results on a screen by selecting a filter such as time of arrival or departure, class of service, availability of upgrades. And there are surely other useful filters not yet developed. When the information is transparently disclosed to consumers, these bias displays do not raise concerns.

Passengers with Disabilities Rules

Consumer reply: These rules are best addressed by organizations participating with the DOT on rulemaking proceedings.

Lengthy Tarmac Delay Rules

Airline request: Initiate a Rulemaking to Conform the Tarmac Delay Rule With Recent Legislation Amending the Time Period Used to Measure a Lengthy Tarmac Delay

Consumer reply: Rulemakings should also be initiated to enact the Families Sitting Together Act and the FAA bill's mandate to a refund of baggage fees when baggage is delayed.

Airline request: Comply With the Statutory Requirement That Tarmac Delay Penalties Be Imposed On a Per-Flight, Not Per-Passenger Basis

Consumer reply: Consumers support the current rules because they serve the purpose of making tarmac-delay rules an important consideration in airlines operations. The occurrence of excess tarmac delays dropped dramatically immediately after imposition of the current penalty system. This shows that when customer service issues are backed by a strong DOT, the airlines will respond appropriately. Changes already included in the FAA Reauthorization Bill of 2016 have mitigated many airline concerns and the history of the DOT penalties shows that the agency has acted with restraint and recognizes when there are extraordinary circumstances.

All passengers on aircraft are harmed equally by excess tarmac delays. This is a regulation to protect passengers, not aircraft. Penalties should be assessed per passenger rather than per aircraft.

Airline request: Apply the Safety and Security Exceptions to the Tarmac Delay Rules, With Due Deference to Pilot in Command Determinations

Consumer reply: Consumers support the current rules and regulations. The DOT already has the power to take these issues into consideration. There is no need to change any of the current rules.

Airline request: Expand the Exceptions to the Tarmac Delay Rules to Include Situations Where Flight Crew Members' Duty Limitations and Rest Requirements Are a Factor in Causing a Tarmac Delay

Consumer reply: The DOT already has the power under the current regulation to take these factors into consideration.

Airline request: Refrain from Regulating Cabin Temperatures Absent a Lengthy Tarmac Delay

Consumer reply: These rules for regulating cabin temperature should apply at all times. They were initiated because of the airlines repeated failure to consider passenger comforts and health. If it turns out that there is truly no need for this kind of regulation, it will never have to be enforced.

Airline request: Eliminate the Requirement that Tarmac Delay-Related Notifications to Passengers Be Provided Every 30 Minutes

Consumer reply: Timely notification of delay-related information is necessary for passengers, unlike cargo, to plan on functions such as eating and using lavatories. It can be important in providing passengers with the opportunity to change to other flights, make hotel reservations, deal with possible missed connections, contact relatives or friends traveling to destination airports to pick them up, etc.

The airlines need to keep their customers informed. We realize that sometimes the gate agent does not know what is happening. In those cases, the agent should at least let passengers waiting for delayed flights know that he/she is trying to get that information and will provide it as soon as it is available. This is a basic customer service that should be provided to all delayed airline passengers.

Airline Reporting Requirements

Airline request: Repeal All Airline Reporting Requirements Not Specifically Required by Statute

Consumer reply: The ADA says, "In order to carry out his responsibilities under this subsection, the Secretary may require each such air carrier to file with the Secretary the reports, data, and other information necessary..." The DOT can and should collect any data that the Secretary feels is needed for the DOT's job of protecting airline passengers and employees and keeping the aviation system functioning safely.

The advent of the Internet only serves to make it easier and less time-consuming to collect and publish the data that the DOT requires. It is certainly not a reason to remove any reporting.

With state consumer protection laws effectively preempted, the DOT should exercise its authority to require reports that show their rules and regulations are being enforced. Without such reports, the Department would have to employ a large system of investigators that would surely be more intrusive and disruptive of airline operations.

The data provided by the American Customer Satisfaction Index, JD Power & Associates, and A4A Air Travel Surveys (conducted by Ipsos) will all add to the DOT data but cannot substitute for them since those sources are not considered official.

The airline statement about their requirement to report:

Incidents involving the loss, injury or death of animals (14 C.F.R. Part 235). These monthly reports are of little or no value to the consumer because such losses, injuries or deaths are extremely limited in number and in the case of injury, are commonly self-inflicted, such as a dog that chews the bars of its kennel and hurts itself. For example, during 2016, reporting airlines transported 523,743 animals, during which only 48 incidents (26 deaths, 22 injuries) occurred, resulting in a remarkably low 0.92 incidents per 10,000 animals transported. This annual reporting is required by DOT even if an airline experiences no reportable incidents during the year.⁸

⁸ Cornell Law School <https://www.law.cornell.edu/cfr/text/14/235.3>

These reports are part of the system that allows the DOT to operate without an enforcement presence such as the FBI or police. Even A4A can agree that producing a report that shows a positive result of regulation is better than having the permanent presence of an investigative entity.

The required reports of advertising and promotion of air transportation and reports of revenues from transporting excess baggage all fall under the DOT enforcement authority. These are reports that the airlines already create for tax purposes and for their own management purposes.

The language in the ADA should be the operative control for any review of reporting. Any reports on air safety should be continued according to Section 107(b) that concludes with (underlining added):

Based on such report, the Secretary shall take those steps necessary to ensure that the high standard of safety in air transportation referred to in subsection (a) of this section is maintained in all aspects of air transportation in the United States.

Section 20(r) requires the DOT to certify airlines and states that this is a

...continuing requirement applicable to each air carrier with respect to the transportation authorized by the Board. The Board shall by order, entered after notice and hearing, modify, suspend, or revoke such certificate or other authority, in whole or in part, for failure of such air carrier to comply with the continuing requirement that the air carrier be so fit, willing, and able, or for failure to file such reports as the Board may deem necessary to determine whether such air carrier is so fit, willing, and able.

These responsibilities require ongoing reporting.

Airline request: Withdraw and Terminate the Notice of Proposed Rulemaking on Reporting Ancillary Airline Passenger Revenues

Consumer reply: Ancillary fees are a part of the total cost of airline travel and airlines should report them. Reporting should not be burdensome since the information must be reported by airlines on tax documents and used to create quarterly profit and loss statements.

Airline request: Align Release of T-100 International Data with the Release of T-100 Domestic Data

Consumer reply: We agree.

Airline request: Update and Streamline the Employment Statistics Reported to DOT

Consumer reply: We agree.

Airline request: Eliminate Other Unnecessary Schedules Required by DOT Form 41

Consumer reply: If the FAA agrees that this data is no longer necessary, consumers agree. However, after examining the required reports, there should be no significant added burden on airlines to provide this information since it is similar to other financial reports filed on a regular basis to other governmental and financial regulatory bodies.

Customer Service Plan Regulations

Airline request: Eliminate the Department's Use of Its Customer Service Plan Rules As a Tool for Increasing Civil Penalty Amounts

Consumer reply: The DOT uses its powers for consumer protection judiciously. For the airlines to complain about these penalties for lack of customer service plan publication of data seems ridiculous. The total penalty is a paltry sum.⁹

Plus, since passengers cannot enforce these "Customer Service Plans" through state law, the DOT actions are the only available means of recourse. The airlines write their own customer service plans. It is not too much to require that they "adhere to the plan's terms."

Airline request: Eliminate the Customer Service Plan Self-Auditing and Auditing Records Retention Requirements

Consumer reply: This is a minimalist approach to ensuring that the airlines can be held accountable for their responsibilities to consumers. In fact, the real problem is the lack of effective penalties for transgressions.

Customer Complaints and Refunds

Airline request: Modify DOT Micro-Regulation of Carrier Responses to Disability-Related Consumer Complaints

Consumer reply: As with the tarmac delay rules, these regulations are needed to protect the flying public. As we noted before, the DOT acts as the prosecutor, judge, and jury for the airline industry. Complying with these DOT rules requires fewer airline resources than would defending cases brought under state law.

⁹ What does a drop in airline fines mean for fliers? Christopher Elliott, The Washington Post, Dec. 9, 2017

Airline request: Modify DOT Micro-Regulation of Carrier Responses to General Consumer Complaints

Consumer reply: None of the airline complaints against the DOT are valid.

- The DOT relies on the complaint system to keep track of service.
- Consumers must bring airline complaints to the DOT since they cannot obtain redress through state and local courts.
- The DOT complaint system is a cost-effective way for the airlines to respond to consumer complaints.
- Since the airlines often fail to act promptly when customers complain to them, the DOT complaint system helps to ensure that passenger justice is not unduly delayed. It saves the airlines money and produces good results for travelers.

Airline request: Eliminate the Requirement That Airlines Inform Consumers How to Complain to the Department

Consumer reply: Since passengers have no recourse under state law, the DOT needs to continue requiring airlines to notify consumers how to complain. Furthermore, the basic consumer compensation rights notifications should also be expanded by requiring that they appear in writing on ticket itineraries and computer-generated boarding passes. These notifications need not be long or detailed.

There is plenty of room on Web-generated ticket itineraries and on boarding passes for this information. Airlines already pack these itineraries and boarding passes with advertisements, Sudoku games, weather reports, etc.

Though airlines claim they have “every incentive to respond to issues,” they have no incentive other than the DOT to respond within 30 days or have a substantive response within 60 days. These reporting deadlines are important consumer protections.

There is nothing in the current rules that prohibit airlines from managing and innovating their complaint responses. Consumer groups encourage them to do just that. However, that innovation must be within the response rules promulgated by the DOT.

Airline request: Eliminate the Refund Requirements Under Regulation Z

Consumer reply: Requiring airlines to comply with the same requirements to promptly process credit card refund requests that apply to all other businesses is not duplicative. It is an important consumer protection.

Obsolete Regulations

Airline request: Eliminate the Department’s Tariffs Rules

Consumer reply: Tariff rules (or tickets rules) are not obsolete. All airlines have detailed tariff rules, and the airlines require consumers to check a box that they have read the rules and

restrictions, etc. before purchasing a ticket. These rules are very complex and serve as the “in writing” legal basis for all airline/passenger ticket transactions.

This is an example of the way that AA lists their tariffs.

SURFACE SECTOR MEANS A SECTOR BETWEEN TWO INTERMEDIATE POINTS OF A FARE COMPONENT WHERE TRAVEL IS VIA OTHER THAN A MILEAGE FARE, THE TICKETED POINT MILEAGE BETWEEN THE ORIGIN AND THE DESTINATION OF THE SURFACE SECTOR IS THROUGH FARE COMPONENT. IN THE CASE OF A ROUTING FARE, BOTH THE ORIGIN AND DESTINATION POINTS OF THE SURFACE SECTOR OF THE FARE. TRANSPORTATION OVER THE SURFACE SECTOR IS COVERED BY THE THROUGH FARE COMPONENT.

THROUGH FARE MEANS A FARE APPLICABLE FOR TRAVEL BETWEEN TWO CONSECUTIVE FARE CONSTRUCTION POINTS VIA AN INTERMEDIATE POINT.

TICKET MEANS THE "PASSENGER TICKET AND BAGGAGE CHECK," INCLUDING ALL FLIGHT, PASSENGER AND OTHER COUPONS TITLED FOR THE CARRIAGE OF THE PASSENGER AND HIS BAGGAGE.

TICKETED POINT MEANS ANY POINT SHOWN IN THE 'GOOD FOR PASSAGE' SECTION OF THE PASSENGER TICKET PLUS ANY OTHER POINT SHOWN IN THE 'FARE CONSTRUCTION BOX' OF THE PASSENGER TICKET; PROVIDED THAT TWO FLIGHT NUMBERS OF TWO COUPONS WILL NOT BE PERMITTED ON ONE FLIGHT COUPON.

TRANSATLANTIC SEGMENT MEANS THAT PORTION OF TRAVEL COVERED BY A SINGLE FLIGHT COUPON FROM THE POINT OF DEPARTURE TO ARRIVAL IN AREA NO. 2 OR AREA NO. 3 AND VICE VERSA.

TRANSFER MEANS A CHANGE FROM THE SERVICE OF ONE CARRIER TO ANOTHER SERVICE OF THE SAME CARRIER (ONLINE TRANSFER) OR CARRIER (INTERLINE TRANSFER).

TRANSIT POINT MEANS ANY STOP AT AN INTERMEDIATE POINT ON THE ROUTE TO BE TRAVELLED (WHETHER OR NOT A CHANGE OF CARRIER WITHIN THE DEFINITION OF A STOPOVER).

TRANSPACIFIC SEGMENT MEANS THE PORTION OF TRAVEL COVERED BY A SINGLE FLIGHT COUPON FROM THE POINT OF DEPARTURE TO ARRIVAL IN AREA 3 AND VICE VERSA EXCEPT FOR A PORTION OF TRAVEL COVERED BY A SINGLE FLIGHT COUPON BETWEEN A POINT IN NORTH AMERICA AND AN ASIAN SUB-CONTINENT.

TRUST TERRITORY MEANS THE AREA COMPRISING THE CAROLINE ISLANDS, MARIANA ISLANDS AND MARSHALL ISLANDS.

ULTIMATE TICKETED DESTINATION MEANS IN SITUATIONS WHERE A PASSENGER'S ORIGIN IS A NON-CANADIAN POINT THE CLOSEST POINT TO CANADA, AS WELL AS AT LEAST ONE STOP OUTSIDE OF CANADA. IF THE STOP IN CANADA IS THE FARTHEST CHECKED POINT AND THE NEAREST AGENCY WOULD CONSIDER THE ULTIMATE TICKETED DESTINATION TO BE CANADA.

These rules should indeed be reviewed. From a consumer point of view:

- Tariffs and ticket rules should be made more easily understood.
- Tariffs and ticket rules should be displayed in easy-to-read type rather than in all capital letters.
- Tariffs are now more complicated than ever and have complex restrictions on frequent flier program awards, changes, carry-on baggage, and more, and
- These tariff documents and ticket rules are more relevant than ever.

Airlines, when faced with IT failures, resort to writing tickets by hand on ticket stock and they still provide ticket envelopes at airports and ticket offices. Until airlines can certify that all IT problems will be eliminated and that all destinations served by the airline or their code-share partners or alliance partners have up-to-date functioning IT systems, paper-based backup is necessary.

The request that airlines only “be required to make their contracts of carriage available electronically to consumers on their websites and reference their contracts of carriage on e-ticket confirmations, as currently required by the Department under 14 C.F.R. § 259.6(c)”¹⁰ is not adequate. Airlines almost never have prepared printed Contracts of Carriage at the airport for reference by passengers. If a passenger insists, the airlines will print out a copy of the contract of carriage and hand it to the passenger. Not all passengers travel with computers and that should not deprive them of the right to see the Contract of Carriage.

¹⁰ Airlines for America comments, Dec. 1, 2017, DOT-OST-2017-0069

Airline request: Eliminate Airport Signage and Paper-Based Consumer Notification Requirements

Consumer reply: Absolutely no.

- Signage and paper-based notifications are simple ways to inform consumers of their rights conspicuously and at the time and in the place that they need the information.
- Not all airports have free WiFi.
- Not all airlines make Contracts of Carriage easily available to passengers when needed.
- Passengers do not receive a detailed list of restrictions on their tickets or on websites.

See also the discussion under elimination of notification on how to complain to the DOT

Airline request: Eliminate the Need to Provide a Paper-Based Explanation of Denied Boarding Compensation

Consumer reply: See also the discussion under elimination to notification of how to complain to the DOT. The detailed denied boarding rights should be available for passengers who are involuntarily denied boarding. This helps to prevent the agents from misleading passengers about their rights.

We reiterate that the basic consumer compensation rights should be displayed on all airline ticket itineraries and on boarding passes. That would be the best way to take advantage of “today’s electronically based airline industry.”

In addition, we suggest that these basic consumer rights should be displayed on airport posters and where available, on video monitors that can continually educate consumers that they have rights. The European Union has established such a program so that passengers know their rights and can demand the compensation for airline failures to which they are entitled.

Airline request: Eliminate the Requirement That Involuntary Denied Boarding Compensation be Paid in Cash or By Check

Consumer reply: All denied boarding compensation should be in some form of cash or a check, a credit card credit or cash transfer smartphone app. All agents must notify passengers that they do not have to take airline scrip or vouchers – they can get a form of cash or credit card credit.

Conclusion

The ADA specifically noted that the purpose of deregulating the airlines was for economic deregulation, not to weaken consumer protections. To that end, the law specifically gave the DOT responsibility to protect the flying public and required them to collect necessary data to ensure the efficient and safe operations of the US aviation system.

As the airlines focus on the importance of competitive market forces, they must recognize that market forces must work for consumers as well as businesses.

Competitive market forces cannot work effectively in the airline industry without disclosing full pricing data, the rules and restrictions that apply, and other factors so that consumers can make informed buying decisions. It is also essential for consumers to be informed of their rights and how to complain to the DOT if they believe an airline has not treated them correctly, and for the DOT to take swift, appropriate action to stop unfair, deceptive, and abusive airline practices.
